

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.477 of 2006

Order Reserved on : 28.8.2017

Order Passed on : 22.9.2017

Surendra Dubey, S/o Bhagwat Prasad Dubey, aged about 42 years, occupation Advocate, resident of Killapara, Ward No.2, Dongar Gaon, District Rajnandgaon, Chhattisgarh

---- **Petitioner**

versus

State of Chhattisgarh, District Magistrate, Rajnandgaon, Chhattisgarh

--- **Respondent**

For Petitioner	:	Smt. Indira Tripathi, Advocate
For Respondent/State	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment dated 26.7.2006 passed in Special Case No.17 of 2005 by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Rajnandgaon convicting the Petitioner/accused under Sections 294 and 323 of the Indian Penal Code and sentencing him for each of the offences to undergo rigorous imprisonment for 1 month and to pay fine of Rs.100/- with default stipulation.
2. The prosecution story, in brief, is that on 10.2.2005, Complainant Mahesh (PW1) had gone to Village Dongargaon from his Village

Matiya for repairing of his torch. At about 10:00 a.m., he was getting his torch repaired at the shop of Parakh Electricals by Shopkeeper Pradeep. At that time, he saw that Mahendra Dubey (acquitted accused) was beating Shivdayal (PW6). Abusing, he was taking Shivdayal (PW6) away with him. When Complainant Mahesh (PW1) along with Ankalu (PW4) tried to intervene, Mahendra Dubey caught him also and abusing, beat him. At that time, brothers of Mahendra Dubey, namely, Narendra Dubey (other acquitted accused) and Surendra Dubey (the present Petitioner) also came there and they also abusing, beat Complainant Mahesh (PW1). The incident was seen by Ankalu (PW4), Bhaggu Marar (not examined) and Sakendra (not examined). Complainant Mahesh (PW1), running, went to home and narrated the incident to his wife and thereafter went to Police Station Dongargaon and lodged First Information Report (Ex.P1). After investigation, a charge-sheet was filed under Sections 294, 323, 506 read with Section 34 of the Indian Penal Code and Section 3(1)(x) of the Act of 1989 against present accused/Petitioner Surendra Dubey and other two acquitted accused Mahendra Dubey and Narendra Dubey. Charges were framed against them accordingly.

3. So as to hold Surendra Dubey, Mahendra Dubey and Narendra Dubey guilty, the prosecution examined as many as 12 witnesses. Statements of the three accused persons were also recorded under Section 313 Cr.P.C. in which they denied the guilt and pleaded their innocence and false implication in the case. The accused persons also examined 4 witnesses in their defence.
4. After trial, the Trial Court acquitted Mahendra Dubey and Narendra

Dubey of the charges framed against them, but convicted and sentenced present accused/Petitioner Surendra Dubey as mentioned in the first paragraph of this order. Hence, this revision.

5. Learned Counsel appearing for the Petitioner argued that on the same piece of evidence, other accused persons Mahendra Dubey and Narendra Dubey have been acquitted and, therefore, present accused/Petitioner Surendra Dubey also deserves acquittal. She further argued that at the time of occurrence, the Petitioner was also assaulted by the Complainant and his brothers in which he had sustained some injuries, but those injuries are not explained by the prosecution.
6. Learned Counsel appearing for the State supported the impugned judgment and submitted that the same does not warrant any interference.
7. In his Court statement, Mahesh (PW1) has deposed that at the time of incident, at about 10:00 a.m., Shivdayal (PW6) was being beaten by Mahendra Dubey. When he went to intervene, Petitioner Surendra Dubey came there from behind, caught his collar and beat him and also abused him with the name of his mother and caused him to fall down. He suffered injury on his lips. He further stated that the accused/Petitioner caused him to fall down and beat him on his back and chest with his legs. After the incident, he lodged the FIR (Ex.P1) against Mahendra Dubey, Surendra Dubey and Narendra Dubey.
8. The above statement of Mahesh (PW1) is duly corroborated by Shivdayal (PW6). He has deposed that when Mahendra Dubey

and Narendra Dubey were assaulting him, at that time, Mahesh (PW1) had come to intervene. At that time, Petitioner Surendra Dubey had assaulted Mahesh (PW1) and had abused him with the name of his mother which was unpleasing in hearing.

9. Ankalu (PW4) has also deposed that Mahesh (PW1) was beaten by Petitioner Surendra Dubey. Rupendra (PW3) has deposed that he had seen injured Mahesh (PW1) weeping on the spot.
10. Mahesh (PW1) was examined by Dr. S.S. Deodas (PW8). As per the statement of Dr. Deodas (PW8) and the M.L.C. Report (Ex.P9), Mahesh (PW1) had suffered one lacerated wound on lower part of the lips, swelling on the right side of the cheek and pain in right wrist, chest, abdomen, waist and back.
11. From the evidence adduced in this case, it is evident that accused/Petitioner Surendra Dubey had assaulted Complainant Mahesh (PW1) and had abused him with the name of his mother. According to Shivdayal (PW6), the abusive words used by the accused/Petitioner were unpleasing in hearing.
12. It was argued on behalf of the Petitioner that on the same piece of evidence, other accused Mahendra Dubey and Narendra Dubey have been acquitted, therefore, Petitioner Surendra Dubey may also be acquitted of the charges framed against him.
13. From the evidence on record, it is clear that Petitioner Surendra Dubey had assaulted Complainant Mahesh (PW1) and he had also abused him with the name of his mother. Therefore, it is established that Petitioner Surendra Dubey was convicted by the

impugned judgment because of there being the above conclusive evidence on record, but other accused Mahendra Dubey and Narendra Dubey were acquitted of the charges because of there being no such conclusive evidence available against them. Therefore, the argument advanced with regard to acquittal of the Petitioner on the same piece of evidence is not considerable.

14. For the foregoing reasons, I do not find any flaw in the finding of conviction arrived at by the Trial Court against the Petitioner warranting interference. Therefore, the conviction imposed upon Petitioner Surendra Dubey under Sections 294 and 323 of the India Penal Code is affirmed.
15. So far as sentence part is concerned, the Trial Court, for the conviction under Sections 294 and 323 of the India Penal Code, has sentenced the Petitioner with rigorous imprisonment for 1 month and fine of Rs.100/- and rigorous imprisonment for 1 month and fine of Rs.100/-, respectively. The Petitioner is facing the *lis* since 2005. He has no criminal antecedent. Out of the total jail sentence of 1 month, he has already undergone the period of about 19 days. Therefore, I am of the considered opinion that the ends of justice would be served if the Petitioner is sentenced with the period already undergone by him and the fine imposed upon him is affirmed. Ordered accordingly.
16. The revision is allowed in part to the extent indicated above.
17. It is reported that the Petitioner is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.

- 18.** Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE