

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 362 of 2009

1. Dilip Kumar Dewangan, S/o- Sukh Ram Dewangan, Aged about- 40 years, Occupation- Agriculturist,
2. Santosh Kumar Dewangan, S/o- Sukh Ram Dewangan, Aged about-38 years, Occupation- Agriculturist,
3. Motiram Dewangan, S/o- Bodhan Dewangan, Aged about-40 years, Occupation- Agriculturist,
4. Tesram Dewangan, S/o- Dhansingh Dewangan, Aged about- 46 years, Occupation- Agriculturist,

All appellants are R/o- Village- Mokha, P.S.- Bhakhara, District- Dhamtari (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, through- P.S.- Bhakhara, District- Dhamtari (C.G.)

---- Respondent

For Appellants : Shri Bishnu Muni, Advocate.

For State/Respondent : Shri Ishwar Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

29/11/2019

1. This appeal is preferred against the judgment dated 21st April, 2009 passed by Special Judge {Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989} (for short 'the Act, 1989') in Special Sessions Case No. 01/2009 wherein the said Court convicted all the appellants for commission of offence under Sections 294 (two counts) and 323 read with Section 34 (two counts) of IPC, 1860 and sentenced to fine of Rs. 250/- (two counts) and fine of Rs. 500/- (two counts) respectively with default stipulations.
2. In the present case, victims are Mukesh Kumar (PW-1) and Bhagwanti Bai (PW-2). Mukesh Kumar (PW-1), Bhagwanti Bai

(PW-2), Sharad Kumar Dhruv (PW-3), Manmohan Dhruv (PW-4) and Sunil Kumar (PW-5) are eye witnesses account to the incident. From their entire version, it is not clear as to which of the appellant has used which obscene words. The statement made by all the witnesses is general and bald and from their version it is clearly not established as to who really uttered the obscene words. The words mentioned by all these witnesses before the trial Court is different from words which is mentioned in FIR Ex. P/1 which is recorded on the next day of the incident. Looking to the general statement and difference in word of obscene category, it is not established that all the appellants uttered obscene words, therefore, charge under Section 294 of IPC is not established. Conviction of the appellants for the said offence and sentence awarded by the trial Court is hereby set aside and they are acquitted of the said charge.

3. All the eye witnesses have deposed in one voice that appellants assaulted Mukesh Kumar (PW-1) and Bhagwanti Bai (PW-2). Their version is supported by Dr. Vandana Vyas (PW-7), who examined Mukesh Kumar (PW-1) and found abrasion on his left hand and again found pain in left side of his back and right thigh. As per version of this witness injuries were simple in nature and it can be healed within 4 to 5 days and it is caused since 15 to 16 hours of the examination. She also examined Bhagwanti Bai (PW-2) who has complained pain in her left cheek. Looking to the direct and medical evidence which is unrebutted during cross examination, the trial Court opined that assault by all the appellants is established. From the evidence, case of the appellants does not fall within any of the exception mentioned in

IPC. They have knowledge that their act will cause pain to the body of the said victims, 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. After re-assessing the entire evidence, this Court has no reason to record a contrary finding regarding commission of offence under Section 323 read with Section 34 of IPC, 1860.

4. Accordingly, conviction of the appellants for offence under Section 323 read with Section 34 of IPC is affirmed. The trial Court awarded sentence of fine only and the same is hereby upheld.
5. With this modification, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge