

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1583 of 1999

Order reserved on 26.07.2019

Order pronounced on 19.12.2019

Anil Kumar, S/o. Mahendra Kunwar, aged about 20 years, Caste Bhumihaar Brahman, R/o. Villaged – Jhandapur, P.S. Bihpur, District Bhagalpur, (Bihar), at present R/o. Security Guard, S.I.S., Grasim Simendra Sayantra Rawan, P.S. Suhela, District Raipur.

---- Appellant

Versus

The State of Madhya Pradesh, through Aarakshi Kendra Suhela, District Raipur, MP (now CG).

---- Respondent

For Appellant : Smt. Indira Tripathi, Advocate

For Respondent/State : Ms. Shriya Mishra, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

This appeal is directed against the judgment dated 21.05.1999 passed by Special Judge, Raipur in Special Session Trial No. 11/99 convicting the accused/appellant under Section 3 (1) (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and sentencing him to undergo rigorous imprisonment for six months and pay fine of Rs. 500/- plus default stipulation.

2. Case of the prosecution, in brief is that on 30.12.1998 when the complainant Panchuram (PW-1) – cobbler by occupation was doing work of shoe polish and shoe repairing in village Rawat, the accused/appellant came there and gave his shoe for repairing to Panchuram (PW-1) at 12 noon. Thereafter when the accused/appellant came to get his shoe back, there was some hot talk over the repair charges being told by the complainant where the accused/appellant abused him calling “Bhosdike”, “Chamar”, “Mochi”.

Not only this, the accused/appellant is also alleged to have hurled the shoe at the complainant as a result of which he suffered injury in the periphery of his eye. On FIR (Ex. P-1) being made by the complainant, offences under Sections 294 and 323 IPC were registered against the accused/appellant and after completion of investigation charge-sheet was filed under the same sections including the one u/s 3 (1) (x) of the Special Act, followed by charge being framed as such.

3. By the judgment impugned learned Court below acquitted the accused of the charge under Section 323 IPC but convicted him under Section 3 (1) (x) of the Special Act and sentenced him as referred to above.

4. Counsel for the accused/appellant submits that the judgment impugned convicting the accused/appellant under Section 3 (1) (x) of the Act, is contrary to the evidence of the witnesses. She submits that even the caste certificate showing to be member of schedule caste has not been produced by the prosecution which is a *sine qua non* for convicting the accused under this section of the Special Act. According to her, the prosecution has not even proved that the intention of the accused/appellant was to humiliate the complainant only for the reason that he belongs to a particular scheduled caste and therefore, the judgment impugned is liable to be set aside.

5. On the other hand, learned State counsel supports the impugned judgment.

6. Having heard counsel for the parties and perused the material available on record including the judgment impugned.

7. Though the complainant (PW-1) and the eye witness namely Pardeshi (PW-2) have stated in their evidence that the accused/appellant abused PW-1 in the name of his caste and thereby put him to humiliation in public view yet none of the prosecution witnesses has stated that all this was done by him to humiliate the complainant fully knowing that he was belonging to the scheduled caste community. The accused is said to have uttered the word "Chamar", "Mochi", which do not refer to his caste rather they refer to his occupation as admittedly he was involved in the shoe repairing occupation, commonly known as "Chamar" or "Mochi". Shoe repairing occupation is not necessarily to be undertaken by a particular caste, rather it can be done by anyone interested and acquainted with the same. In this case, none of the witnesses has stated that the accused/appellant was aware before-hand about the caste of the complainant as "Mehar". Furthermore, no certificate showing the complainant to be a person of scheduled caste category has been filed by the prosecution and therefore, it cannot be said the accused/appellant was intending to humiliate the complainant in the wake of his caste. As regards the deposition of the doctor (PW-3), it becomes redundant for the reason that the accused/appellant has already been acquitted of the charge under Section 323 IPC.

8. Thus the prosecution has not been able to prove the charge levelled against the accused/appellant under the Special Act beyond all reasonable doubts and therefore, the accused/appellant is entitled for receiving the benefit of the same. Court below seems to have fallen in error in holding the accused/appellant guilty as such though none of the witnesses has been eloquent enough based on reason,

particularly when the caste of the complainant itself remains unproved.

9. Judgment impugned is thus hereby set aside and the accused is acquitted of the charge levelled against him by allowing this appeal. Being already on bail, the bonds so furnished by the appellant stand discharged.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan