

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 967 of 2002**

Ashwan S/o Puran Ram, aged about 26 years, Occupation Agriculturist, R/o Village Parsouda, Police Station Charama, District Kanker (C.G.).

----Appellant**Versus**

State of Chhattisgarh, through District Magistrate, Kanker (C.G.)

---- Respondent

For Appellant	:	Mr. Sunil Sahu, Advocate
For Respondent	:	Ms. Seema Dixit, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****22/11/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 26/08/2002 passed in Sessions Trial No. 146/2002 by the Special Judge, Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act, Jagdalpur, whereby the Appellant has been convicted under Sections 458, 323 and 506 Part-II of the Indian Penal Code and Section 3 (1) (10) of the Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act (henceforth 'the Act') and sentenced to undergo RI for 2 years with fine of Rs. 700/-, RI for 9 months with fine of Rs. 700/-, RI for 1 year with fine of Rs. 400/- and RI for 2 years with fine of Rs. 700/-, respectively, with default stipulations.
2. Facts of the case are that Complainant Nathi Bai (PW1) belongs to Gond Caste and Appellant belongs to Sahu Caste. On 05/03/2002 at about 9 pm, the Complainant after taking her meal was sitting in her house along with other family members. The Appellant came near the door of the

Complainant and asked to open the door, but the Complainant denied. Thereafter, the Appellant forcibly opened the door and entered into the house. He inquired about Chandrabhan, son of the Complainant. On this, a quarrel took place between them and the Appellant beaten the Complainant. The Appellant also pushed Lathi in her mouth. He threatened her of dire consequence for son of the Complainant. The matter was reported by the Complainant. Statement of witnesses under Section 161 of the Cr.P.C was recorded. Necessary documents with regard to the caste of the Complainant was collected. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 7 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. During pendency of this appeal, an application for compounding of offence was filed by the Appellant and on the basis of said application, vide order dated 31/07/2019, the Appellant has been acquitted from the charge framed under Section 323 of the IPC.
5. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that from the evidence available on record, it makes clear that the alleged act has not been done just because the Complainant belongs to a particular caste, therefore, the trial Court has wrongly convicted the Appellant under

Section 3(1) (10) of the Act. He further submits that there are material contradictions and omissions occurred in the statement of the witnesses, therefore, the conviction of the Appellant for remaining offence is also not proper.

6. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
7. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
8. The Complainant (PW1) before the trial Court has deposed that on the date of incident when she was inside her house, the Appellant came there and entered inside her house forcibly. He committed Marpeet with her and pushed a Lathi in her mouth due to which her three teeth were broken. He also assaulted on her head and forcibly twisted her hand. The Appellant threatened her to kill. Chandrabhan (PW2) and Nandini (PW3) have also supported the above statement of the Complainant (PW1). Santu Ram (PW4) is another witness who is neighbor of the Complainant. He also deposed that at the time of incident, the Appellant was abusing in front of the house of the Complainant, then he tried to convince the Appellant. On the next day, he saw the Complainant with broken teeth. Dr. Indra Kumar Singh (PW7) has examined the Complainant on 06/03/2002. His report is Ex.P-3. He found swelling in left gum of her mouth. There was swelling in her left hand wrist also.
9. On minute examination of above evidence, it makes clear that the Complainant has categorically stated that the Appellant forcibly entered into her house and assaulted her. The Appellant also threatened her.

The above statement of the Complainant has been duly supported by Chandrabhan (PW2) and Nandini (PW3). All the witnesses have remained firm during their cross-examination. From the medical examination of the Complainant, it is also clear that the Complainant sustained two injuries. Looking to the above evidence, the trial Court has rightly convicted the Appellant for the offence punishable under Sections 458 and 506 Part-II of the IPC, which require no interference.

10. With regard to offence under Section 3 (1) (10) of the Act, there is no evidence available on record on the basis of which it can be said that the alleged act has been committed with the Complainant because she belongs to a particular caste. There was previous dispute between the parties and therefore the incident took place. In these circumstances, offence under Section 3 (1) (10) of the Act is not proved against the Appellant.
11. In the result, the Appeal is partly allowed. The Appellant is acquitted from the charge framed under Section 3(1) (10) of the Act, however, his conviction Sections 458 and 506 Part-II of the IPC is affirmed.
12. As submitted by the counsel for the Appellant, the Appellant has already undergone about 22 days of jail sentenced and a compromise has taken place between the parties and there is no previous antecedent against the Appellant, therefore, he has prayed that the jail sentence awarded to the Appellant may be undergone.
13. Since the Appellant has already undergone about 22 days, he is facing the *lis* since 2002 and there is no criminal antecedent against him, I am of the view that the ends of justice would be met if, while convicting the Appellant under Sections 458 and 506 Part-II of the IPC, the jail

sentenced awarded to him is reduced to the period already undergone by him and the fine sentence imposed under Sections 458 and 506 Part-II of the IPC is enhanced to Rs. 10000/- and Rs. 10,000/-, respectively. . Ordered accordingly. The above fine amount shall be payable within 2 months. In default of payment, the Appellant shall be liable to undergo RI for 6 months and 2 months. If any amount towards fine has been paid, the same shall be adjusted the fine amount enhanced today.

14. It is reported that the Appellant/accused is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of the provisions contained in Section 437-A of Cr.P.C.
15. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge