

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL APPEAL No 1101/2002****Reserved on 12-11-2018****Delivered on 27-11-2018**

(Arising out of judgment of conviction and order of sentence dated 23-9-2002 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Raigarh (CG) in Special Case No. 13/2002)

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Narad Patel, aged about 28 years, son of Shri Chandulal Patel, resident of village Bahirkela, Police Station Gharghoda, Distt. Raigarh (CG)

**Appellant****VERSUS**

State of Chhattisgarh through Station House Officer, PS Raigarh (CG)

**Respondent**

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 For Appellant : Shri Pawan Kesharwani, Adv.  
 For Respondent : Shri Ramakant Pandey, Panel Lawyer.  
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**Hon'ble Shri Justice Sharad Kumar Gupta****CAV JUDGMENT**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 23-9-2002 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,(in brevity 'SCST Act'), Raigarh (CG) in Special Case No. 13/2002 whereby and whereunder he convicted and sentenced the appellant as under:-

| Conviction under Section | Sentence        | Fine sentence                                                        |
|--------------------------|-----------------|----------------------------------------------------------------------|
| 294, IPC                 | RI for 3 months |                                                                      |
| 3(1)(x) of the SCST Act  | RI for 6 months | Rs. 2000/-, in default of payment of fine to undergo RI for 2 months |

Both the sentences have been directed to run concurrently.

2. This is admitted by appellant that he is neither a member of

scheduled caste nor scheduled tribe. A meeting of Panchayat was convened.

3. In brief the prosecution case is that complainants Deshiram and Shyam Sunder are brothers and member of scheduled tribe and by caste Kanwar. They are the resident of village Baheerkela. On 30-9-2001 in the night appellant had cut linhay and used entire water. Thus, the field of the complainant Deshiram got dried. On 1-10-2001 he called a meeting of the respected people of the village. In the meeting appellant abused said complainant, gave threatening to kill them, said 'Adiwasi Kanwar'. He also abused complainant Shyamsunder, gave threatening to kill her, said him Kanwar. On very day complainant Deshiram gave an application to the SHO, SC and ST Police Station Chakradharnagar. After the inquiry on 27-1-2002, an FIR was lodged in AJAK Police Station, Raigarh. After completion of the investigation a charge sheet was filed against the appellant. The trial Court framed charges against the appellant under Section 294, 506-B IPC, and 3(1)(x) of the SCST Act for each complainant. Appellant abjured the charges and faced trial. To bring home the charges prosecution examined as many as 10 witnesses. Appellant examined one witness in his defence. During the trial appellant was acquitted from the charges punishable u/s 294, 506-B IPC, and 3(1)(x) of the SCST Act for complainant Shyamsunder however he was convicted for the complainant Deshiram as aforesaid.

4. Being aggrieved from aforesaid conviction and sentences, the appellant has preferred this criminal appeal.

5. Shri Pawan Kesharwani, counsel for the appellant submits that the appellant has been falsely implicated, Trial Court has not appreciated the evidence in proper perspective. Therefore, the

impugned judgment of conviction and order of sentences being bad in law may be set aside and he may be acquitted of the aforesaid charges.

6. On the other hand, Shri Ramakant Pandey, Panel Lawyer appearing for the State supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. No interference is called for by this Court. Hence the appeal may be dismissed.

7. P.W. 1 Deshiram, P.W. 2 Shyamsunder, P.W. 3 Phool Singh, P.W. 4 Prakash Singh, in para 2, P.W. 5 Tilak Ram, P.W. 8 Damroodhar Rathiya in para 3, of their statements given on oath say that in the meeting of panchayat appellant had abused complainant Deshiram by using obscene words. P.W. 2 Shyamsunder, P.W. 3 Phool Singh, P.W. 4 Prakash Singh, in para 2, P.W. 5 Tilak Ram, P.W. 8 Damroodhar Rathiya in para 3, say that they had felt annoyance on hearing the said obscene words.

8. D.W. 1 Digeshwar Singh Thakur says in para 2 of his statement given on oath that aforesaid complainants had caught hold the appellant, complainant Deshiram had slapped him.

9. There is no such evidence on record on strength of which it can be said that P.W. 3 Phool Singh P.W. 4 Prakash Singh, P.W. 5 Tilakram, P.W. 8 Damroodhar Rathiya had made aforesaid statements because they were interested with the said complainant Deshiram or they were prejudiced from appellant for such reasons.

10. Application Ex. P-1 has been given by said complainant Deshiram without any delay. It is transpired from Ex. P-1 that appellant had abused said complainant Deshiram by using filthy words.

11. There is no such evidence available on record on the strength of which it can be said that Ex. P-1 is concocted or fabricated with the intention to falsely implicate the appellant.

12. There is no material available on record on the strength of which it can be said that aforesaid statements of P.W. 1 Deshiram, P.W. 2 Shyamsunder, P.W. 3 Phool Singh, P.W. 4 Prakash Singh, P.W. 5 Tilak Ram, P.W. 8 Damroodhar Rathiya are not simple, not natural, not normal. Thus this Court believes on aforesaid statements of P.W. 1 Deshiram, P.W. 2 Shyamsunder, P.W. 3 Phool Singh, P.W. 4 Prakash Singh, P.W. 5 Tilak Ram, P.W. 8 Damroodhar Rathiya and disbelieves aforesaid statement of D.W. 1 Digeshwar Singh Thakur in the reference that appellant had allegedly not committed any wrong act.

13. After the appreciation of the evidence discussed herebefore and concerned admitted fact, this Court finds that prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 294, IPC regarding complainant Deshiram. Thus, this Court affirms the conviction of the appellant for the offence punishable under Section 294, IPC regarding complainant Deshiram.

14. As per the caste certificate Ex. P-5 complainant Deshiram is the member of scheduled tribe and by caste Kanwar.

15. There is no such material available on record on strength of which it can be said that Ex. P-5 is not believable. Thus this Court believes on Ex. P-5.

16. P.W. 1 complainant Deshiram says in para 2 that appellant had asked him 'Adiwasi, neech'.

17. P.W. 2 Shyamsunder says in para 2 that appellant had asked complainant Deshiram 'Neech Jati Ka Kanwar'.

18. P.W. 3 Phool Singh, P.W. 5 Tilakram say in para 2 and para 3 respectively, that appellant had asked complainant Deshiram 'Adiwasi Kanwar'.

19. P.W. 4 Prakash Singh says in para 2 that appellant had asked complainant Deshiram 'Adiwasi, Kanwar, Chhoti Jati Ka'.

20. P.W. 8 Damroodhar Rathiya says in para 3 that appellant had asked complainant Deshiram 'Adiwasi, neech, kanwar'.

21. In Ex. P-1 it has been mentioned that appellant had asked complainant Deshiram 'Adiwasi, Kanwar'.

22. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 1 Deshiram, P.W. 2 Shyamsunder, P.W. 3 Phool Singh, P.W. 4 Prakash Singh, P.W. 5 Tilakram, P.W. 8 Damroodhar Rathiya are not simple, not natural, not normal. Thus this Court believes on them.

23. Hon'ble Supreme Court in the matter of **Swaran Singh and others -v- State through Standing Counsel and another** reported in [(2008) 8 SCC 435] has observed in para 21 to 24 and 30 as under :-

“21. Today the word “chamar” is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person “chamar” today is nowadays an abusive language and is highly offensive. In fact, the word “chamar” when used today is not normally used to denote a caste but to intentionally insult and humiliate someone.

22. It may be mentioned that when we interpret Section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects and Reasons of the Act. Hence, while interpreting Section 3(1)(x) of the Act, we have to take into account the popular meaning of the word “chamar” which it has

acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word “chamar” when addressing a member of the Scheduled Caste, even if that person in fact belongs to the “chamar” caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity'so many religions, castes, ethnic and lingual groups, etc.—all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste “chamar” with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word “chamar” will of course depend on the context in which it was used.

30. In this connection it may be mentioned that in America to use the word “nigger” today for an African-American is regarded as highly offensive and is totally unacceptable, even if it was acceptable 50 years ago. In our opinion, even if the word “chamar” was not regarded offensive at one time in our country, today it is certainly a highly offensive word when used in a derogatory sense to insult and humiliate a person. Hence, it should never be used with that intent. The use of the word “chamar” will certainly attract Section 3(1)(x) of the Act, if from the context it appears that it was used in a derogatory sense to insult or humiliate a member of SC/ST.”

24. Hon'ble Supreme Court in the matter of **Arumugam Servai -v- State of Tamil Nadu** reported in [(2011) 6 SCC 405] has observed in para 5, 6 and 7 as under :-

“5.....The word “Pallan” no doubt denotes a specific caste, but it is also a word used in a derogatory sense to insult someone (just as in North India the word “Chamar” denotes a specific caste, but it is also used in a derogatory sense to insult someone). Even calling a person a “Pallan”, if used with the intent to insult a member of the Scheduled Caste is, in our opinion, an offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the SC/ST Act”). To call a person as a “pallapayal” in Tamil Nadu is even more insulting, and hence is even more an offence.

6. Similarly, in Tamil Nadu there is a caste called “Parayan” but the word “Parayan” is also used in a derogatory sense. The word “paraparayan” is even more derogatory.

7. In our opinion use of the words “Pallan”, “pallapayal”, “Parayan” or “paraparayan” with intent to insult is highly objectionable and is also an offence under the SC/ST Act. It is just unacceptable in the modern age, just as the words “Nigger” or “Negro” are unacceptable for African-Americans today (even if they were acceptable 50 years ago). ....”

25. Looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in **Swaran Singh** (supra) and **Arumugam Servai** (supra), this Court finds that aforesaid words asked by appellant are generally used for insult, abuse, derision. The aforesaid words are derogatory, highly objectionable and unacceptable now a days. The aforesaid words are highly offensive.

26. Looking to the facts and circumstances of the case, this Court finds that appellant had asked aforesaid words to the complainant Deshiram with intention to insult or humiliate him.

27. From the facts and circumstances of the case, material available on record, this Court finds that appellant had abused the complainant Deshiram and asked him aforesaid words merely on the ground that he

is the member of the scheduled tribe.

28. After appreciation of the evidence discussed herebefore, this Court finds that prosecution has succeeded to prove beyond reasonable doubt against the appellant the offence punishable under Section 3(1)(x) of the SCST Act regarding complainant Deshiram.

29. At the time of commission of the offence punishable under Section 3(1)(x) of the SCST Act, minimum sentence was prescribed as 6 months.

30. Looking to the facts and circumstances of the case, this Court finds that trial Court has not committed any illegality in sentencing the appellant for the offences punishable under Section 294, IPC, and Section 3(1)(x) of the SCST Act. Hence, this Court affirms the sentences for the offences punishable under Section 294, IPC and Section 3(1)(x) of the SCST Act regarding complainant Deshiram. Thus, the impugned order of sentences is affirmed.

31. The appeal sans substratum deserves to be and is hereby dismissed. Appellant is reported to be on bail. He is directed to surrender immediately before the trial Court for serving the remaining part of sentences. If the appellant does not surrender, the Trial Court is also directed to take him into custody and send him jail to serve the remaining part of sentences.

**Sd/-**  
**(Sharad Kumar Gupta)**  
Judge