

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL No 923/2001****Reserved on 28-11-2018****Delivered on 3-12-2018**

(Arising out of judgment of conviction and order of sentence dated 14-9-2001 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Bastar at Jagdalpur (CG) in ST Case No. 71/2001)

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Rameshwar S/o. Sonu Ram Yadav, aged about 28 years, R/o. Ulnaar, P.S. Nagarnar, Distt. Bastar (CG)

Appellant

VERSUS

State of Chhattisgarh through District Magistrate, Jagdalpur, Distt. Bastar (CG)

Respondent

 For Appellant : Shri Keshav Dewangan, Adv.
 For Respondent : Shri Ashok Swarnkar, Panel Lawyer.

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 14-9-2001 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (in brevity 'SCST Act'), Bastar at Jagdalpur (CG) in ST Case No. 71/2001 whereby and whereunder he convicted and sentenced the appellant as under:-

Conviction under Section	Sentence	Fine sentence
323, IPC	RI for 6 months	
3(1)(x) of the SCST Act	RI for 1 year	Rs. 1,000/-, in default of payment of fine to undergo RI for 3 months

Both the sentences have been directed to run concurrently.

2. This is admitted by appellant that he is Raut by caste.
3. In brief the prosecution case is that on 28-12-1998 complainant

Smt. Nirmla Kashyap at about 12.00 pm was going to take rice. Appellant called her and asked as to why the house under Indira Awas Yojana has not been given to Mangaldei. During the conversation he said her 'Muria, Sala'. She told the incident to her husband after reaching in the house. She, her husband, Laikhan and other persons went to his house to inquire the matter. He beat her husband and Laikhan by club. On 30-12-1998 she gave an application to police station SC & ST Jagdalpur. After the inquiry, an FIR was lodged in police station AJAK, Jagdalpur on 9-1-1999. After completion of the investigation a charge sheet was filed against him. The trial Court framed charges against him under Section 323, IPC, regarding complainant Laikhan and Tulsiram Kashyap and 3(1)(x) of the SCST Act. He abjured the charges and faced trial. To bring home the charges prosecution examined as many as 6 witnesses. He examined 3 witnesses in his defence. After conclusion of the trial, he was acquitted from the charge punishable u/s 323, IPC regarding complainant Laikhan however he was convicted and sentenced as aforesaid.

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

5. Shri Keshav Dewangan, counsel for the appellant submits that the appellant has been falsely implicated, Trial Court has not appreciated the evidence in proper perspective, the investigation has been conducted by Sub Inspector which is violation of Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Rules, 1995 (in brevity 'SCST rules'), there is no evidence that alleged insult had been committed with intention to humiliate the complainant Smt. Nirmla Kashyap. 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 Ashok Swarnkar, 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. 2 Tulsiram Kashyap says in para 1 of his statement given on oath that his wife complainant Smt. Nirmla Kashyap is a member of scheduled tribe.

8. P.W. 4 Smt. Nirmla Kashyap says in para 1 of her statement given on oath that she is Muria by caste and member of scheduled tribe.

9. P.W. 5 Laikhan says in para 1 of his statement given on oath that complainant Smt. Nirmla Kashyap is Muria by case and member of scheduled tribe.

10. P.W. 6 Smt. Soni Bai says in para 1 of her statement given on oath that complainant Smt. Nirmla Kashyap is Muriya by caste.

11. There is no such evidence on record on strength of which it can be said that aforesaid statements of aforesaid witnesses are not believable. Thus this Court believes on them.

12. After appreciation of the evidence discussed herebefore, this Court finds that prosecution has succeeded to prove beyond reasonable doubt that the complainant is by caste Muria and member of Scheduled Tribe.

13. The Raut caste neither comes in category of scheduled caste

nor in scheduled tribe.

14. P.W. 4 Smt. Nirmla Kashyap says in para 2 that when she was taking rice from the Lampus Society, appellant asked her as to why house under Indira Awas Yojana has not been given to Mangaldei. He said her "Murin, Sali".

15. P.W. 2 Tulsiram Kashyap says in para 3 that his wife had told him that appellant had addressed her "Murin, Sali".

16. P.W. 6 Smt. Soni Bai says in para 2 that appellant had told complainant Smt. Nirmla Bai "Muria, Sale"

17. D.W. 1 Tulsiram says in para 1, D.W. 3 Rameshwar Kashyap says in para 2 of their statements given on oath that appellant was making inquiry from complainant as to why the name of Mangaldei has been struck off from the list of beneficiaries prepared under Indira Awas Yojana, no quarrel happened.

18. D.W. 2 Maniram says in para 1 of his statement given on oath that appellant had asked the complainant as to why house has not been allotted to Mangaldei, thereafter all people had gone.

19. There is no such evidence available on record on the strength of which it can be said that P.W. 6 Smt. Soni Bai had made aforesaid statement as they were allegedly interested with the complainant Smt. Nirmla Kashyap or prejudiced with the appellant for such reasons.

20. P.W. 4 Smt. Nirmla Kashyap says in para 4 during her cross-examination that the appellant had lodged the report in police station Nagarnar thus she lodged the report against him.

21. There is no material available on record on the strength of which it can be said that the appellant allegedly had not committed any wrong

act and complainant had given the application, she and P.W. 2 Tulsiram Kashyap had made aforesaid statements, merely to escape themselves from criminal liability which may arise from the report lodged by appellant. Thus, the appellant does not get any help from the aforesaid statement of para 4 of P.W. 4 Smt. Nirmla Kashyap.

22. There is no such evidence on record on the strength of which it can be said that P.W. 4 Smt. Nirmla Kashyap, P.W. 2 Tulsiram Kashyap and P.W. 6 Smt. Soni Bai had made aforesaid statements because there was a party bandi and appellant was in oppose party.

23. In Ex. P-4 it has been mentioned that the appellant had addressed prosecutrix 'Muria, Sala'.

24. In the matter of **State of H.P. -v- Shree Kant Shekari** [(2004) 8 SCC 153], Hon'ble Supreme Court has held in para 18 as under :-

“18. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. These

aspects were highlighted in *Tulshidas Kanolkar v. State of Goa* [(2003) 8 SCC 590 : 2004 SCC (Cri) 44] .”

25. The relevant portion of para-13 in **Puran Chand -v- State of H.P.** [(2014) 5 SCC 689] is quoted below wherein the Hon'ble Supreme Court has observed that :-

“13.The delay in lodging the FIR has been clearly explained by the prosecution relating the circumstance and the witnesses supporting the same have stood the test of scrutiny of the cross-examination as a result of which the version of the victim girl cannot be doubted. The delay in lodging the FIR thus stands fully explained.”

26. P.W. 4 Smt. Nirmla Kashyap says in para 4 during her cross-examination she had not lodged the report on the very day because villagers had told that matter would be settled by compromise.

27. There is no such evidence on record on the strength of which it can be said that aforesaid explanation for giving Ex. P-4 with delay is not sufficient or not natural. Thus, this Court believes on aforesaid explanation. Thus, looking to the judicial precedents in the matters of **Shree Kant Shekari** (supra) and **Puran Chand** (supra), this Court finds that the delay in giving Ex. P-4 is not fatal to the prosecution case.

28. Looking to the above-mentioned facts and circumstances, this Court finds that Ex. P-4 is normal, natural, simple and is not concocted, not fabricated.

29. Looking to the above mentioned facts and circumstances, this Court finds that aforesaid statements of para 2 of P.W. 4 Smt. Nirmla Kashyap, para 3 of P.W. 2 Tulsiram Kashyap, P.W. 6 of Smt. Soni Bai are simple, natural and normal. Thus, this Court believes on the aforesaid statements of para 2 of P.W. 4 Smt. Nirmla Kashyap, para 3

of P.W. 2 Tulsiram Kashyap, P.W. 6 of Smt. Soni Bai, and disbelieves aforesaid statements of D.W. 1 Tulsiram Baghel, DW. 2 Maniram, DW 3 Rameshwar Kashyap regarding the reference that appellant had not allegedly committed any wrong act.

30. Counsel for the appellant placed reliance on a decision of this Court in **Horilal and another -v- State of M.P.** [(2011) 4 CGLJ 51] para 10 of which is relevant and quoted below :-

“10. Thus in view of the clear mandate of Rule 7 of Rules, 1995 and the decisions of the Supreme Court and various High Courts referred to above it is only the Deputy Superintendent of Police who is competent to investigate the offence under this special Act. Undisputedly, in the case in hand, the entire investigation has been carried out by the Sub-Inspector of Police, which is in flagrant violation of the legal provision and renders the entire trial as vitiated.”

31. Rule 7 of the SCST Rules is relevant in the case in hand which reads as under :-

“7. Investigating Officer.—(1) An offence committed under the Act shall be investigated by a police officer not below the rank of Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The Investigating Officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer-in-charge

of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the Investigating Officer.”

32. In the case in hand, investigation was not conducted by P.W. 3 Kriparam Khande. He had conducted inquiry and lodged FIR. Entire investigation was done by V.K. Hajari, SDOP, AJAK police Station Jagdalpur thus appellant does not get any help from aforesaid judicial precedent laid down by this Court in **Horilal** (supra).

33. Counsel for the appellant placed reliance on the decision of this Court in **The State of Chhattisgarh -v- Laxmiprasad Yadav** [(2014) 4 CGLJ 256] relevant portion of para 20 of the same is quoted below :-

“20. Thus, it is held that in the instant case, merely calling the complainant by accused from his caste (Kawar Adiwashi) as there is no proof of intention of insulting or humiliating him, do not constitute an offence under Section 3(1)(x) of the Atrocities Act”

34. 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.”

35. 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).”

36. 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.

37. Looking to the facts and circumstances of the case, this Court finds that appellant had asked aforesaid words to the complainant Smt. Nirmla Kashyap with intention to insult or humiliate her. Thus, the appellant does not get any help from the aforesaid judicial precedent

laid down by this Court in the **State of Chhattisgarh** (supra).

38. From the facts and circumstances of the case, material available on record, this Court finds that appellant had uttered aforesaid words to the complainant Smt. Nirmla Kashyap merely on the ground that she is the member of the scheduled tribe.

39. 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. Thus, this Court affirms the conviction of the appellant punishable under Section 3(1)(x) of the SCST Act.

40. As per the MLC report Ex. P-2, P.W. 1 Dr. Vinay Kumar had examined complainant Tulsiram kashyap and found one lacerated wound size 1.5 cm x 0.5 cm on right forehead. One another lacerated wound on index finger of left hand size 0.5 cm x 0.5 cm. He opined that injuries were caused by hard and blunt object.

41. There is no such evidence on record on strength of which it can be said that Ex. P-2 is not believable. Thus, this Court believes on Ex. P-2.

42. P.W. 2 Tulsiram says in para 4 that appellant had caused injury on his forehead by club.

43. P.W. 4 Smt. Nirmla Kashyap says in para 3 that appellant had caused injury on forehead of his husband by club.

44. P.W. 5 Laikhan says in para 3 that appellant beat complainant Tulsiram.

45. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 2 Tulsiram, P.W. 4 Smt.

Nirmla Kashyap and P.W. 5 Laikhan are not believable. Thus, this Court believes on them.

46. 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 323 of the IPC. Thus, this Court finds that trial Court has not committed any illegality in convicting the appellant for the offence punishable under Section 323 of the IPC. Thus, this Court affirms the conviction of the appellant for the offence punishable under Section 323, of the IPC.

47. 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.

48. Looking to the facts and circumstances of the case, this Court finds that the aforesaid jail sentences are excessive. Thus, the jail sentence of one year for the offence punishable under Section 3(1)(x) of the SCST Act is reduced to RI for six months. The RI for six months for the offence punishable under Section 323 of the IPC is reduced to RI for 3 months. Both the jail sentences shall run concurrently. The fine sentence shall remain as it is.

49. The appeal is partly allowed. 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