

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 893 of 2002

Order reserved on : 07.08.2018

Order passed on : 29.08. 2018

1. Sudru @ Boti S/o. Somru, Aged about 47 years,
 2. Smt. Janadaie W/o. Sudru @ Bati, Aged about 44 years,
- Both residents of village Hitabara, Thatapara, Police Station
Kukerenda, District Dantewada (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through Police Station Kukerenda, District
Dantewada (C.G.)

---- Respondent

For Appellants	: Mrs. Meenu Banerjee, Advocate
For Respondent	: Ms. K. Tripti Rao, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Judgment

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 20.06.2002 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Bastar place Jagdalpur (C.G.) in Special Criminal Case No. 141 of 2002, convicting and sentencing the accused/Appellants as under:-

Conviction	Sentence
Under Section 323 read with section 34 of the Indian Penal Code	Rigorous Imprisonment for 6 months.
Under Section 342 of the Indian Penal Code	Rigorous Imprisonment for 6 months.
Under Section 3(1)(3) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989	Rigorous Imprisonment for 1 year and fine of Rs.200/- in default of payment of fine further undergo RI for 1 month.
Under Section 3(1)(X) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989	Rigorous Imprisonment for 1 year and fine of Rs.200/- in default of payment of fine further undergo RI for 1 month with a direction to run all the sentences concurrently.

2. Case of the prosecution, in brief, is that complainant Varse Somdu, who is a gond by caste and is the member of Scheduled Tribe. The appellants are not the members of Scheduled Tribe. On 17.01.2002, at about 4.00 pm, Appellant Boti Telga invited him for drinking liquor at his house and there appellant Boti Telga used obscene word against the complaint's wife. Further case of the prosecution, is that at the time of incident accused/appellant Boti Telga and the complainant had consumed liquor there and thereafter Appellant Boti Telga and his wife Janadaie committed marpeet with the complainant and tied up with a tree whole night. On the next day, at about 4.00 AM, Hidma of Totapara, released him from the tree. The complainant lodged First Information Report vide (Ex.P-1) against the appellants in Police

Station Kuakonda and the complainant was sent for medical examination at Primary Health Centre at Kuakonda.

3. After completion of the investigation, charge-sheet was filed before the trial Court wherein the trial Court framed charges as mentioned above to which the appellants did not plead guilty. The trial Court conducted the trial and after completion of evidence of the prosecution side, statement of the appellants under Section 313 of the Cr.P.C. were recorded and after completion of trial, the trial Judge considering the material available on record by the impugned judgement convicted and sentenced the appellants as mentioned above.

4. Learned counsel for the appellants submits that the appellants are not challenging their conviction. She further submits that she confines her argument to the sentence part only and prays to reduce the jail sentence awarded to the appellants to the period already undergone by them as they have been facing the case against them since 2002; they are facing the trial for last 16 years. Learned counsel for the appellants have further submitted that the appellants have no criminal antecedent. Since the appellants have already served eight months jail sentence, the same be reduced to the period already undergone by them.

5. On the other hand, learned State counsel supported the impugned judgment of conviction and sentence and opposed the arguments advanced by learned counsel for the appellants.

6. I have heard learned counsel for the parties, perused the judgment impugned and the evidence available on record carefully.

7. From the record, it reveals that the incident is of 17.01.2002. No evidence has been led by the prosecution regarding criminal antecedent of the appellants. More than 16 years have already passed since the date of incident and the appellants have already suffered jail sentence for eight months.

8. In light of above discussion, I am of the considered opinion that interest of justice would be served if, while upholding the conviction imposed upon the appellants, they are sentenced with the imprisonment already suffered by them.

9. Accordingly, the appeals filed by the appellants are hereby allowed in part. The conviction of the appellants are hereby maintained. However, the jail sentence of the appellants is reduced to the period already undergone by them. The sentence of fine, with default stipulation, imposed upon the appellants by the impugned judgment shall remain unchanged.

10. It is reported that the appellants are on bail. Their bail bonds are not discharged at this stage and shall remain operative for a further period of six months in view of the provisions contained under Section 437-A of the Cr.P.C.

Sd/-
(Vimla Singh Kapoor)
JUDGE