

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 24-10-2018****Delivered on 25-10-2018****CRIMINAL APPEAL No. 473/2003**

(Arising out of judgment of conviction and order of sentence dated 25-3-2003 passed by the Special Judge and Additional Sessions Judge, Durg in Special Case No. 129/2002)

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Pelka Telugu aged about 29 years, S/o. N.K. Murty Telugu, Caste Kewat, R/o. Purena, P.O. and P.S. Old Bhilai, Distt. Durg (CG)

----Appellant**-Versus-**

State of Chhattisgarh, through S.H.O., P.S. Old Bhilai, Distt. Durg (CG)

----Respondent

For appellant : Shri S.K. Agrawal, Adv.

For State : Shri R.K. Pandey, PL

Hon'ble Shri Sharad Kumar Gupta, Judge
CAV JUDGMENT

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 25-3-2003 passed by the Special Judge and Additional Sessions Judge, Durg in Special Case No. 129/2002 whereby and whereunder he convicted the appellant for the offence punishable u/s 295 of the Indian Penal Code (hereafter called as 'IPC') and sentenced him to undergo RI for 6 months and to pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo SI for 3 months.
2. In brief, case of the prosecution is that complainant is Satnami by caste. There is a religious place known Ghasidas Chabutara

at village Puraina. On 30-5-2002 at about 2 pm, the appellant and other persons climbed over said Chabutara wearing shoes. They uttered word Chamar to insult the people of Satnami Samaj. Complainant gave an application to Special SO, Harijan Satnami Thana, Durg and Collector, Durg. After inquiry, an FIR was lodged in Special Thana Durg on 25-6-2002. After completing the investigation a charge sheet was filed against him. Trial Court framed charges against him under Section 295 IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity 'SCST Act'). After conclusion of the trial, Trial Court acquitted him of the charge punishable under Section 3(1)(x) of the SCST Act however convicted and sentenced him as aforesaid.

3. Shri S.K. Agrawal, counsel for the appellant strenuously argued that trial Court has not appreciated the evidence in its proper perspective. Thus, aforesaid conviction and sentence are bad in the eyes of law and not sustainable. Thus, aforesaid conviction and sentence may be set aside and the appellant may be acquitted of the aforesaid charge.
4. Shri Pandey, Panel Lawyer for the State submitted that aforesaid conviction and sentence are based on clinching evidence led by the prosecution. He supported the aforesaid conviction and sentence and submitted that no interference is called for by this Court.
5. P.W. 4 Smt. Madarbai, P.W. 5 Smt. Manjubai, P.W. 6 Khorbahra, P.W. 7 Smt. Kerabai say in para No. 1 of their statements given on oath that the appellant climbed over the Ghasidas Chabutara wearing shoes. P.W. 4 Smt. Madarbai. P.W. 5 Smt. Manjubai,

P.W. 6 Khorbahra further say in para 1 that they offer worship and prayer at the Guru Ghasidas Chabutara, from the act of the appellant, their religious sentiments hurt.

6. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 4 Smt. Madarbai, P.W. 5 Manjubai, P.W. 6 Khorbahra, P.W. 7 Smt. Kerabai are not natural, not normal, not simple.
7. In application Ex. P-2 it has been mentioned that appellant had climbed over the Guru Ghasidas Chabutara wearing shoes and they feel insulted themselves.
8. After the appreciation of the evidence discussed herebefore, this Court believes on aforesaid statements of P.W. 4 Smt. Madarbai, P.W. 5 Manjubai, P.W. 6 Khorbahra, P.W. 7 Smt. Kerabai, in the reference that appellant defiled Guru Ghasidas Chabutara with intention to insult the religion of Satnami Samaj or with the knowledge that members of Satnami Samaj are likely to consider such defilement, as an insult to their religion.
9. After the appreciation of the evidence discussed herebefore this Court finds that prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 295 against the appellant. Thus, trial Court has not committed any illegality in convicting the appellant for the offence punishable under Section 295, IPC.
10. At the time of the incident, no minimum imprisonment was provided for the offence punishable under Section 295, IPC. The appellant has remained in jail from 2-7-2002 to 5-7-2002 and 26-11-2002 to 4-12-2002 i.e. total 12 days. About 16 and half years have passed after the incident. At the time of incident,

he was aged about 29 years, now he is about 45 and half years old. Now he is in mainstream of society. Sending him to jail would disturb him as well as his family members' life. Hence, no useful purpose would be served if he is sent to jail after 16 and half years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] I am of the opinion that cause of justice would be sub-served, if RI of 6 months is reduced to the sentence for the period already undergone by him and fine amount may be suitably enhanced.

11. Consequently, the appeal is partly allowed. The sentence of the appellant of RI for 6 months is reduced to the period already undergone by him and fine of Rs. 1,000/- awarded by the trial Court is enhanced to Rs. 5,000/-(Rupees five thousands only), in default of payment of fine, to undergo SI for three months.

12. The appellant is granted two months' time from the date of this order for depositing the fine amount. The amount deposited earlier by the appellant shall be adjusted in the fine amount awarded by this Court.

13. The appellant is reported to be on bail. His bail bond stands canceled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge