

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL No 247/2003****Reserved on 20-8-2018****Delivered on 23-8-2018**

[Arising out of judgment of conviction and order of sentence dated 11-2-2003 passed by the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in ST No. 307/2002]

Dhaneshwar Alias Khodia S/o. Tula Ram, aged about 26 years,
R/o.village Kuruspal, PS Nagarnar, Distt. Bastar.

Versus

State of Chhattisgarh through Scheduled Caste and Scheduled
Tribe Wing, Jagdalpur

For Appellant	:	None.
For Respondent	:	Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta

CAV JUDGMENT

1. In this criminal appeal, challenge levied is to the judgment of conviction and order of sentence dated 11.02.2003 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Bastar at Jagdalpur in ST No. 307/2002 whereby and whereunder he convicted the appellant for offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter called as 'Act, 1989') and sentenced him to undergo RI for one year and to pay a fine Rs. 1000/-, in default of payment of fine, to further undergo additional

RI for three months.

2. This is admitted by the appellant that complainant Sonadhar is a Bhatra by caste and is a member of scheduled tribe and he himself is Mahra by caste.
3. In brief the prosecution case is that on 26.06.2002 complainant had taken out his bull for grazing towards Mahran of Sudhumahra, at about 3 pm. Appellant reached there and uttered the complainant Bhatra Maderchod, you are grazing the cattle here, if it is a land of your father and caused injury on his head by brick. Complainant Sondhar lodged the FIR on very day to AJAK Police Station, Jagdalpur. After completion of the investigation a charge sheet was filed against the appellant u/s 294, 336 I.P.C. and 3(1)(x) of the Act, 1989. The trial Court framed charge against the appellant under Sections 3(1)(x) of the Act, 1989 and 324 of the IPC. Appellant abjured the charges and faced trial. To bring home the charges prosecution examined as many as seven witnesses. Appellant did not examine any witness in his defence.
4. During the trial, appellant was acquitted from the charge punishable u/s 324, IPC on compromise.
5. After conclusion of the trial, the Trial Court convicted and sentenced appellant as aforesaid.
6. P.W. 5 Sonadhar says in para 2 of his statement given on oath that, on 26.06.2002 at about 3 pm he was grazing his bull. Appellant reached there and uttered that Bhatra Maderchod, you

are grazing the cattle here, if it is a land of your father.

7. P.W. 6 Smt. Jimayat Bai says in para 2 and 3 of her statement given on oath that complainant Sonadhar was grazing cattle, the appellant reached there and uttered him that Bhatra Madarchod, you are grazing the cattle here, if it is a land of your father.
8. P.W. 5 Sonadhar and P.W. 6 Smt. Jimayat Bai do not say that, the appellant had allegedly given any threat to P.W. 5 Sonadhar.
9. From the aforesaid statement of P.W. 5 Sonadhar and P.W. 6 Smt. Jimayat Bai, it does not appear that the appellant had allegedly provoked P.W. 5 Sonadhar intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence.
10. In **Bhalchand Tiwari @ Bhola v State of Chhattisgarh {2016 (3) CGLJ Vol. 363}** it has been held that the appellant is acquitted of the charge under Section 3(1)(XII) of the Special Act because it is not proved that the appellant had dominated the will of the Prosecutrix and used his position to exploit her sexually simply because she belonged to the Scheduled Tribe Category.
11. In the judgment of the Division Bench of this Court in **Bhikhar and Others v. State of Chhattisgarh passed in Cr.A. No. 328 of 2003 decided on 14.06.2016** it was observed that so far as the conviction of the appellants under Section 3(2)(V) of the Act is concerned, in the present case, there is no evidence at all to the effect that appellants had committed the offence on the ground that the deceased belonged to Scheduled Caste

Category. In the absence of such ingredients merely because the deceased happens to be a member of Scheduled Caste Category, automatically the offence under Section 3(2)(V) of the Act is not made out against the appellants.

12. The Division Bench of this Court in its decision dated 14-12-2017 passed in Cr.A. No. 304/2007 in the matter of **Devchand Patel and Others v. State of Chhattisgarh** observed that so far as conviction under Section 3(2)(V) of the Act, 1989 is concerned, since it has already been held that the appellants have not committed any offence as against the deceased, the question of their conviction under this Section does not arise. Even otherwise this is not a case of the prosecution that as the deceased belonged to a particular caste, he was subjected to beat, rather it has been established from the evidence that it was the deceased who being at fault was beaten by the villagers, which unfortunately resulted in his death. Therefore, the accused are acquitted of this charge also.

13. The Hon'ble Supreme Court in **Dinesh @ Buddha v. State of Rajasthan {2006 (3) SCC771}** in para-15 has held as under:

“ 15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act

been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

14. In the case in hand, there is no such evidence on record that the appellant had allegedly committed said offence merely on the ground that the complainant was a member of the Scheduled Tribe.

15. Looking to the above facts and circumstances of the case, this Court finds that the prosecution has failed to prove beyond reasonable doubt that the appellant has committed offence punishable under Section 3(1)(x) of the Act, 1989 or any of its minor offence.

16. Consequently, the appeal is allowed and the impugned judgment of conviction and order of sentence are hereby set aside. The appellant is acquitted of the charge punishable under Section 3(1)(x) of the Act, 1989. The fine amount deposited by the appellant be returned back to him after the expiration of period of appeal or revision.

17. The appellant is on bail. His bail bond stands discharged subject to the provisions contained in Section 437-A of the Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge