

HIGH COURT OF CHHATTISGARH : BILASPUR

CRA No.1071 of 2008

- Hemant Bhatt S/o Shri Salik Ram Bhatt, aged about 39 years, Occupation Agriculturist R/o Post Office Ward, Ramsagar Para, Dhamatari, District Dhamtari (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through P.S. City Kotwali, Distt.-Dhamtari CG

---- Respondent

(Criminal Appeal under Section 374(2) of the Code of Criminal Procedure)

Present: - Shri Shrawan Kumar Chandel and Ms. Nirupama Bajpai, counsel for the appellant.
Shri Neeraj Sharma, Dy.GA for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/02/2018

This appeal is directed against impugned judgment of conviction and order of sentence dated 21-10-2008 passed by the Special Judge(Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, Dhamtari, District Dhamtari, in Special Sessions Trial No.4/2008, whereby and whereunder the appellant has been held guilty of commission of offence under Section 294 & 323 of IPC and sentenced him as described below:-

Under Section 294 of IPC	fine of Rs.1,000/-, in default of payment of fine, simple imprisonment of for 1 month.
Under Section 323 of IPC	fine of Rs.1,000/-, in default of payment of fine, simple imprisonment of for 1 month.

2. The prosecution story, in brief, is that on 27-09-2007 at about 16.10 hours, the victim Satau Ram, PW-4 lodged a report in the police station that on 26-09-2007 at about 10.30 PM in the night, when Satau Ram came out of his Kirana Shop, near Ambedkar Chowk, Jodhapur, at that time, the appellant came out from the hotel in intoxicated condition and approached the complainant-Satau Ram Netam and asked for money. When Satau Ram, PW-3 denied, he was abused and assaulted as also threatened that he would be killed. After recording FIR, investigation was made and charge sheet was filed in the Court of Special Judge, which was committed for trial before the Special Court (SC/ST). The trial Court framed charges against the appellant under Section 294, 506-B & 323 of IPC as also framed charges under Section 3(1)(X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (In short "the Act of 1989"). The appellant having abjured guilt, he was put to trial. The prosecution examined as many as six witnesses including Satau Ram Netam, PW-3. In his defence, the appellant examined six defence witnesses.

Learned trial Court, upon scrutiny of evidence and other incriminating material and circumstances led by the prosecution, though acquitted the appellant from the charges of commission of offence under Section 506-B of IPC and Section 3(1)(X) of the Act of 1989, but held the appellant guilty of commission of offence under Section 294 & 323 of IPC and sentenced him as described above.

3. Assailing the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the prosecution has failed to prove the involvement of the appellant in the incident, beyond

reasonable doubt. He submits that the evidence of the complainant Satau Ram Netam, PW-3 is not supported by medical evidence and no injuries are found on the body of the complainant. The allegation of hurling abuses on the appellant are vague. The evidence of defence witnesses have not been properly appreciated. Plausible defence was raised that the complainant-Satau Ram Netam had approached the appellant, who was Counselor, seeking his favour in award of contract, which was denied and thereafter, the complainant had threatened to get him falsely implicated followed by alleged incident.

4. On the other hand, learned State counsel supports the impugned judgment of conviction and order of sentence by submitting that prosecution case is proved from the ocular testimony of the complainant Satau Ram Netam, PW-3 as also supported by the evidence of Purushottam Kumar Dhimar, PW-4, who is an independent witness.

5. Satau Ram Netam, PW-3, who is an injured witness, on whose complaint, report was lodged, has stated in his evidence that on 26-09-2007 at about 10.30 PM in the night, the appellant intercepted and asked for money, which was denied and thereafter, the appellant assaulted him with hands and fists on his face and chest and also abused. According to this witness, Purushottam, Yashwant and Ajay Dhruv were also present at the spot. In his cross-examination, suggestion of previous enmity has been denied. The evidence of this witness with regard to he being assaulted and abused, has been supported by the evidence of Purushottam Kumar Dhimar, PW-4, who has also stated that in the night at about 10.30 PM, the complainant Satau Ram Netam, PW-3 was

intercepted by the appellant, abused and assaulted. This witness has also affirmed that the appellant assaulted the complainant on his chest and face by hands and fists and stated regarding hurling of abuses by the appellant in the presence of others, which was in public view. From the cross-examination of this witness, nothing could be elicited to doubt the veracity of statement of this witness.

6. The defence of the appellant that there was previous enmity and the complainant had earlier abused him in relation to award of contract and when award of contract was not given to him, he threatened the appellant to implicate him by lodging false report in the police station, is not supported from any independent and reliable witness.

7. Though, no injury was found, learned trial Court having found that there is evidence of assault and abuse, proved from the testimony of Satau Ram Netam, PW-3, supported by the independent witness, Purushottam Kumar Dhimar, PW-4, has committed no illegality in holding the appellant guilty for commission of offence under Section 294 & 323 of IPC. The appellant has only been imposed sentence of fine and no jail imprisonment has been awarded.

8. Taking into consideration the totality of the circumstances, in my considered opinion, no interference in the impugned judgment of conviction and order of sentence is called for. The appeal is accordingly dismissed.

SD/-
(Manindra Mohan Shrivastava)
JUDGE