

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 29-10-2018****Delivered on 14-11-2018****CRIMINAL APPEAL No. 1036/2002**

(Arising out of judgment of conviction and order of sentence dated 16-9-2002 passed by the Special Judge, constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Raipur in Special Case No. 61/2000)

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Pushkar Chaikrawarti, aged about 24 years, S/o. Thukel Ram Chakrawarti, R/o. Village Koundkera, PS Gariyaband, Distt. Raipur (CG)

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

State of Chhattisgarh, through Station House Officer, P.S. Gariyaband, Distt. Raipur (CG)

----Respondent

For appellant : Ms. Shriya Mishra, Adv.
For State : Mr. Ashok Kumar Swarnkar, 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 16-9-2002 passed by the Special Judge, constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity 'SCST Act'), Raipur in Special Case No. 61/2000 whereby and whereunder he convicted the appellant for offence punishable under Section 325 of the Indian Penal Code (in brevity 'IPC') and sentenced to undergo RI for 1 year and to pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for 2 months.

2. In brief, case of the prosecution is that on 2-12-2000 complainant Ganeshu was sitting in front of the house of his brother-in-law Tijuram

at about 5.30 pm. He was talking with co-accused Manohar. At that time, the appellant, co-accused Umashankar and Kajuram reached there. Appellant and co-accused Umashankar beat him by hands and legs. Appellant twisted his right hand. He lodged FIR on very day in police station Gariyaband at about 20.15 hour. After completing the investigation a charge sheet was filed against them. Trial Court framed charges against appellant and co-accused Umashankar under Section 3(1)(x) of the SCST Act, Section 325 read with Section 34, IPC; against co-accused Kajuram under Section 3(1)(x), SCST Act, Section 109 read with Section 325, IPC; against co-accused Manohar under Section 3(1)(x) of the SCST Act. After conclusion of the trial, Trial Court acquitted them of Section 3(1)(x), SCST Act; co-accused Umashankar of the offence punishable under Section 325 read with Section 34, IPC; co-accused Kajuram of the offence punishable under Section 109 read with Section 325 of IPC. However, trial Court convicted and sentenced the appellant as aforesaid.

3. Hence this appeal.

4. Ms. Shriya Mishra, counsel for the appellant strenuously argued that trial Court has not appreciated the evidence in its proper perspective. Prosecution failed to examine independent witness. In MLC report of the complainant the time is mentioned as 8.00 am. Co-accused Manohar had also lodged a report against complainant and his brother-in-law. 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.

5. Shri Ashok Swarnkar, 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.

6. As per the MLC report Ex. P-4, P.W. 5 Dr. Smt. B. Bara had examined said complainant and found that severe pain and tenderness were present on his right forearm, pain and tenderness were present on his left thigh, severe pain and tenderness were present on his back. She opined that injuries were caused by hard and blunt object.

7. In Ex. P-4 the time of the examination of the complainant is mentioned as 8.00 am which is wrong. Merely on the basis of wrong mentioning of time in Ex. P-4 it cannot be said that P.W. 5 Dr. Smt. B. Bara allegedly had not examined the complainant. Thus, appellant does not get any help from wrong mentioning of examination time as 8 am in Ex. P-4. Thus, this Court disallows the written submission of counsel for the appellant in this reference.

8. There is no such evidence on record on strength of which it can be said that Ex. P-4 is not believable in this reference that P.W. 5 Dr. Smt. B. Bara had examined the complainant and found aforesaid pain and tenderness on the body of the complainant, injuries were caused by hard and blunt object. Thus, this Court believes on Ex. P-4 in that reference.

9. As per Ex. P-5, P.W. 5 Dr. Smt. B. Bara after seeing the x-ray film of the complainant opined that there was a fracture on 1/3rd portion of ulna bone of right hand.

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

11. P.W. 1 Ganeshuram says in para 2 of his statement given on oath

that appellant had beaten him by hand. He had twisted his right hand.

12. P.W. 2 Manjoram says in para 3 of his statement given on oath that appellant had beaten complainant by hand.

13. As P.W. 2 Manjoram is maternal nephew of the complainant thus aforesaid statement requires minute scrutiny.

14. As per the police statement Ex. D-1 of P.W. 1 Ganeshuram, appellant had also twisted his right hand, thus, there is no omission in Ex. D-1 regarding alleged twisting of right hand of complainant by the appellant.

