

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 546 of 2006

Aajuram S/o Dukalha Sahu, aged about 35 years, R/o Dhobghatti, Out-Post Pandatarai, P.S. Kunda, District - Kabirdham, Chhattisgarh

---- Appellant

Versus

State of Chhattisgarh through Police Station Kunda, District Kabirdham, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Sudhir Verma, Advocate
For Respondent	:	Shri Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on board

03.09.2020

According to the case of the prosecution, on 14.11.2005 when complainant Shyam Ratan was cleansing his teeth by sitting in front of his house, the accused-appellant who was passing through the said lane, started hurling abuses publically and when Shyam Ratan (PW-1) objected to him saying as to why he was unnecessarily hurling abuses, the accused-appellant turned his attention towards him and started filthily abusing him and also called him "Chamar" – the caste to which he was belonging. Not only this, the accused-appellant gave 4-5 slaps to him and cause a tooth bite injury on his left hand. On seeing them, when Jaleshwar (PW-2) reached the spot and tried to intervene the matter, the accused-appellant also gave 3-4 slaps to him and caused tooth bite injury on his right wrist and chin. Report to this effect Ex-P/1 was lodged on the same day, based on which the offence under Sections 294, 506, 323, 324 IPC and Sections 3 (1) (x) of the Scheduled Caste and Scheduled Tribe

(Prevention of Atrocities) Act, 1989. After medical examination and completion of investigation relating formalities, the charge-sheet was filed against the accused-appellant under the same sections followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 17.07.2006 passed by Special Judge, Kabirdham in Special Criminal Case No. 03/2006 acquitted the accused-appellant of all other charges including the one under the Special Act, but held him guilty under Sections 323 and 324 of IPC and imposing on him the sentence of R.I. for one month with fine of Rs.500/- on each count, plus default stipulations. Hence this appeal.

3. Counsel for the accused/appellant submits that it is the complainant (PW-1) who provoked the accused-appellant and for this he got enraged and caused tooth bite injuries. He further submits that on the same set of evidence, the accused-appellant has already been acquitted of the other charges under the IPC and as also under the Special Act, the same treatment should have been given to him under these Sections also as no other evidence has been adduced by the prosecution.

4. State counsel however supports the judgment impugned holding the same to be just and proper.

5. Heard counsel for the parties and perused the judgment impugned and record of the Court below.

6. From the evidence Shyam Ratan (PW-1) it is evident that when he asked the accused-appellant not to unnecessarily hurl abuses publically, he got provoked and in addition to giving 3-4 slaps, he

caused tooth bite injuries on his left hand also. Likewise, Jaleshwar (PW-2) who came to the rescue of Shyam Ratan (PW-1) has also supported the case of the prosecution stating that when he tried to intervene in the matter, the accused-appellant slapped him thrice and also caused tooth bite injuries on his right wrist and chin. Dr. V.P. Jaiswal (PW-6) who medically examined Shyam Ratan (PW-1) has supported the case of the prosecution stating that he noticed a cut injury on the right thumb of Shyam Ratan (PW-1); contusion and abrasions on forearms of Jaleshwar (PW-2). According to this witness, though the said injuries appear to have been caused by hard and blunt object, they were simple in nature. The report given by this witness in respect of Shyam Ratan (PW-1) and Jaleshwar (PW-2) are Ex-P/6 and Ex-P/7. Motiram (PW-3) has however not supported the case of the prosecution and has been declared hostile. Investigating Officer has duly supported the case of the prosecution.

7. Having heard counsel for the parties and gone through the witnesses particularly that of Shyam Ratan (PW-1) and Jaleshwar (PW-2) in the light of medical evidence showing cut injuries and abrasion noticed by Dr. V.P. Jaiswal (PW-6), this Court has no hesitation to say that the offence under Sections 323 and 324 IPC is clearly made out against accused-appellant. The injury caused by tooth under this Section can be construed to have been caused by an instrument used for cutting, and being so, no interference with the well reasoned findings recorded by the Court below is warranted. The conviction under Sections 323 and 324 of IPC is therefore maintained.

8. As regards sentence, considering the fact that the accused-appellant has already suffered a lot in the wake of incident that had taken place in the year 2005 and that he has already remained in jail, may be for two days, this Court is not inclined to again send him to jail at such a belated stage and thereby disturbed his well settled family life. Accordingly his sentence is reduced to the period already undergone. Being already on bail the appellant does not need any order from this Court for being set free or otherwise.

9. The appeal thus succeeds in part to the extent indicated above.

Sd/-
(Vimla Singh Kapoor)
Judge