

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 30 of 2006

- Rajesh Singh, S/o RK Singh, aged 25 years, R/o Bhadrapara, P.S. Balco, Occupation-Student, Distt. Korba (CG)

---- Appellant

Versus

- State Of Chhattisgarh through District Magistrate, Korba (CG)

---- Respondent

For Appellant	:	Shri RK Tiwari, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, G.A.

Hon'ble Shri Pritinker Diwaker, J

Judgment On Board

28/06/2018:

This appeal arises out of the judgment of conviction and order of sentence dated 22.12.2005 passed by the Special Sessions Judge, {Under Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989}, Korba in Special S.T.No.53/2004 convicting the accused/appellant under Sections 341, 323, 294 of IPC and Section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and sentencing him to undergo SI for one month, fine of Rs.500/-; RI for six months, fine of Rs.500/-; RI for three months, fine of Rs.500/-; and RI for two years; fine of Rs.1000/- with default stipulations.

02. In the present case, name of the complainant is Ajay Kurre (PW-1) who belongs to scheduled caste. On 3.5.2003 a written report

(Ex.P/1) was lodged the complainant alleging therein that on 2.5.2003 at about 8 pm while he was going towards Balco Nagar, Sector-1 from Sector-3 along with Preetam Singh (PW-2), the accused/appellant came from behind on his motorcycle accompanied by his friend Santosh Pradhan who was sitting as a pillion rider. After stopping the vehicle, the appellant abused him filthily as also in the name of his caste by calling him "*chamar*" The appellant also threatened him that he can be lifted from his house at any time. It is further stated that while the appellant and his friend Santosh Pradhan were beating them, he raised cry, on which the passersby namely Vikas Sharma and Dinesh Singh came to their rescue and the accused persons left the said place.

On 18.11.2003 unnumbered FIR (Ex.P/4) was registered against the appellant and Santosh Pradhan under Sections 341, 294, 323, 34 of IPC and Section 3(1)(x) of Scheduled Castes & Scheduled Tribe (Prevention of Atrocities) Act, 1989 (in short "the Act"). On 19.11.2003 diary statement of the complainant (Ex.D/1) was recorded wherein he repeated the allegations as were made by him in his written report. On 10.1.2004 numbered FIR was registered against the appellant and Santosh Pradhan under the aforesaid sections. While framing charge, the trial Court charged the appellant under Sections 341, 294, 323 of IPC and Section 3(1)(x) of the Act.

03. So as to hold the accused/appellant guilty, the prosecution examined six witnesses in all. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded

innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- that according to the complainant, immediately after the incident, his case diary statement was recorded where the same was recorded on 19.11.2003 i.e. after about six months from the date of lodging of written report.
- that even if some altercation took place between the parties, it had no nexus with the caste of the complainant, it was a general altercation which happens normally when vehicle of a person accidentally dashes the passersby or vehicle of someone.
- that the appellant had no intention to insult or intimidate the complainant at a public place on account of he being the member of scheduled caste and in fact, the complainant by taking undue advantage of his caste, has made such allegations to make the offence graver.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Ajay Kumar Kurre has stated that he is Satnami by caste which comes under Harijan community whereas the appellant is of Rajput community. On 2.5.2003 at about 8 pm while he along with his friends Preetam and Vikas was going from Sector-3 to Sector-1, the appellant came from behind on his motorcycle and rode away dashing him. When they objected to it saying as to in what manner he is riding the vehicle, he (appellant) returned and attempted to run his vehicle over him and also flashed the light over their faces. The appellant also beat him, abused him filthily in the name of his mother and caste saying that he is of low caste, can't do any wrong to him and he can lift him (complainant) from his house at any time. The appellant beat him with belt and club, which hit his hand and back. He states that the appellant knew beforehand that he (complainant) is Satnami by caste. He also caused injuries to Vikas and that appellant's friend Santosh Pradhan was also committing *marpeet*. He states that the appellant also lodged a report against them, which was written by the police, however, their report was not written by the police. Even he was not medically examined on the same date. Then he wrote a complaint Ex.P/1 and then the police enquired into the matter, his caste certificate was seized and his medical examination was got done. On the second day he approached Harijan Police Station and also made a written complaint to the Superintendent of Police wherein he disclosed to the police that he was dashed by the appellant, however, if the same is not recorded in his written report he cannot tell the reason. He further states that he also informed the police that the appellant returned and tried to run the vehicle over him and also threw light of the vehicle on him. If the said fact is not recorded in the report, he cannot tell the

reason. Likewise, he also informed the police that the appellant told him that he (PW-1) can not do any wrong to him and the appellant had beaten him with belt and club, if the same is not recorded he cannot tell the reason. He states that it is he who got the written report typed and if something is missing, he cannot tell the reason. He admits that the place of occurrence is a busy road, however, denies the fact that he along with his friend was walking on the road covering the entire road. He has further stated that after about 10-15 days of the incident, the police came to him and enquired, and his diary statement was not recorded after six months and if it is filed after six months, the same is incorrect. He has also stated about issuance and production of the caste certificate.

09. PW-2 Preetam Singh, friend of PW-1, has stated that when riding of the appellant was objected to by the complainant, the appellant abused him filthily and also called him "*chamar*". The appellant also threatened the complainant of getting him lifted at any time from his house. It is relevant to note here that diary statement of this witness (Ex.D/2) is different from his Court statement.

10. PW-3 Vikas Sharma, another friend of the complainant, has stated that after dashing the complainant, the appellant abused him filthily and then called him Satnami and of low caste. He has also admitted the fact that the road where the incident took place is a busy road. He states that in his diary statement Ex.D/3 it has wrongly been mentioned that they were going towards Durga Pandal and no such fact was disclosed by him. From the diary statement of this witness, it is apparent that some unfortunate accident had taken place between

the appellant and the complainant. However, there are material contradictions and omissions in the Court statement of this witness as compared to his diary statement.

11. PW-4 RP Tandon, investigating officer, has supported the prosecution case. PW-5 DR. BP Pandey medically examined complainant vide Ex.P/5 and noticed simple injuries. PW-6 NS Bhagat, Tehsildar, had issued caste certificate to the complainant.

12. Close scrutiny of the evidence makes it clear that on 2.5.2003 at about 8 pm when the complainant along with Preetam Singh (PW-2) was going towards Balco Nagar, Sector-1 from Sector-3, the accused/appellant came from behind on his motorcycle along with his friend Santosh Pradhan who was sitting as a pillion rider and dashed the complainant. When the complainant and his friend objected to the rash and negligent act of the appellant, some altercation took place between the two groups and during that the appellant caused some injuries to the complainant, which as per his medical report Ex.P/5 were simple in nature. Evidence on record further goes to show that the appellant also hurled abuses at the complainant at the place of occurrence, which is a busy public road. Defence has not been able to lead any evidence which could render the evidence of the complainant Ajay Kumar Kurre (PW-1), Preetam Singh (PW-2) and Vikas Sharma (PW-3) untrustworthy or doubtful as regards the aforesaid allegations against the appellant are concerned. In view of above, it stands proved that on the date of incident, the appellant wrongfully restrained the complainant (PW-1) while he was walking on the road with his friend, after altercation with him caused him injuries, which were simple in

nature and also hurled abuses at him at the public place, which caused annoyance to the complainant and his companions. Being so, his conviction under Sections 341, 323 and 294 of IPC is just and proper and need no interference by this Court.

13. As regards conviction of the appellant under Section 3 (1)(x) of the Act, for bringing home the offence under this section, it is necessary to prove that the act done by a person not belonging to Scheduled Caste or Scheduled Tribe to a person of such caste was intentional to humiliate and insult him in any place within the public view. Section 3(1)(x) reads as under:

“3. Punishments for offences of atrocities

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

xxxx xxxx xxxx

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

14. Admittedly, the complainant is a member of Scheduled Caste and the appellant does not belong to Scheduled Caste or Scheduled Tribe. Though the complainant (PW-1) has stated that the appellant abused him in the name of his caste by calling him “*chamar*” and Satnami, which is a Scheduled Caste and this version has been supported by PW-2 & PW-3, but from the case diary statements of these witnesses it is evident that while deposing in the Court they have exaggerated and made improvement. This improvement and exaggeration appears to have been made because the accused persons had also lodged a report against the complainant party. PW-4

RP Tandon, the investigating officer, has also stated in the Court that whatever was stated by the witnesses, the same were reduced in writing by him and he did not add or omit anything while recording such statements.

15. Considering the overall evidence on record, the manner in which the incident took place, both the parties lodged report against each other, the exaggeration and improvement made by the complainant and his companions in the Court, I find it difficult to hold that the appellant hurled abuses at the complainant with intent to humiliate and insult him because of he being a member of Scheduled Caste. Rather utterance of such offending words appears to be out of anger in the heat of passion upon a sudden quarrel between the parties, which seems to have been projected by the complainant in such a manner so as to attract the provisions of the Act to make the offence graver. Thus, in the totality of facts and circumstances of the case, the prosecution has not been able to prove the offence under Section 3(1)(x) of the Act against the appellant beyond all reasonable doubt and being so, he deserves to be acquitted of the said charge by extending him benefit of doubt.

16. As regards the sentence under Sections 341, 323 and 294 of IPC, considering the fact that the incident had taken place more than 15 years ago, the appellant remained in custody from 31.3.2004 to 1.4.2004, however, jail sentence under these sections is not mandatory, the appellant has been on bail since 2006, I am of the opinion that no fruitful purpose would be served in sending him back to jail at this stage and the ends of justice would be met if the fine amount

imposed upon him by the trial Court under the aforesaid sections is maintained as punishment for these offence and he is further directed to pay suitable compensation under Section 357 of CrPC to the complainant (PW-1).

17. In the result, the appeal is allowed in part. Conviction of the appellant under Section 3(1)(x) of the Act and sentence imposed thereunder are hereby set aside. However, conviction of the appellants under Sections 341, 323 and 294 of IPC is maintained. While setting aside substantive jail sentence under these sections imposed by the trial Court, the sentence of fine with default stipulation as awarded by the trial Court under these sections is maintained. In the facts and circumstances of the case, this Court deems it proper to direct the appellant to pay a sum of Rs.10,000/- as compensation to the complainant (PW-1) within six months, failing which he shall have to suffer additional SI for two months. Ordered accordingly.

Sd/

(Pritinker Diwaker)

Judge