

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.175 of 2011

Judgment Reserved on : 18.7.2019

Judgment Delivered on : 15.10.2019

Babulal Sahu, S/o Late Mehattar Ram Sahu, aged about 45 years, R/o Village Narharpur, Police Station Narharpur, District Kanker, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Police Station Narharpur, District North Bastar Kanker, Chhattisgarh

--- Respondent

For Appellant : Shri Amit Kumar Sahu, Advocate on behalf
of Shri Aditya Kumar, Advocate
For Respondent : Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 26.2.2011 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act'), North Bastar Kanker in Special Sessions Trial No.21 of 2008, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 420 read with Section 34 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation
Under Section 3(2)(ii) of the Act	Rigorous Imprisonment for 6 months and fine of Rs.1,000/- with default stipulation
	Both the sentences are directed to run consecutively

2. Facts of the case, in brief, are that on 20.7.2005, Complainant Benuram (PW1) lodged a written complaint in police station alleging that 2 years prior to lodging of the complaint the Appellant and co-accused Farasram Kunjam had obtained his rinpustika and thereafter asked him to sign some documents in the bank and also in the agency of tractor without informing him that they were taking his signatures for the purpose of obtaining loan for a tractor. On the basis of said written complaint, offence was registered. During investigation, documents were seized from the bank. Rinpustika was seized from Benuram (PW1). Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. After investigation, initially a charge-sheet was filed against co-accused Farasram declaring the Appellant and other co-accused S.G. Wankhede to be absconded. Vide the judgment dated 15.4.2009, the Trial Court initially convicted co-accused Farasram for the offence punishable under Section 420/34 of the Indian Penal Code and sentenced him with the period already undergone by him and with fine of Rs.500/-. Thereafter, on 28.8.2009, absconded accused/Appellant was arrested and charges under Section 420/34 of the Indian Penal Code and Section 3(2)(ii) of the Act were framed against him. Other co-accused S.G. Wankhede is still absconded.
3. In first round of trial, as many as 12 witnesses were examined by the prosecution. In second round of trial relating to the present Appellant, Balram (PW2) was again examined as PW1. N.S. Thakur (PW7) was again examined as PW3. Dashrath (PW11) was again examined as PW4 and one additional witness D.N. Kashyap (PW2) was examined by the Trial Court. All the

prosecution witnesses were duly cross-examined by the defence. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt. No witness has been examined in his defence.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being any evidence on record against the Appellant the Trial Court has convicted him. The Trial Court has failed to consider the statement of Complainant Benuram (PW1), who has specifically admitted that he signed all the documents after getting knowledge and reading over of the contents to him and, therefore, it cannot be said that any fraud or cheating was committed by the Appellant before obtaining signatures of the Complainant. It was further submitted that there is no evidence on record on the basis of which it could be said that the Appellant had taken the Complainant to the bank and obtained any signature from him. There is also no evidence on record on the basis of which it could be said that the Appellant took the Complainant to the showroom of tractors and obtained his signatures for purchasing a tractor.
6. Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Complainant Benuram (PW1), in his Court statement, has deposed that the Appellant had come to him. The Appellant took the patta

of his agricultural field saying that a demarcation of the trees of his agricultural field is to be done and on cutting of those trees the Complainant will get money from the Government. 1½ years thereafter, the Appellant returned the patta of his agricultural field. This witness has further deposed that later on he came to know that on the basis of his patta, the Appellant along with co-accused Farasram got a tractor financed in joint names of the Complainant and Farasram.

9. Patwari Pilaram Dhruw (PW5) has stated that on being contacted by co-accused Farasram to him, he had prepared and given copies of Khasra and B1 of the agricultural land of the Complainant to Farasram. Contrary to this, in his cross-examination, this witness has stated that the Complainant himself had come to him stating that he wanted to get a tractor financed and, therefore, he had given copies of relevant documents to the Complainant himself.
10. B.P.Shrivastava (PW9), Branch Manager of the Central Bank, in his cross-examination, has admitted the fact that a loan was sanctioned from his bank in joint names of Farasram and Benuram for purchase of a tractor. In all the documents relating to the said loan, signatures of both Farasram and Benuram were obtained. This witness has also stated that according to the prescribed procedure, if the loan is to be sanctioned in joint names, both the borrowers have to appear in the bank. In his cross-examination, Complainant Benuram (PW1) has also admitted the fact that he had gone to the bank along with co-accused Farasram and he was read over all the contents of all the loan documents and thereafter both he and Farasram had signed all those documents. He has further admitted that the Appellant had accompanied him to the

bank just to inform him that where the finance was to be done. Prosecution Witness Balram, in his cross-examination, has also admitted the fact that he, Complainant Benuram and co-accused Farasram had gone to the bank. Before obtaining signatures, the bank officials had read over and inculcated all the contents of the loan documents to Benuram and Farasram. This witness has also admitted the fact that thereafter they had gone to the tractor shop, namely, Goodwill Tractors and there also the contents of the documents relating to finance of the tractor were read over and inculcated to Benuram and Farasram.

- 11.** Krishna Kumar (PW6), driver of the said financed tractor has also stated that he had driven the tractor purchased on finance for 3 months. The tractor was being parked at the house of co-accused Farasram and all the accounts relating to the said tractor were being maintained by both Complainant Benuram and co-accused Farasram.
- 12.** On a minute examination of the above evidence, it is clear that a loan was sanctioned in joint names of Complainant Benuram (PW1) and co-accused Farasram and the said tractor was purchased and got delivered from Goodwill Tractors. From the admission made by Complainant Benuram himself, it is clear that all the loan documents were read over and inculcated to him and Farasram in the bank and thereafter both had signed those documents. Role of the Appellant was that he just accompanied the Complainant to the bank. From the statement of Patwari Pilaram Dhruw (PW5), it is also established that the Complainant himself had gone to this witness along with his rinpustika saying that he wanted to obtain a loan for purchasing a tractor and this

witness had given copies of relevant documents to the Complainant. From the statements of Prosecution Witnesses Balram and Krishna Kumar, it is clear that though the Appellant had accompanied Complainant Benuram and co-accused Farasram to the shop of Goodwill Tractors, before delivery of the tractor at the shop of Goodwill Tractors both Complainant Benuram and co-accused Farasram were read over and inculcated all the relevant documents and thereafter their signatures were obtained and the tractor was delivered. From the admission made by Prosecution Witness Krishna Kumar, possession of the tractor was in the hands of co-accused Farasram, but accounts of the tractor were being dealt with by both Complainant Benuram and co-accused Farasram. The Complainant has not stated anything in his statement that any recovery of the said loan was made from him or any notice regarding recovery of the said loan was served to him. From the above, I find that no case is made out against the Appellant.

13. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
14. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE