

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 248 of 2007

Judgment reserved on 17.08.2020

Judgment delivered on 06.11.2020

1. Baisakhuram S/o. Dhan Singh Yadav, aged 20 years,
2. Gore Lal S/o. Heera Lal Yadav, aged 30 years,
3. Gautam S/o. Heera Lal Yadav, aged 34 years,
4. Dhan Singh S/o. Heera Lal Yadav, aged about 40 years\

All are resident of Bakarkuda, Police Station Masturi, District Bilaspur (CG)

---- **Appellants**

Versus

State of Chhattisgarh through Police Station Masturi, District Bilaspur (CG)

---- **Respondent**

For Appellants : Mr. Uttam Pandey, Advocate.

For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

FIR (Ex.P-2) registered on the basis of written report (Ex.P-1) given by complainant Janakram (PW-1) goes to show that on 23.08.2005 at about 10.00 PM, the accused/appellants gathered in *satnami* locality

and started hurling abuses in general calling *chamar*, *satnami* and also exhorted them to come out of their houses. It is relevant to note that such filthy abuses including in the name of caste was not aimed at any individual. FIR (Ex.P-2) further discloses that the accused/appellants also started damaging a pole known as "*Jaitkhamb*". This offended the complainant (PW-1) at whose instance the FIR was registered against the accused/appellants under Sections 294, 506/34 and 3(i)(x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. Investigation culminated in filing of the charge-sheet as also framing of charge under the same sections.

2. Learned Court below vide judgment impugned dated 01.03.2007 passed in Special Sessions Case No. 82/2006 acquitted the accused/appellants under Sections 506/34 IPC but has held them guilty under Sections 294 and 3(i)(x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and sentencing each of them with imprisonment for 1 month with fine of Rs. 500/- under Section 294 IPC and RI for six months with fine of Rs. 500/- under the Special Act plus default stipulations. Hence, this appeal.

3. Counsel for the accused/ appellants attacks the impugned judgment on the ground that though there is no evidence that the incident occurred at a place within the public view yet the court below has recorded the conviction of the accused/appellants under Section 3(i)(x) of the Special Act which is palpably illegal. Likewise, he also submits that the conviction under Section 294 is also not based on the

proper appreciation of the evidence of the witnesses and is liable to be set aside.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.

6. As many as five eye-witnesses are said to be there but none of them has stated that the accused/appellants hurled abuses at Janakram (PW-1) alone. Tularam (PW-2) on the contrary has stated that the accused/appellants were abusing in general not naming any particular individual. This apart, there is no evidence on record to show that the place where incident took place was a public view at the relevant time which was in the night at about 10.00 PM. In these circumstances, the conviction of the appellants under the Special Act is hereby set aside.

7. As regards conviction under Section 294 IPC is concerned, the evidence discloses that the accused/appellants by hurling filthy abuses in *satnami* locality had caused annoyance to the inhabitants of the area. Almost all the witnesses including eye-witnesses have stated to this effect. Thus, the involvement of the accused/appellants under Section 294 IPC is fully established, therefore, their conviction under Section 294 IPC is hereby maintained.

8. However, looking to the incident being of the year 2005, and that since then the accused/appellants have already faced a long drawn prosecution and even they remained inside for about one month and ten days, interest of justice in the opinion of this Court, would be served if their sentences are reduced to the period already undergone. Order accordingly.

9. Appeal is thus allowed in part to the extent indicate above. As the appellants are already on bail, their bail bonds stand discharged.

Sd/-
(Vimla Singh Kapoor)
JUDGE