

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.3109 of 1998

Judgment Reserved on : 22.2.2018

Judgment Delivered on : 18.5.2018

Hulas Singh, S/o Munna Singh, aged about 40 years, R/o Akaltara, P.S. Akaltara, District Bilaspur

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant : Smt. Renu Kochar, Advocate
For Respondent/State : Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 21.12.1998 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Bilaspur in Special Criminal Case No.27 of 1996 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 3(1)(x) of the Act of 1989	Rigorous Imprisonment for 2 years and fine of Rs.500/- with default stipulation
Under Section 323 of the Indian Penal Code	Rigorous Imprisonment for 6 months

2. Facts of the case, in brief, are that on 8.4.1991, Complainant Constable Sukhdas Suman (PW1) was on his duty at Bus Stand, Akaltara. At that time, the Appellant was drunk and was abusing. On being stopped by the Complainant, he abused him in the name of his mother and addressing him "Satnami Saale" said that who

was he to stop him and thereafter catching his collar gave him a fist blow on his chest. The incident was witnessed by Arun Kumar Sahu (PW2), Ghanshyam (PW3) and Rajesh Jain (PW4). First Information Report (Ex.P1) was lodged by Complainant Sukhdas Suman (PW1). The Complainant and the Appellant were medically examined by Dr. Pramod Mahajan (PW6). At the time of examination, the doctor found that smell of liquor was coming out of the mouth of the Appellant, but he was not intoxicated. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 332, 294 of the Indian Penal Code and Section 3(1)(x) of the Act of 1989. Charges were framed against him under Section 3(1)(x) of the Act of 1989 and Sections 294 and 332 of the Indian Penal Code.

3. To rope in the Appellant, the prosecution examined as many as 6 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him, pleaded innocence and false implication. No witness has been examined in his defence.
4. After trial, the Trial Court acquitted the Appellant of the charges framed under Sections 294 and 332 of the Indian Penal Code, but convicted and sentenced him as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the

Appellant has falsely been implicated in the case. Independent witnesses Arun Kumar Sahu (PW2) and Rajesh Jain (PW4) have not supported the case of the prosecution. They have been declared hostile. Though Ghanshyam (PW3) has supported the case of the prosecution yet he is an interested witness. He belongs to the same caste to which the Appellant belongs. There is material contradiction in the statements of Complainant Sukhdas Suman (PW1) and Ghanshyam (PW3). It was further argued that from the evidence on record, it is clear that the Appellant was in drunken condition. If he, in drunken condition, had said anything regarding caste of the Complainant, it cannot be said that he said so to humiliate the Complainant.

6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Complainant Sukhdas Suman (PW1) has deposed that on 8.4.1991, when he was on duty at the bus stand, at that time, the Appellant came there. He was in drunken condition. He was abusing. He was not aware that to whom the Appellant was abusing. He stopped him from abusing and asked him to go back to his home. The Appellant asked him who was he to stop him and addressed him as "Satnami Saale". On again being stopped, the Appellant said that "Satnami Saale Satnami Jaise Raho" and he gave him a fist blow on his chest. The incident was witnessed by

Arun Kumar Sahu (PW2) and Ghanshyam (PW3). Thereafter, he reported the matter vide FIR (Ex.P1). During cross-examination, he has admitted that when he met the Appellant at the bus stand, he found that the Appellant was abusing from before his arrival.

9. Arun Kumar Sahu (PW2) has only stated that when he went to the bus stand, he came to know that a dispute had taken place between the Appellant and some police official. He himself did not witness the incident. He has been declared hostile.
10. Ghanshyam (PW3) has stated that at the bus stand, the Appellant was abusing. The Complainant stopped him from abusing. On this, the Appellant, addressing the Complainant "Saale Satnami Apni Jati Ke Aukat Me Raho", gave him a fist blow on his chest. Thereafter, the Appellant, taking his bicycle, went away from there. During cross-examination, he has admitted that he belongs to the same caste to which the Appellant belongs.
11. Dr. Pramod Mahajan (PW6), who medically examined both the Complainant and the Appellant, has stated that at the time of examination, the Appellant was in drunken condition, he was staggering and was stuttering in speaking.
12. Sub-Inspector K.B. Dwivedi (PW5) is the witness who investigated the offence in question.
13. A minute examination of the above evidence makes it clear that at the time of incident, the Appellant was in drunken condition, he was

abusing in public at the bus stand. On Complainant's stopping, a dispute took place between them and the Appellant gave a fist blow on the chest of the Complainant. When the Complainant tried to stop the Appellant from abusing, the Appellant said the Complainant that "Satnami Saale Satnami Jaise Raho".

14. As per the statement of Ghanshyam (PW3), the Appellant had said the Complainant that "Saale Satnami Apni Jati Ke Aukat Me Raho".
15. From the evidence of Dr. Pramod Mahajan (PW6), it is also clear that the Appellant was in drunken condition. He was staggering and stuttering in speaking. In these circumstances, even if the Appellant abused the Complainant in drunken condition in the name of his caste, it is not established that he said so with an intent to humiliate the Complainant. From the evidence on record, it is also clear that the Appellant was abusing in public and the dispute had taken place on being stopped by the Complainant. Therefore, the Appellant said anything to the Complainant intentionally to harass him is not established. In these circumstances, the offence alleged against the Appellant under Section 3(1)(x) of the Act of 1989 is not proved beyond reasonable doubt. Therefore, the Appellant is acquitted of the charge framed under Section 3(1)(x) of the Act of 1989. From the material available on record, the offence alleged against the Appellant under Section 323 of the Indian Penal Code is proved and, therefore, the conviction imposed upon the Appellant under Section 323 of the Indian Penal Code is affirmed.

- 16.** So far as sentence part is concerned, the incident took place in the year 1991. The *lis* is pending for about 27 years. The Appellant has already undergone about 15 days. After about a period of 27 years, it would not be appropriate to send the Appellant back to jail. I am of the considered opinion that it would be in the interest of justice if the Appellant is sentenced with the period already undergone by him. Ordered accordingly.
- 17.** Resultantly, the appeal is allowed in part to the extent indicated above.
- 18.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE