

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 172 of 2010**

1. Narendra Rajput s/o Bahal Singh Rajput, aged about 45 years,
 2. Avinash Rajput s/o Bodhan Singh Rajput, aged about 34 years,
- Both R/o village – Aamgaon, Thana- Dongargaon,
District Rajnandgaon (CG)

---- Appellants**Versus**

State of Chhattisgarh Through -Police Station, Dongargaon,
District Rajnandgaon(CG)

---- Respondent

For Appellant : Shri Samir Singh, Advocate

For the respondent/State: Shri Ramakant Pandey, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****20/8/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 24.2.2010, passed by the Special Judge, Rajnandgaon (CG) under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Special Case No. 78/2008, whereby, the said Court has convicted the appellants under Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the SC/ST Act) and Sections 294, 325 r/w Section 34 of the I.P.C. and

sentenced to undergo S.I. for 6 months and fine of Rs.250/-, fine of Rs.250/- and S.I. for 6 months and fine of Rs.250/- respectively with default stipulations.

2. As per the case of prosecution, complainant Sawant Ram is Halba by caste and member of Scheduled Tribe while the appellants are not the members of Scheduled Caste and Scheduled Tribe. It is alleged that one criminal case was initiated by daughter of the complainant against appellant- Narendra Rajput and due to the said issue, the appellants used obscene words against the complainant and assaulted him on 8.6.2008 at about 8.00 pm. The matter was reported and after investigation the appellants were charge sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellants as aforementioned.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellants submits as under :

(i) No caste certificate is proved to establish that the complainant is Halba by caste and member of Scheduled Tribe.

(ii) As there is enmity between the parties on account of criminal case lodged by the daughter of the complainant against appellant Narendra Rajput, the appellants have been falsely implicated.

(iii) There is material omission and contradictions in the statement of the prosecution witnesses but the trial Court has overlooked the same and came to a wrong conclusion.

5. On the other hand, learned counsel for the State supporting the judgment submits that the Court below has rightly convicted and sentenced the accused/appellants and the conviction is not liable to be interfered with.

6. To substantiate the charge prosecution has examined as many as 12 witnesses.

7. No one has been examined to prove the caste certificate of the complainant- Sawant Ram. As per version of Sawant Ram, there was a criminal case between the appellant Narendra Rajput and his daughter Fuleshwari that is why the incident took place. From the statement of this witness, it is clear that the incident did not take place due to caste issue, but it had happened due to previous enmity, therefore, it cannot be adjudicated that the complainant was subjected to cruelty/atrocities on account of caste and the ingredients of offence under Section 3 (1) (x) of the SC/ST Act are not made out.

8. As per version of Sawant Ram, the appellants used some abusive words in the name of his mother, but it is a settled law that filthy abuses are not obscene words. Any word stated without intention or premeditation cannot be termed as obscene word. It is

not the case that the words were related to morality or sexuality of the complainant. In absence of obscenity, an offence under Section 294 I.P.C. is also not made out. Again, as per version of Sawant Ram both the appellants have assaulted him. As per version of Kawal Singh (PW2), the appellants have assaulted by club. Version of this witness is supported by the version of Rohit Kumar (PW3), Smt.Sonkarin Bai (PW5) and Teman Lal (PW9). Again, ocular evidence is supported by the medical evidence of Dr. K.K. Ramtake (PW10) and Dr. Y.K. Tiwari (PW12). As per version of Dr. Y.K. Tiwari (PW12), he found a fracture in left leg of the complainant. Version of these witnesses is unshaken during cross-examination and there is nothing to discard the same.

9. The appellants were not acting in their right of private defence or defence of property and their case does not fall in any of these exceptions of the I.P.C. Both the appellants were having knowledge that their assault may cause pain to the complainant and therefore, it is established that they have voluntarily caused grievous injury to the complainant. Their act falls within the mischief of Section 325 r/w Section 34 I.P.C. for which, the trial Court had convicted and sentenced them as above and the same is hereby affirmed.

10. On overall assessment of the evidence, the appeal is partly allowed and the appellants are acquitted of the charge under Section 3 (1) (x) of the SC/ST Act and Section 294 I.P.C. Their conviction and sentence on these two counts is hereby set aside.

11. Heard on the point of sentence for commission of offence under Section 325 r/w Section 34 I.P.C.:

12. Appellant No.1- Narendra Rajput has suffered the jail sentence from 9.6.2008 to 16.6.2008 (8 days) and appellant No.2- Avinash Rajput has suffered jail sentence from 18.6.2008 to 19.6.2008 (2 days). The offence is compoundable under Section 320(2) of the Cr.P.C. though it is not compounded by the complainant. Therefore, the sentence awarded to the appellants is reduced to the period already undergone by them. The fine amount imposed by the trial Court shall remain intact. The appellants are reported to be on bail. Their bail bonds shall continue for a period of six months in view of Section 437-A Cr.P.C.

13. With these modifications, the appeal is partly allowed.

Sd/

(Ram Prasanna Sharma)

JUDGE