

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 24 of 2008**

1. Ishwari Verma S/o Gokaran Verma, aged about 45 years, Caste-Kurmi, R/o Village – Beharsari, Police Station – Bodla, District Kabirdham (C.G.).

---- Appellant**Versus**

1. State of Chhattisgarh, through – Station House Officer, Police Station – Bodla, District Kabirdham (C.G.).

---- Respondent

For Appellant	:	Shri Shri Rajeev Shrivastava, Advocate with Prateek Kumar Singh, Advocate.
For Respondent/State	:	Shri Vikas Shrivastava, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****12/12/2019**

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 29/10/2007 passed by Special Judge, Kabirdhan (Kawardha) (C.G.) in Special Case No. 37/2006; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under section 294 of Indian Penal Code (in short "IPC")	Fine of Rs. 1,000/-, in default of payment of fine R.I. for 1 month

- 2) Case of the prosecution in brief is that on the date of incident i.e. on 16/09/2005 around 05:00 AM complainant Vidya Bai Satnami prosecutrix had gone to answer the call of nature, at that time accused was present there and after seeing the prosecutrix, the appellant started filthily abusing the complainant "Sale chamrin, burmari ke tum pani ko rokthe ho. Burmari ke chamrin tumhare sabhi khet ko pani mein duboyenge. Tumhare gand mein danda ko dal denge aadi" and intimidated to kill her. At the time of occurrence Fanda and Ratan were present on the spot.

Thereafter, prosecutrix lodged written complaint Ex. P-3 at concerned Police Station, Bodla and after inquiry FIR Ex. P-3(A) was registered by PW-06 Dhanesh Tandekar, Head Constable under Sections 294 and 506(B) of IPC and under Section 3(1)(x) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989. The statements of the witnesses, complainant Vidya Bai PW-02, husband of complainant PW-01 Sakha Ram Satnami, Kundram and Ratan PW-03 were recorded.

- 3) After due investigation charge sheet was filed against the appellant/accused for the offence under sections 294 and 506(B) of IPC and Section 3(1)(x) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989.
- 4) The Trial Court framed charges against the accused/appellant under Sections 294 and 506(II) of IPC and section 3(1)(x) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989. The accused/appellant denied the charges and prayed for trial.
- 5) The prosecution in support of its case examined as many as 07 witnesses namely PW-01 Sakharam (husband of prosecutrix), PW-02 Vidya Bai (Prosecutrix), PW-03 Ratan, PW-04 S.S. Soy, Naib Tehsildar PW-05 Fanda, PW-06 Dhanesh Kumar Tandekar, Head Constable and PW-07 M.S. Khan (Retd. D.S.P.). The statement of the accused was also recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. Defence witness DW-01 Kishore Kumar, DW-02 Beni and DW-03 R.J. Toppo (D.S.P.) were examined by the accused in his defence.
- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned in Para 1 of this judgment.
- 7) Learned counsel for the appellant submits that the Trial Court

has not properly appreciated the evidence available on record. He submits that the appellant is working as a Watchman in Irrigation Department. On the date of incident complainant blocked the canal water and prior to incident the villagers had made complaint against complainant her husband and son for blocking the water and causing agricultural loss of Rs. 50,000/- to the villagers. The complaint was lodged against the son and husband of the complainant by Ishwari Verma, Watchman, therefore, he was falsely implicated in this case.

- 8) He further submits that as per Ex. D-5 already that fact is mentioned that the complaint made by the appellant was under investigation and it required some time for investigation, therefore, due to enmity complainant lodged report against the appellant.
- 9) He submits that as per statement of PW-02 Vidya Bai complainant, she also admitted in para 7 of her depositions that the report is lodged by Ishwari Prasad against her husband and son and she also lodged report due to complaint made by the appellant against her husband (Sakharam PW-01) and son. Therefore, the appellant has been falsely implicated in this case.
- 10) Learned counsel for the appellant further submits that PW-01 Sakharam is not the eye witnesses of this case. Therefore, looking to the entire evidence the appellant is wrongly convicted and evidence of the prosecution is not appreciated according to law and due to enmity with the accused/appellant, he was falsely implicated but that fact is not considered by the learned Trial Court.
- 11) On the other hand learned counsel for the respondent/State supporting the impugned judgment and submits that as per PW-03 Ratan and PW-05 Fanda who are independent eye witnesses of the incident, the incident happened at early morning around 05:00 AM. Therefore, the learned Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls

for no interference by this Court.

- 12) Heard counsel for the parties and perused the material available on record.
- 13) It is not disputed by both the parties that earlier the complaint was made by the appellant against the son and husband (PW-01 Sakharam) of complainant Vidya Bai and this fact is also admitted by PW-02 Vidya Bai in para 7 of her statement.
- 14) It is also defence taken by the appellant in his examination under section 313 of Cr.PC and supported by the defence witness DW-01 Kishore Kumar, DW-02 Beni and DW-03 R.J. Toppo, Deputy Superintendent of Police that one complaint is made by the appellant Ishwari Verma and due to this enmity he has been falsely implicated in this crime by the complainant. Therefore, the available evidence has to be appreciated with due care and caution.
- 15) It is not disputed that due to blockage of water flow by the complainant's husband and her son, loss is caused to village people looking to the complaint made by the appellant himself but on the date of incident at early morning around 05:00 AM when the complainant PW-02 Vidya Bai went for attending the call of nature, she was abused by the appellant with filthy language and at the time of incident PW-03 Ratan and PW-05 Fanda were present and both are eye witness of this case. The filthy language used by appellant caused annoyance to people present on the place of occurrence as stated by PW-03 Ratan and PW-05 Fanda. Therefore, looking to the evidence of above independent witnesses and prompt written complaint made by complainant PW-02 Vidya Bai as per Ex. P-3 and that there is no major contradiction and omission in the statements of the prosecution witnesses, learned Trial Court rightly convicted the appellant under Section 294 of IPC.
- 16) Learned counsel for the appellant also submits that appellant is a public servant and for the public cause he had a quarrel with the

complainant over release of the water to protect the fields of the village people. Therefore, the appellant did not have quarrel with the complainant or any personal matter but to protect the agricultural field of the villagers. In these circumstances the benefit of Probation of Offenders Act may be given to the appellant.

- 17) Looking to the origin of the dispute between the appellant and the complainant PW-02 Vidya Bai, definitely the appellant was protecting the rights of the village people and for this reason quarrel between the appellant and the complainant occurred on the date of incident. Therefore, looking to the facts and circumstances of the case that appellant is a government servant as Watchman in Irrigation Department having no previous criminal antecedent and after this incident, considering the nature of the offence and the character of the offender, this Court is of the opinion that the appellant can be given benefit of Section 3 of the Probation of Offenders Act, 1958. Accordingly, instead of sentencing the appellant to any punishment he is released after due admonition. Since the appellant has been found guilty of offence under Section 294 of IPC and extended the benefit of Section of Probation of Offenders Act, 1958, he shall not suffer disqualification, if any, attaching to the aforesaid conviction.
- 18) In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 294 of IPC, he is granted the benefit of section of the Probation of Offenders Act, 1958 and as such released after due admonition.

**-Sd/-
(Gautam Chourdiya)
Judge**