15. There is no omission in police statement Ex. D-2 of P.W. 2 Manjoram pertaining to allegedly beating by appellant of complainant by hand.

16. P.W. 2 Manjoram says in para 8 that appellant and co-accused are in against party.

17. There is no such evidence on record on the strength of which it can be said that P.W. 1 Ganeshuram had made aforesaid statement of para 2, P.W. 2 Manjoram had made aforesaid statement of para 3, only because there was party bandi in the village.

18. P.W. 1 Ganeshuram says in para 10 during his cross-examination that SHO had told him that appellant and co-accused had come to lodge the report against him. He says in para 11 that this is true that co-accused Manohar reached to police station earlier.

19. There is no such evidence on record on the strength of which it can be said that Ex. P-1 was lodged merely on alleged apprehension that appellant or any co-accused would lodge report against him.

20. P.W. 2 Manjoram says in para 9 that this is true that one day prior his father Tijuram had abused co-accused Manohar in his shop.

21. There is no such material available on record on the strength of which it can be said that Ex. P-1 was lodged, P.W. 1 Ganeshuram had made aforesaid statement of para 2, P.W. 2 Manjaram had made aforesaid statement of para 3, merely to avoid legal consequences of alleged incident of said abusing.

22. As per the alleged report Ex. D-3 co-accused Manohar had lodged the report against the complainant, father of P.W.2 Manjaram and some other persons on 2-12-2001 at about 18.25 hours.

23. There is no such evidence on record on the strength of which it can be said that P.W. 1 Ganeshuram had made said statement of para 2, P.W. 2 Manjaram had made said statement of para 3, to avoid any legal consequences which might arise from Ex. D-3. Thus this Court disapproves the written submission advanced by counsel for the appellant in that reference.

24. Not examining any independent witness by the prosecution is not itself a sufficient ground to disbelieve the aforesaid statements of para 2 of P.W. 1 Ganeshuram, para 3 of P.W. 2 Manjaram. Thus, this Court is not impressed from the written submission of counsel of the appellant in this reference.

25. Ex. P-1 has been lodged without any delay. In Ex. P-1 it has been mentioned that the appellant had beaten him by hand and twisted his right hand.

26. There is no such evidence on record on the strength of which it can be said that Ex. P-1 is fabricated or concocted.

27. There is no such evidence on record on the strength of which it can be said that aforesaid statements of para 2 of P.W. 1 Ganeshuram, para 3 of P.W. 2 Manjaram are not simple, not natural and not normal.

Thus, this Court believes on them.

28. 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 325 of the IPC against the appellant. Thus, this Court finds that trial Court has not committed any illegality in convicting the appellant for offence punishable under Section 325 of the IPC. Hence, this Court affirms the conviction of the appellant under Section 325 of the IPC.

29. At the time of the incident, no minimum imprisonment was provided for the offence punishable under Section 325, IPC. The appellant remained in jail from 20-12-2000 to 22-12-2000 and after issuance of warrant by order dated 3-8-2018 he has been arrested and still in jail till date. About 18 years have passed after the incident. At the time of incident, he was aged about 25 years, now he is about 43. 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 18 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] this Court is of the opinion that cause of justice would be sub-served, if RI of 1 year is reduced to the sentence for the period already undergone by him and fine amount may be suitably enhanced.

30. Consequently, the appeal is partly allowed. The sentence of the appellant of RI for 1 year is reduced to the period already undergone by him and fine of Rs. 1,000/- awarded by the trial Court is enhanced to Rs. 15,000/- (Rupees fifteen thousands only), in default of payment of fine, to undergo RI for six months.

31. The appellant is in jail. He be released forthwith if not required in any other criminal case. The appellant is granted two months' time from the date of this order for depositing the fine amount. The amount deposited earlier by him shall be adjusted in the fine amount awarded by this Court. If fine amount is not deposited by the appellant, trial Court shall proceed against the appellant for serving the sentence of default clause.

32. Out of the fine amount of Rs. 15,000/-, if deposited, Rs. 10,000/- be given to the complainant as compensation after expiry of the prescribed period for further remedy available to parties.

Sd/-
(Sharad Kumar Gupta)
Judge