

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.367 of 2010**

- Satish Singh S/o Rudrapratap Singh, aged about 50 years, Caste Khatriya R/o Vill. And PS Kelhari, Tah. Manendrgarh, Korea (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Kelhari, Distt. Korea, Chhattisgarh

---- Respondent

 For the appellant : Shri Pushkar Sinha, Advocate
 For the respondent/State : Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****28.9.2018.**

1. This appeal has been directed against the judgment of conviction and order of sentence dated 11.5.2010 passed by Special Session Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities), Act 1989 (for short 'the Act 1989') Korla at Baikunthpur (CG) in Special Session Case No.04/2008, wherein the said Court convicted the appellant for commission of offence under Section 3(1)(xi) of the Act, 1989 and under Section 294 and 323 of the Indian Penal Code and sentenced to undergo Rigorous imprisonment for three years and to pay fine of Rs.5000/-, RI for three months and RI for one year respectively with default stipulations.

2. In the present case, Prosecutrix is Sarpanch of Gram Panchayat Kelhari. She went to see construction of CC Road made in front of bus stop at about 2.45 pm on 04.02.2008. At the

time of the inspection, the appellant reached there and charged prosecutrix that she is involved in black marketing of the rice in the society. After this allegation, there was some altercation took place between them and the appellant assaulted the prosecutrix by hand and pushed her to ground. It is also alleged that the appellant used abusive language against the prosecutrix. The matter was reported and investigated and after completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant submits that even if the evidence of the prosecution is taken as it is, at the most it is a case under Section 323 IPC and no other offence are established against the appellant. He further submits that finding recorded by the trial court is not based on the evidence adduced by the prosecution but the same is based on conjunctures which is liable to be reversed.

4. On the other hand, learned counsel for the State submits that the finding arrived at by the trial Court is based on proper marshaling of evidence which is not liable to be interfered with.

5. I have heard learned counsel for the parties and perused the material available on record.

6. For commission of offence under Section 3(1)(xi) of the Act 1989, it has to be proved that the assault or criminal force is used to outrage the modesty of the prosecutrix. From the evidence of the prosecutrix (PW-1) it is not established that any assault or criminal force is used to outrage her modesty. Altercation took

place between the appellant and the prosecutrix because one pillar was fixed in the road and the prosecutrix was enquiring about the said pillar. The altercation is not based on any caste and from the evidence of the prosecution it is clear that the appellant assaulted her only by hands. It is not the case that the appellant used any criminal force or made assault to outrage the modesty of the prosecutrix. From the evidence of the prosecutrix herself outraging the modesty is not established. Supportive evidence is also not establishing the guilt under Section 3(1)(xi) of the Act, 1989, therefore, the finding of the trial Court is not sustainable for the offence under Section 3(1)(xi) of the Act, 1989.

7. Though the prosecutrix deposed that some obscene words were used by the appellant during the altercation but the point is whether the said words fall within the definition of obscene words. The essence of the crime under Section 294 of the IPC consists in creating a public nuisance which because of its gravity being of a public nature may endanger public peace. In order to bring home the guilt of the accused for an offence under Section 294 of the IPC the prosecution has to establish that the words uttered were obscene. The test of obscenity is whether the tendency of the matter charges as obscenity is to be deprave and corrupt those whose minds are open to such immoral influences.

8. Filthy abuses are not uncommon. It had not more significance than mere platitudinous utterances signifying the enraged state of the persons' mind. The words which have no literal significance cannot fall in the purview of obscene words.

From the evidence it is not established beyond doubt that any obscene words were uttered by the appellant, thus offence under Section 294 IPC is not established against the appellant.

9. From the evidence of prosecutrix (PW-1) and Vinod Kumar (PW-2) it is established that the appellant assaulted the prosecutrix by hands. Versions of these witnesses are supported by the version of Rajesh Gupta (PW-3) and Lakshman Prasad (PW-4). The direct evidence is again supported by medical evidence in which it is found that contusion and abrasion were present on back side of the neck and in the left hand and right wrist of the prosecutrix. The expert opined that the injuries were simple in nature. The case of the appellant does not fall in any of the exception as he was aware of the fact that assaulting by hands will cause pain in the body of the victim. Looking to the entire evidence it is established that the appellant assaulted the victim voluntarily and the hurt caused was simple in nature which is punishable under Section 323 IPC for which the trial Court convicted the appellant and the same is hereby affirmed.

10. Accordingly, the appellant is acquitted of the charges under Section 3(1)(xi) of the Act 1989 and under Section 294 IPC and his conviction and sentence are hereby set aside and he is acquitted of both the charges.

11. So far as the conviction under Section 323 IPC is concerned, the appellant has suffered jail sentence during trial from 04.3.08 to 10.3.08 i.e. 07 days. Corporal punishment is not compulsory for the offence under Section 323 IPC. Therefore,

sentence for offence under Section 323 IPC is reduced to the period already undergone by him.

12. With this modification the appeal is allowed in part.

Sd/-

(Ram Prasanna Sharma)
JUDGE