

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2458 of 1999

1. Anand Mahapatra, S/o- Nakul Mahapatra, Aged about- 28 years,
2. Ravindra Mahapatra, S/o- Nakul Mahapatra, Aged about- 24 years,

Both appellants are R/o- Mahapatra Colony, Jashpurnagar (M.P.)
(Now C.G.)

---- Appellants

Versus

- State of M.P. (Now C.G.), through- P.S.- Jashpurnagar, Tahsil & District- Jashpurnagar (C.G.)

---- Respondent

For Appellants : Shri Raj Kumar Pali & Shri N.K. Malaviya, Advocates.

For State/Respondent : Shri Raghvendra Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

22/11/2019

1. This appeal is preferred against the judgment dated 1st September, 1999 passed by Special Judge {Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act, 1989"), Jashpurnagar (M.P.) (Now C.G.) in Special Case No. 14/1999 wherein the said Court convicted both the appellants for commission of offence under Sections 452 and 323 read with Section 34 of IPC, 1860 and under Section 3(1)(x) of the Act, 1989 and sentenced them to undergo R.I. for six months and fine of Rs. 500/-, fine of Rs. 500/- and R.I. for six months respectively with default stipulations.
2. In the present case, name of the complainant is Anita Bada (PW-3). No one was examined before the trial Court to prove her caste. Anita Bada (PW-3) herself did not depose before the trial

Court that any act was committed by any of the appellant on the ground of caste.

3. From the evidence of other witness namely Chotu Vishwakarma (PW-4) also did not depose that any act of the appellant was committed on the ground of the caste. Though, Anita Bada (PW-3) deposed before the trial Court that some abusive words were used against her but the fact remains that same is not done on the basis of caste, therefore, from the entire evidence it is not established that any of the appellants insulted or intimidated the said complainant on the basis of her caste. In view of the above, charge under Section 3(1)(x) of the Act, 1989 is not established against any of the appellants.
4. For commission of offence under Section 452 of IPC, it has to be established that preparation was done before commission of offence. From the evidence of Anita Bada (PW-3) it is established that both the appellants assaulted her by one stick and fists but, there is no evidence that any article was collected before commission of the offence as preparation of the offence.
5. From the entire evidence, it is not established that any preparation was done before commission of offence, therefore, preparation on part of the appellants is not established and their conviction under Section 452 is not sustainable. Accordingly, the appellants are acquitted of the charge under Section 3(1)(x) of the Act, 1989 and Section 452 of IPC, 1860.
6. Anita Bada (PW-3) deposed that both the appellants assaulted her by stick and fists. Dr. Sanjay Kumar Goyal (PW-1) who examined the injury on the body of the complainant found superficial injury on her body and opined that all the injuries were

simple in nature. Version of direct evidence is unrebutted and this is supported by medical evidence. Case of the appellants does not fall within any of the exception of the IPC. They have knowledge that their act will cause pain to the body of said Anita Bada (PW-3), therefore, their act was voluntary in nature which falls under Section 323 read with Section 34 of IPC for which the trial Court has convicted the appellants.

7. After going through the entire evidence, this Court has no reason to record contrary finding. Accordingly, conviction of the appellants for commission of offence under Section 323 read with Section 34 is hereby affirmed and the sentence of fine awarded by the Court shall remain intact.
8. Accordingly, the appeal is partly allowed. Both appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
Judge