

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRIMINAL APPEAL No 1642/1999

Reserved on 11-2-2019

Delivered on 27-3-2019

(Arising out of judgment of conviction and order of sentence dated 29.05.1999 passed by Special Judge, constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Bilaspur in Spl. Criminal Case No. 30/1997)

...

1. Natthuram (**since deceased**)
2. Tarachand son of Natthooram Jayaswal, aged 32 years
3. Khageshwar, son of Natthooram Jayaswal, aged 27 years

Respondents No.2 and 3 residents of village Peerda, PS Malkharoda, distt. Janjgir-Champa (CG) **----Appellants**

VERSUS

State of Madhya Pradesh (now CG) through the S.H.O., Malkharoda, Distt. Janjgir Champa, CG **----Respondent**

For Appellant : Shri Afroj Khan, Adv.
 For Respondent : Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta
CAV JUDGMENT

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 29.05.1999 passed by Special Judge, Bilaspur constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity 'SCST Act') in Spl. Criminal Case No. 30/1997 whereby and whereunder he convicted and sentenced each appellant as under:-

Conviction under Section	Sentence	Fine sentence
294 IPC	RI for 1 month	
3(1)(x) of the SCST Act	RI for 6 months	Rs. 500/- in default of payment of fine to undergo RI for 2 months

The jail sentences were directed to run concurrently.

2. This is admitted by appellants that they are Kalar by caste.
3. In brief the prosecution case is that complainant Babulal is Satnami by caste. He is resident of village Pirda. On 07.05.1997 between 8 to 9 pm at village Pirda a Panchayat was convened amidst the village. In the panchayat appellants abused complainant and

addressed him *Chamar* and threatened to kill him. The complainant gave an application on 08.05.1997 at 13:00 hours in police station Malkharoda where an FIR was registered. After completion of the investigation a charge sheet was filed against them under Sections 294, 506-B/34 of the Indian Penal Code (in brevity 'IPC') and Section 3 (i) (x) of SCST Act. The trial Court framed charges against them under Section 294, 506-B the IPC and Section 3(1)(x) of the SCST Act. They abjured the charges and faced trial. To bring home the charges prosecution examined as many as 9 witnesses. They did not examine any witness in their defence. After conclusion of the trial, trial Court acquitted them of the charge punishable under Section 506-B IPC however they were convicted and sentenced as aforesaid.

4. Being aggrieved from aforesaid conviction and sentences, the appellants have preferred this criminal appeal.

5. During the pendency of the appeal, appeal was abated against appellant No.1 Natthuram due to his death. Now the word 'appellants' would be refereed only for appellant No. 2 Tarachand and appellant No. 3 Khageshwar.

6. Counsel for the appellants submits that the appellants have been falsely implicated, Trial Court has not appreciated the evidence in proper perspective. Prosecution has examined interested witnesses. There is no evidence that alleged insult had been committed with intention to humiliate the complainant. Therefore, the impugned judgment of conviction and order of sentences being bad in law may be set aside and they may be acquitted of the aforesaid charges.

7. On the other hand, State counsel supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellants. No interference is called for by this Court. Hence the appeal may be dismissed.

8. P.W. 1 Babulal, P.W.2 Judhram, P.W.5 Ganeshram son of Kondaram and P.W.6 Ganeshram Jaiswal son of Lachhandas Jaiswal say in para 1 of their statements given on oath that the complainant is Satnami by caste.

9. There is no such evidence on record on the strength of which it

can be said that aforesaid statements of P.W. 1 Babulal, P.W. 2 Judhram, P.W. 5 Ganeshram son of Kondaram and P.W. 6 Ganeshram Jaiswal son of Lachhandas Jaiswal are not believable, thus this Court believes on them.

10. Caste Satnami falls in the category of Scheduled Caste.

11. After the appreciation of the evidence discussed herebefore, this Court finds that prosecution succeeded to prove beyond reasonable doubt that the complainant is a member of scheduled caste.

12. P.W. 1 Babulal says in para 7 that in the panchayat appellants abused him in the name of his mother and sister, and addressed him *saale, Chamar*.

13. P.W. 2 Judhram says in para 2 and 3 that in the panchayat held in midst of locality appellants abused complainant in the name of his mother and sister, and also called him *saale, Chamar*.

14. P.W. 3 Harnarayan Jaiswal says in para 2 of his statement given on oath that in the midst of locality the complainant and appellant Tarachand were present.

15. P.W. 5 Ganeshram son of Kondaram who is brother of the complainant says in para 5 that in the Panchayat appellant abused complainant and addressed him *Chamar*.

16. P.W. 6 Ganeshram Jaiswal son of Lachhandas Jaiswal says in para 2 that in the Panchayat appellants abused the complainant and addressed him *Chamar*.

17. P.W. 1 Babulal says in para 11 during his cross-examination that this is true that on the report of appellants a criminal case is pending against him and P.W. 5 Ganeshram son of Kondaram in Sakti court on the allegation that they had entered in the house of appellants holding knife. P.W. 5 Ganeshram son of Kondaram says in para 7 during his cross-examination that this is true that on the report of the appellants a criminal case is pending against him and complainant in Sakti Court.

18. There is no such evidence on record on the strength of which it can be said that P.W. 1 Babulal had lodged the Ex. P-1, he had aforesaid statement of para 7, P.W. 5 Ghanshram son of Kondaram had made aforesaid statement of para 5, to only counter the aforesaid

report lodged by appellants knowing that appellants had not committed any wrong act with him. Thus appellants do not get any help from the aforesaid statements of para 11 of P.W. 1 Babulal and para 7 of P.W. 5 Ganeshram son of Kondaram.

19. P.W. 1 Babulal says in para 12 that this is true that he is the member of party of sarpanch and appellants are the members of opponent party. P.W. 2 Judhram says in para 7 during his cross-examination that this is true that he is in one party and appellants are in another party.

20. There is no such evidence on record on the strength of which it can be said that P.W. 1 Babulal had made aforesaid statement of para 7, P.W. 2 Judhram had made aforesaid statement of para 2 and 3 merely on the ground that they belong to one party and appellants belong to another party, with intention to falsely implicate them. Thus, appellants do not get any help from the aforesaid statements of para 12 of P.W. 1 Babulal and para 7 of P.W. 2 Judhram.

21. P.W. 2 Judhram says in para 7 that this is true that he belongs to the same caste to which Babulal belongs.

22. There is no such evidence on record on the strength of which it can be said that P.W. 2 Judhram had made aforesaid statement of para 7 only because he and complainant belong to the same caste. Thus, appellants do not get any help from the aforesaid statements of para 7 of P.W. 2 Judhram.

23. P.W. 6 Ganeshram Jaiswal son of Lachhandas says in para 3 during his cross-examination that between him and the appellants a case of land dispute was going on.

24. There is no such evidence on record on the strength of which it can be said that P.W. 6 Ganeshram Jaiswal son of Lachhandas had made aforesaid statement of para 2 only because earlier there was rivalry between him and the appellants. Thus, appellants do not get any help from the aforesaid statement of para 3 of P.W. 6 Ganeshram Jaiswal son of Lachhandas.

25. There is no such evidence on record on the strength of which it can be said that P.W. 3 Harnarayan Jaiswal had made aforesaid

statement because he was interested with complainant for such reason or he was prejudiced with the appellants for such reason.

26. No such material omission and contradiction have dealt with the statements of P.W. 1 Babulal, P.W. 2 Judhram, P.W. 3 Harnarayan Jaiswal, P.W. 5 Ganeshram son of Kondaram, P.W. 6 Ganeshram son of Lachhandas Jaiswal, which may impeach the credibility of the aforesaid statements of Para 7 of P.W. 1 Babulal, Para 2 and 3 of P.W. 2 Judhram, para 2 of P.W. 3 Harnarayan Jaiswal, para 5 of P.W. 5 Ganeshram son of Kondaram, Para 2 of P.W. 6 Ganeshram Jaiswal son of Lachhandas Jaiswal.

27. In application Ex. P-1 it has been mentioned that in the panchayat appellants had abused complainant and addressed him *Chamar*.

28. Ex. P-1 was given in police station Malkharoda on 8-5-1997. Incident took place on 7-5-1997 between 8 to 9 pm. In Ex. P-1 distance from village Pirda to P.S. Malkharoda is mentioned as 17 km. Thus, it cannot be said that Ex. P-1 was given in police station Malkharoda with inordinate and unexplained delay.

29. There is no such evidence on record on the strength of which it can be said that Ex. P-1 is fabricated or lodged as an afterthought to falsely implicate the appellants.

30. Looking to the above mentioned facts and circumstances, this Court finds that aforesaid statements of para 7 of P.W. 1 Babulal, para 2 and 3 of P.W. 2 Judhram, para 2 of P.W. 3 Harnarayan Jaiswal, para 5 of P.W. 5 Ganeshram son of Kondaram, para 2 of P.W. 6 Ganeshram Jaiswal son of Lachhandas are believable. Thus this Court believes on them.

31. 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.”

32. 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).”

33. 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 appellants 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.

34. Looking to the facts and circumstances of the case, this Court finds that appellants had used aforesaid word for complainant Babulal with intention to insult or humiliate him.

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

36. After appreciation of the evidence discussed herebefore, this Court finds that prosecution has succeeded to prove beyond reasonable doubt against the appellants the offences punishable under Sections 294, IPC and 3(1)(x) of the SCST Act. Thus, this Court affirms the conviction of the appellants punishable under Sections 294, IPC and 3(1)(x) of the SCST Act.

37. 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.

38. Looking to the facts and circumstances of the case, this Court finds that the aforesaid jail sentences and fine are just and proper. Thus, this Court affirms the jail sentences and fine sentence awarded by the trial Court.

39. Thus, the appeal being devoid of merit deserves to be and is hereby dismissed.

40. Appellants are reported to be on bail. They are directed to surrender immediately before the trial Court for serving the remaining part of jail sentences. If the appellants do not surrender, the Trial Court is also directed to take them into custody and send them jail to serve the remaining part of sentences.

Sd/-
(Sharad Kumar Gupta)
Judge