

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1255 of 1998**

1. Rajbahaur S/o Panchpati Kumhar, aged about 22 years,
2. Sitaram S/o Bhagirathi Kumhar, aged about 45 years,

Both are R/o Gram Binori, P.S. Palari, district Raipur (M.P.) now (C.G.)

---- Appellants**Versus**

1. State of M.P. now Chhattisgarh, through P.S. Palari, District Raipur (C.G.)

---- Respondent

For Appellants : Miss Pragya Pandey, Advocate.
 For Respondent/State : Shri Raghvendra Verma, Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****19/03/2020**

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 19/05/1998 passed by Special Judge, S.C.S.T. Act, Raipur (C.G.) in Special Session Trial No. 52/1997; whereby the appellants stand convicted and sentenced as under:-

Conviction	Sentence
U/s. 3(1)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "SC/ST Act")	R.I. for 6 months & fine of Rs. 750/- each, in default of fine additional R.I. for 15 days.

- 2) Case of the prosecution in brief is that FIR Ex. P-1 was lodged by PW-01 Mamina Bai on the date of incident i.e. 05/04/1997 stating therein that on the said day at around 10:30 AM when prosecutrix had gone for fetching water from well, at that time both accused persons came there, started abusing her filthily

saying **Ye Sale Chamar Log Kunwa Mein Pani Bharne Aate Hain, Kunwa Ko Achoot Kar Diye & Chamrin Log Kunwe Ko Achoot Karte Hain.** Thereafter, the accused persons threw her bucket and *Gundi* and assaulted upon her as a result of which she suffered injuries. The incident was witnessed by Sailindri Bai, Bhuri Bai and Malikram. The prosecutrix immediately informed about the incident to village Kotwar Pawan and promptly lodged FIR within one and half hours at around 12:00 PM as per Ex. P-1. During investigation Ex. P-2 Spot Map was prepared. MLC of prosecutrix was prepared by PW-06 Dr. F.R. Nirala and he found 2 contusions over right hand of size 2"x1" and 2"x1^{1/2}" in elbow and shoulder as per Ex. P-3. After recording the statements of witnesses under section 161 of Cr.P.C. charge-sheet was filed against the accused for the offence punishable under Sections 294, 323/34 of IPC and Section 3(1)(xi) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

- 3) The Trial Court framed charges under Section 294 of IPC and Section 3(1)(v) & Section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the accused/ appellants. The accused abjured their guilt and prayed for trial.
- 4) The prosecution in support of its case examined as many as 07 witnesses namely PW-01 Mamina Bai (Prosecutrix), PW-02 Nanhe Bai, PW-03 Sailindri Bai, PW-04 Pancho Bai, PW-05 Salik Ram, PW-06 Dr. F.R. Nirala, PW-07 P.K. Singh (S.D.O.P) (I.O.). The statements of the accused were also recorded under section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implications. Accused took defence that as the prosecutrix wanted to have bricks and roof tiles from appellants and they denied to provide the same on credit, they have been falsely implicated in this offence. However, one witness DW-01 Ram Nihore was examined by them in their defence.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above in para 1 of this judgment.
- 6) Learned counsel for the appellants submits that no any dispute arose regarding the caste of the prosecutrix nor the appellants restrained the prosecutrix in any manner from fetching water from the well. In fact, there was dispute between Maini Bai (wife of accused Rajbahadur) and the prosecutrix but the accused/appellants have been falsely implicated in this case. No any independent witness was examined by the prosecution in support of his case. Since the appellants denied to provide bricks and Tiles on credit to the prosecutrix, they were falsely implicated. This fact is also proved by DW-01 Ram Nihore that actual dispute was between Maini Bai and prosecutrix and no other incident happened between the appellants and the prosecutrix. Therefore, without properly appreciating the prosecution evidence available on record and the evidence of the defence witness, the learned Trial Court wrongly convicted the appellants for the offence under Section 3(1)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 which is liable to be set aside.
- 7) On the other hand, learned counsel for the respondent/State supporting the impugned judgment submits that it is admitted by the defence witness DW-01 Ram Nihore that there was no dispute between the prosecutrix with the appellants nor any enmity prior to the incident. PW-01 Mamina Bai Prosecutrix proved this fact that when she reached at place of occurrence for fetching water from well, both the appellants assaulted upon her and were using filthy language in the name of her caste saying that **Ye Sale Chamar Log Kunwa Mein Pani Bharne Aate Hain, Kunwa Ko Achoot Kar Diye & Chamrin Log Kunwe Ko Achoot Karte Hain** and they restrained her from fetching water from the well due to her caste. PW-01 Prosecutrix promptly lodged FIR which is supported by her MLC Ex. P-3.

There is no contradiction or omission in the FIR and the statement of prosecutrix and her statement is supported by PW-02 Nanhe Bai, PW-03 Sailindri Bai & PW-04 Pancho Bai and also from her medical report. Therefore, the learned Trial Court has rightly convicted and sentenced the appellants by the impugned judgment which calls for no interference by this Court.

- 8) Heard counsel for the parties and perused the material available on record.
- 9) It is not in dispute in the present case that the prosecutrix (PW-01) belongs to Chamarin Caste which is scheduled caste as mentioned in Sl. No. 14 of the Constitution Order, 1950. Further, it is also not in dispute that the appellants are Kumhar by caste. Appellant Sitaram in reply to question No. 2 in her defence statement has also admitted that he belongs to Kumhar community and Prosecutrix belongs to Satnami community. Thus, it stands proved beyond reasonable doubt that the prosecutrix belongs to scheduled caste whereas the appellants are not member of scheduled caste or scheduled tribe.
- 10) In this case the prosecutrix also sustained injury as mentioned in FIR and her MLC (Ex.P/3). The appellants have challenged their conviction on the ground they had no dispute with the prosecutrix as alleged by her nor any assault was made on her or she was restrained by them. PW-01 Mamina Bai has categorically mentioned the incident in paras 1 and 2 of her deposition that when she reached at around 10:30 AM for fetching water from the well, both the accused were saying **Ye Sale Chamar Log Kunwa Mein Pani Bharne Aate Hain, Kunwa Ko Achoot Kar Diye & Chamrin Log Kunwe Ko Achoot Karte Hain** and they did not permit her to fetch water from the well. She further stated that the accused persons threw her Bucket (Balti) and were abusing her as also assaulted upon her. At that time PW-02 Nanhe Bai also interfered and restrained the appellants but appellants used same language against this witness also. The prosecutrix also proved the FIR lodged as per

Ex. P-1 and Spot map Ex. P-2. In her cross-examination the prosecutrix remained consistent and reiterated as to the manner in which the incident took place. Therefore, there is no reason to disbelieve her statement.

- 11) PW-02 Nanhe Bai also stated the same fact in her deposition in para 2 as stated by the prosecutrix. PW-02 is mother-in-law of the PW-01 prosecutrix.
- 12) PW-03 Sailindri Bai also proved this fact that when PW-01 Mamina Bai reached the well for fetching water, accused Sitaram threw her Bucket (Balti) and both accused did not permit the prosecutrix to fetch water from the well and they assaulted upon prosecutrix. PW-03 Sailindri Bai is the neighbour of the appellant Sitaram and her house is situated in front of the well. She stated the family members of the appellants also quarreled with the prosecutrix.
- 13) PW-04 Pancho Bai also supported the evidence of the prosecutrix. There is no contradiction or omission in the statements of PW-02 Nanhe Bai, PW-03 Sailindri Bai and PW-04 Pancho Bai. Prompt FIR is lodged by the prosecutrix as per Ex. P-1 and she was medically examined by PW-06 Dr. F.R. Nirala who has duly proved the injury found on the body of the prosecutrix.
- 14) PW-07 P.K. Singh (S.D.O.P) (I.O.) has supported the prosecution case.
- 15) The defence taken by the appellants in their statement under Section 313 of Cr.P.C. is that since the prosecutrix was asking for Tiles and Bricks on credit and the appellants refused to provide the same, they have been falsely implicated in this case. However, no such evidence has been adduced by the appellants to substantiate the said defence nor in the cross-examination of the prosecution witnesses any such suggestion was given to them. Only one suggestion was given in cross-examination of PW-01 Prosecutrix that she had stolen Bricks of the appellants

therefore, dispute arose between them but there is no evidence available on record that prosecutrix had stolen any Brick of the appellants. Thus, considering the overall facts and circumstances of the case, the evidence of the prosecutrix (PW-01), which finds due corroboration from the evidence of PW-02 Nanhe Bai, PW-03 Sailindri Bai and PW-04 Pancho Bai as also from the promptly lodged FIR and her MLC, this Court is of the opinion that the trial Court was fully justified in convicting the appellants under Section 3(1)(v) of the Act. Further, considering the fact that the trial Court has awarded minimum sentence to the appellants as prescribed by the Act, there is no need to interfere with the sentence part also.

- 16) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly dismissed. Appellants are reported to be on bail, therefore, their bail bonds stand canceled and they are directed to be taken into custody forthwith to serve out the remaining part of their sentence.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant