

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 15-2-2019

Delivered on 28-3-2019

CRA No. 304 of 2009

- Shankar Lal Sao s/o. Dular Singh Sao, aged about 30 years, occupation labourer, resident of village Malda, PS Pusaur, District Raigarh. (CG).

---- Appellant

Versus

- State of Chhattisgarh through PS Scheduled Castes and Scheduled Tribes Welfare, District Raigarh (CG).

---- Respondent

For Appellant : Ms. Nirupama Bajpai, Advocate

For respondent/State : Mrs. Shubha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 2-4-2009 passed by the Special Sessions Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, "the Act, 1989") Raigarh (CG) in Special Case No. 16 of 2008 wherein the said Court has convicted the appellant for the commission of offence under Section 3(1)(x) of the Act, 1989 and Section 323 of IPC and sentenced him to undergo RI for six months and to pay fine of Rs.500/- and Fine of Rs.500/-, with default stipulations on each count.

2. As per version of prosecution on 14-8-2007 when ceremony of worship was held in Bramhani Pathi Devi Mandir, village Malda, appellant abused the complainant Mehattar and Santram on the basis of their caste and assaulted them by hands and fists. On the date of incident after the worship Shankar put Tika on the forehead of villagers and when he did not put Tika on the forehead of complainant Mehattar, he asked about the same then appellant told him that he belongs to lower caste therefore, he will not put Tika on his forehead, thereafter sudden quarrel took place and appellant assaulted the complainant. The matter was reported and investigated and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) The trial Court erred in holding that the appellant guilty for offence because there is no corroboration in the prosecution witnesses.
- ii) The trial Court ignored contradictions and omissions in the statements of the prosecution witnesses.
- iii) It is a case of aggression of the

complainant, therefore, offence is not made out against the appellant, that is why order passed by the trial Court is not sustainable.

4. On the other hand, learned counsel for the respondent/State would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. Though PW/1 Mehattar Chowhan, Santram Chouhan (PW/2) and Trinath Chouhan (PW/4) deposed that the appellant refused to put Tika on the forehead of Mehattar Chouhan, but DW/1 Subhash Behra deposed that after completion of worship complainant Mehattar, Premlal and Trinath reached there after consuming liquor and involved in quarrel with the people present in the temple. As per his version, appellant did not refuse to put Tika on the forehead of Mehattar on the basis of caste. From the evidence of Ex.D/3 and D/4, which is report against the present appellant, it is established that Mehattar Chouhan (PW/1) assaulted Shankar by his shoes. From the evidence of defence side and report lodged in Police Station, it appears that there was quarrel between Mehattar and Shankar due to which report was

lodged, therefore, looking to the entire evidence, it cannot be held that the incident took place on the basis of caste. The place of incident is temple in which no one can be treated specially. It does not appear to be a case on the basis of caste because worship is going in the temple and in the meanwhile the appellant and Mehattr (PW/1) involved in some quarrel that is why report was lodged by both sides, therefore, it cannot be said that the appellant committed any offence against the complainant on the basis of caste. Offence of Section 3 (1)(x) of the Act, 1989 is not established and conviction for the aforesaid offence is hereby set aside. He is acquitted of the said charge framed against him.

7) From the evidence of both sides, it is clear that quarrel took place between complainant Mehattar and appellant Shankar, therefore, prosecution was under obligation to establish as to how the quarrel started and who was the aggressor. Evidence of both sides is conflicting in nature, therefore, it is not established that the appellant was aggressor during quarrel. If he was not aggressor, then he had right of self defence under which causing simple injury the aggressor is permissible, therefore, offence under Section 323 of IPC is also not made out.

8. Accordingly, the appeal is allowed. Conviction and sentence under Section 323 of IPC is set aside. The appellant is acquitted of the said charge framed against him. The appellant is reported

to be on bail and his bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C. Fine amount, if deposited, be returned to the appellant.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju