

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 25-7-2019****Pronounced on 31-7-2019****Criminal Appeal No. 71 of 2007**

(Arising out of judgment of conviction and order of sentence dated 8-1-2007 passed by Special Judge constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities, Act 1989 Bilaspur in Special Criminal Case No. 87/2005)

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Sita Ram Yadav, Son of Dhanush Ram Yadav, aged about 36 years, resident of Village Bhathalikala, PS Jarhagaon, Distt. Bilaspur (CG)

Appellant**VERSUS**

State of Chhattisgarh, through PS Jarhagaon, Distt. Bilaspur (CG)

---Respondent

For appellant : Mr. Shashi Kumar Kushwah, Adv.

For respondent/State : Mr. Vinod Tekam, PL.

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 8-1-2007 passed by Special Judge constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities, Act 1989 (hereinafter called as 'SCST Act), Bilaspur in Special Criminal Case No. 87/2005 whereby and whereunder he convicted and sentenced the appellant as under :-

Offence u/S.	RI for	Fine Rs.	In default of payment of fine
294, IPC	3 months	500/-	RI for 15 days
506, IPC	1 year	500/-	RI for 15 days
3(1)(x), SCST Act	1 year	1,000/-	RI for 1 month

All the jail sentences have been directed to run concurrently.

2. In brief the prosecution story is that at the time of alleged incident

complainant Jeevan Mehar was resident of village Bhathlikala. He is the member of scheduled caste. Appellant is neither the member of scheduled caste nor scheduled tribe. On 25-4-2005 at about 18 hours appellant abused him, threatened to kill, intentionally insulted him on caste basis. On 26-4-2005 at about 7.15 am the complainant lodged an FIR against him at PS Jarhagaon. After completion of the investigation, a charge sheet was filed against him under Sections 294, 506-B, IPC and Section 3(1)(x) of the SCST Act. Trial Court framed charge against him for the offences punishable under Sections 294, 506, IPC and Section 3(1)(x) of the SCST Act. To bring home the charges the prosecution examined 10 witnesses in all. He did not examine any witness on his defence. After completion of trial, trial Court convicted and sentenced him as aforesaid.

3. Being aggrieved, appellant preferred this Criminal Appeal.
4. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentences of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charges.
5. Counsel for the State argued that the conviction and sentences of the appellant are based on clinching evidence. The conviction and sentences of the appellant do not call for any interference by this Court.
6. P.W. 1 Complainant Jeevan Mehar says in para 1 of his statement given on oath that he is by caste Mehar and appellant is by caste Yadav.
7. P.W. 2 Sunil Kumar who is the grand son of P.W. 1 Jeevan Mehar says in para 1 of his statement given on oath that P.W. 1 Jeevan Mehar is Mehar by caste.

8. P.W. 3 Mst. Laxmin Bai who is the relative of P.W. 1 Jeevan Mehar says in para 1 of her statement given on oath that she is by caste Mehar and appellant is by caste Yadav.

9. P.W. 7 Mst. Lalita Bai who is grand daughter of P.W. 1 Jeevan Mehar says in para 1 of his statement given on oath that P.W. 1 Jeevan is Mehar by caste and appellant is Yadav by caste.

10. P.W. 9 Manharan who is the relative of the P.W. 1 Jeevan Mehar says in para 1 of his statement given on oath that P.W. 1 Jeevan Mehar is Mehar by caste and appellant is Yadav by caste.

11. P.W. 10 Lakhan who is the relative of the P.W. 1 Jeevan Mehar says in para 1 of his statement given on oath that P.W. 1 Jeevan Mehar is Mehar by caste.

12. As per the alleged caste certificate Ex. P-3 P.W. 1 Jeevan Mehar is Mehar by caste which falls in scheduled caste category.

13. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 1 Jeevan Mehar, P.W. 2 Sunil Kumar, P.W. 3 Mst. Laxmin Bai, P.W. 7 Mst. Lalita Bai, P.W. 9 Manharan, P.W. 10 Lakhan, and Ex. P-3 are not believable. Thus, this Court believes on them.

14. Yadav caste neither falls in the category of scheduled caste nor in scheduled tribe.

15. After the appreciation of the evidence discussed hereinabove, this Court finds that prosecution has succeeded to prove that P.W. 1 Jeevan Mehar is a member of scheduled caste.

16. P.W. 1 Jeevan Mehar says in para 3 of his statement that appellant had abused stating the name of his mother and sister.

17. P.W. 2 Sunil Kumar says in para 5 of his statement that appellant

had abused P.W. 1 Jeevan Mehar stating the name of his mother and sister.

18. P.W. 3 Mst. Laxmin Bai, P.W. 7 Mst Lalita Bai, P.W. 9 Manharan, P.W. 10 Lakhan do not say that allegedly appellant had abused P.W. 1 Jeevan Mehar stating the name of his mother and sister which annoyed them.

19. There is an omission in police statement of P.W. 2 Sunil Kumar marked as Ex. D-1, that allegedly appellant had abused P.W. 1 Jeevan Mehar stating the name of her mother and sister. This omission is material and important. Thus, this Court disbelieves aforesaid statement of P.W. 2 Sunil Kumar.

20. Looking to the above mentioned facts and circumstances of the case, this Court finds that prosecution has failed to prove beyond reasonable doubt the charge of Section 294 of the IPC against the appellant. Thus, the conviction of the appellant under Section 294 of IPC is set aside.

21. P.W. 1 Jeevan Mehar says in para 3 of his statement that appellant had told that he will dishonour his mother and sister.

22. P.W. 2 Sunil Kumar says in para 5 of his statement that appellant had told P.W. 1 Jeevan Mehar that he will kill him.

23. There is an omission in Ex. D-1, that allegedly appellant had told P.W. 1 Jeevan Mehar that he will kill him. This omission is material and important. Thus, this Court disbelieves aforesaid statement of P.W. 2 Sunil Kumar.

24. There is omission in alleged FIR Ex. P-1 lodged by P.W. 1 Jeevan Mehar that allegedly appellant had told that he will dishonor his mother and sister. This omission is material and important. Thus, this

Court disbelieves aforesaid statement of P.W. 1 Jeevan Mehar.

25. P.W. 1 Jeevan Mehar does not say in consonance with Ex. P-1 that appellant had allegedly threatened to beat and set his house at fire.

26. After the appreciation of the evidence discussed herebefore, this Court finds that prosecution has failed to prove beyond reasonable doubt the charge of Section 506 of the IPC against the appellant. Thus, the conviction of the appellant under Section 506 of IPC is set aside.

27. P.W. 1 Jeevan Mehar says in para 3 of his statement that appellant had addressed him as Chamra.

28. P.W. 2 Sunil Kumar says in para 5 that appellant had addressed P.W. 1 Jeevan Mehar as Chamar.

29. P.W. 3 Mst. Laxmin Bai, P.W. 7 Mst. Lalita Bai, P.W. 9 Manharan, P.W. 10 Lakhan do not say that appellant had allegedly addressed P.W. 1 Jeevan as Chamar.

30. There is omission in Ex. D-1 that allegedly appellant had addressed P.W. 1 Jeevan Mehar as Chamar. This omission is material and important. Thus, this Court disbelieves aforesaid statement of P.W. 2 Sunil Kumar.

31. There is no such material on record on strength of which it can be said that P.W. 1 Jeevan Mehar had stated aforesaid statement on account of alleged enmity.

32. No such omissions and contradictions have dealt during the cross-examination of P.W. 1 Jeevan Mehar on behalf of appellant which can adversely affect the aforesaid testimony of P.W. 1 Jeevan Mehar.

33. Ex. P-1 has been lodged next day of the alleged incident i.e. 26-4-2005. There is no inordinate delay in lodging Ex. P-1. In Ex. P-1 it has been mentioned that appellant had addressed P.W. 1 Jeevan

Mehar as Chamar.

34. There is no such evidence on record on the strength of which it can be said that Ex. P-1 is fabricated or lodged afterthought to falsely implicate the appellant in the offence punishable under Section 3(1)(x) of the SCST Act.

35. Looking to the above mentioned facts and circumstances of the case this Court finds that aforesaid statement of P.W. 1 Jeevan Mehar is simple, normal and natural. Thus, this Court believes on it.

36. Hon'ble Supreme Court in the matter of **Swaran Singh and others -v- State through Standing Counsel and another** reported in [(2008) 8 SCC 435] has observed in para 21 to 24 and 30 as under :-

“21. Today the word “chamar” is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person “chamar” today is nowadays an abusive language and is highly offensive. In fact, the word “chamar” when used today is not normally used to denote a caste but to intentionally insult and humiliate someone.

22. It may be mentioned that when we interpret Section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects and Reasons of the Act. Hence, while interpreting Section 3(1)(x) of the Act, we have to take into account the popular meaning of the word “chamar” which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word “chamar” when addressing a member of the Scheduled Caste, even if that person in fact belongs to the “chamar” caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity so many religions, castes, ethnic and lingual groups, etc.—all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste

“chamar” with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word “chamar” will of course depend on the context in which it was used.

30. In this connection it may be mentioned that in America to use the word “nigger” today for an African-American is regarded as highly offensive and is totally unacceptable, even if it was acceptable 50 years ago. In our opinion, even if the word “chamar” was not regarded offensive at one time in our country, today it is certainly a highly offensive word when used in a derogatory sense to insult and humiliate a person. Hence, it should never be used with that intent. The use of the word “chamar” will certainly attract Section 3(1)(x) of the Act, if from the context it appears that it was used in a derogatory sense to insult or humiliate a member of SC/ST.”

37. Hon'ble Supreme Court in the matter of **Arumugam Servai -v- State of Tamil Nadu** reported in [(2011) 6 SCC 405] has observed in para 5, 6 and 7 as under :-

“5.....The word “Pallan” no doubt denotes a specific caste, but it is also a word used in a derogatory sense to insult someone (just as in North India the word “Chamar” denotes a specific caste, but it is also used in a derogatory sense to insult someone). Even calling a person a “Pallan”, if used with the intent to insult a member of the Scheduled Caste is, in our opinion, an offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the SC/ST Act”). To call a person as a “pallapayal” in Tamil Nadu is even more insulting, and hence is even more an offence.

6. Similarly, in Tamil Nadu there is a caste called “Parayan” but the word “Parayan” is also used in a derogatory sense. The word “paraparayan” is even more derogatory.

7. In our opinion use of the words “Pallan”, “pallapayal”, “Parayan” or “paraparayan” with intent to insult is highly objectionable and is also an offence under the SC/ST Act. It is just unacceptable in the modern age, just as the words “Nigger” or “Negro” are unacceptable for African-Americans today (even if they were acceptable 50 years ago).”

38. Looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in **Swaran Singh** (supra) and **Arumugam Servai** (supra), this Court finds that aforesaid word – Chamar used by appellant is generally used for insult, abuse, derision. The aforesaid word is derogatory, highly objectionable and unacceptable now a days. The aforesaid word is highly offensive.

39. Looking to the facts and circumstances of the case, this Court finds that appellant had used aforesaid word for complainant Jeevan Mehar with intention to insult or humiliate him.

40. From the aforesaid facts and circumstances of the case, material available on record, this Court finds that appellant had used aforesaid word merely on the ground that complainant was a member of the scheduled caste.

41. After appreciation of the evidence discussed herebefore, this Court finds that prosecution has succeeded to prove beyond reasonable doubt against the appellant the offence punishable under Section 3(1)(x) of the SCST Act. Thus, this Court affirms the conviction of the appellant punishable under Section 3(1)(x) of the SCST Act.

42. At the time of commission of the offence punishable under Section 3(1)(x) of the SCST Act, minimum sentence was prescribed as 6 months.

43. Looking to the above mentioned facts and circumstances of the case, it is ordered that sentences for the offences punishable under Section 294 and 506 of IPC are set aside. The fine amount as awarded by the trial Court for said offences, if already deposited by the appellant, the same be refunded to him after the expiration of prescribed period of the further legal remedy available to the parties.

44. This Court finds that the aforesaid jail sentence of RI of 1 year for the offence punishable under section 3(1)(x) of SCST Act is somehow excessive. Thus, it is reduced to RI for 6 months. However, the fine sentence regarding this offence is affirmed.

45. Thus, the appeal is partly allowed as mentioned above.

46. Appellant is reported to be on bail. He is directed to surrender immediately before the trial Court for serving the remaining part of jail sentence, if any, as ordered above. If the appellant does not surrender, the Trial Court is also directed to take him into custody and send him jail to serve the remaining part of sentence, if any.

Sd/-
(Sharad Kumar Gupta)
Judge