

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 156 of 2007**

1. Punwa S/o Hagru Chandrakar, aged about 32 years.
2. Rajkumar S/o Hagru Chandrakar, aged about 23 years.
3. Dhannu S/o Hagru Chandrakar, aged about 26 years.

All are R/o Village Khamhariya, Police Station- Kunda, District Kabeerdham (C.G.)

---- Appellants**Versus**

1. State of Chhattisgarh, through Police Station- Kunda, District Kabeerdham (C.G.)

---- Respondent

For Appellants	:	Shri Suresh Kumar Verma, Advocate.
For Respondent/State	:	Shri Gagan Tiwari, Dy. Govt Advocate.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****14/07/2020**

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under Section 374 of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 23/02/2007 passed by Special Judge, Kabirdham (Kawardha) (C.G.) in Special Case No. 43/2006; whereby the appellants stand convicted and sentenced as under:-

Accused	Conviction	Sentence
Punwa	Two times convicted U/s 323 of Indian Penal Code (in short "IPC")	R.I. for 6-6 months
	U/s 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (In short SC/ST Act	R.I for 1 year & fine of Rs. 200/- in default of fine additional R.I. for 1 month.

Rajkumar and Dhannu	U/s. 323 of IPC	R.I. for 6 months (each)
	U/s 3(1)(x) of SC/ST Act	R.I. for 1 year & fine of Rs. 200/- (each), in default of fine additional R.I. for 1 month.
(Both Sentences were directed to run concurrently)		

- 3) Case of the prosecution in brief is that on the date of incident i.e. 19/07/2006 at around 05:00 PM at village Khamariya while the complainant Rambai was fetching water from the public tap, at that time the accused appellants came there and started abusing her filthily in the name of her caste saying that her cattle have damaged their crops and also assaulted her with hands and fists. In this incident the bangles of the complainant got broken and she sustained injuries. The incident was witnessed by PW-01 Baldau, PW-10 Radhelal and Neelu Bareth. When daughter-in-law of the complainant namely Patribai intervened in the matter, she was also assaulted by the accused appellant Punwa as a result of which she sustained injuries. Thereafter, report of the incident was lodged by the complainant vide Ex. P-2 at the Police Station. During investigation the complainant and Patribai were medically examined vide Ex. P-8 and Ex. P-9 respectively by Doctor P.L. Kurrey PW-06.

Injuries sustained by complainant Rambai:-

- (i) abrasion of size $\frac{3}{4}$ inch long over wrist.
- (ii) multiple abrasions of size $\frac{1}{4}$ inch to $\frac{1}{2}$ inch on right wrist.

The injuries were caused within 4-5 hours by hard and blunt object and were simple in nature.

Injuries sustained by Patribai:-

- (i) two abrasions of size 3 inch and $\frac{1}{2}$ inch over left wrist.

The abrasion injuries were caused within 4-5 hours by

hard and blunt object and were simple in nature.

- 4) During investigation caste certificate of the complainant was seized vide Ex. P-1 and Ex. P-6. As per Ex. P-11 the broken bangles of the complainant were seized. After completion of usual investigation charge-sheet was filed against the accused persons for the offence punishable under Sections 294, 323, 34 of IPC and Section 3(1)(x) of SC/ST Act.
- 5) The Trial Court framed charges under Sections 294 & 323 of IPC and Section 3(1)(x) of SC/ST Act against the accused/appellants Rajkumar & Dhannu and Sections 294 & 323, 323 of IPC and Section 3(1)(x) of SC/ST Act against the accused/appellant Punwa. The accused persons abjured their guilt and prayed for trial.
- 6) The prosecution in support of its case examined as many as 10 witnesses namely PW-01 Baldau, PW-02 Bhuneshwar, PW-03 Ubarandas, PW-04 Khilawan Ram Sahu (ASI), PW-05 N.K. Sharma (Tehsildar), PW-06 Dr. P.L. Kurrey (Medical Officer), PW-07 Rambai (complainant), PW-08 Patribai, PW-09 Umend, PW-10 Radhelal, PW-11 M.S. Khan (Retd. D.S.P.). 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. DW-01 Shrawan was examined by them in their defence.
- 7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above in para 2 of this judgment.
- 8) Learned counsel for the appellants submits that learned Trial acquitted appellants of offence under section 294 of IPC. It is not proved by the prosecution by adducing cogent and reliable

evidence that appellants assaulted the complainant or humiliated her in public place on the basis of her caste. In fact the dispute arose between the parties on account of the cattle of the complainant grazing the crops of the appellants and damaging the same. The offence under Section 3(1)(x) of SC/ST Act is not been proved by the prosecution beyond reasonable doubts against the appellants. He submits that the appellants has been falsely implicated in this case due to previous enmity with the complainant and the injuries sustained by the complainant and Patribai were not caused by the appellants. In fact when the appellants were taking the cattle of the complainant for impounding them in the Kanji House, the complainant party had a scuffle with the appellants and during this process the complainant party sustained injuries accidentally. In these circumstances the conviction of the appellants under Section 323 of IPC is also not sustained and is liable to be set aside.

- 9) He lastly submits that if this Court ultimately confirms the conviction of the appellants, considering the facts and circumstances of the case, the fact that the incident took place around 14 years back, the appellants are the first offender having no criminal antecedents, their age at the time of incident i.e. 32, 23 & 26 years respectively, and they may be given the benefit of Probation of Offenders Act and the sentence be reduced to the period already undergone by them.
- 10) On the other hand learned counsel for the respondent/State supports the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellants by the impugned judgment which calls for no interference by this Court.
- 11) Heard counsel for the parties and perused the material available on record.
- 12) PW-07 Rambai (complainant) and PW-08 Patri Bai both have

stated in their deposition and admitted the fact that as the cattle had entered field of the appellants, dispute arose between the parties and all the appellants assaulted upon Rambai, as a result of which her bangles got broken and she sustained injury. As per Ex. P-8 only multiple abrasions were found on the body of the complainant PW-07 and also the abrasion found on body of PW-08 Patribai as per Ex. P-9 and all the abrasions are simple in nature, no any lacerated or cut wound was found. PW-07 Rambai and PW-08 Patribai also proved this fact when dispute arose between the parties, the accused assaulted by hand upon PW-07 Rambai and when PW-08 Patribai reached at the place of occurrence and was trying to pacify the dispute she also sustained injury when accused Punwa pushed her. PW-01 Baldau has also stated that on the date of incident he saw the accused appellant abusing the complainant filthily in the name of her caste and they were chasing her for beating. This witness in the cross examination has admitted the fact that no incident of beating took place in his presence.

- 13) Considering the evidence of the injured witnesses PW-07 complainant and PW-08 Patribai which is also supported by their medical reports Ex. P-8 and Ex. P-9 and the evidence of Doctor PW-06 P.L. Kurrey as also the promptly lodged FIR Ex. P-2 naming the appellants as the assailants and the evidence of eye witness PW-01 Baldau, the prosecution has successfully proved the guilt of the appellants under section 323 of IPC.
- 14) So far as offence under Section 3(1)(x) of SC/ST Act is concerned, to substantiate the said offence the prosecution is required to prove that the accused who is not a member of SC ST community intentionally insulted or intimidated with intent to humiliate a member of scheduled caste or scheduled tribe in any place within public view. PW-07 Rambai, complainant, has stated that the incident occurred on account of cattle being entered into the field of the accused appellants whereas the

cattle were of some other person. In her deposition she has nowhere stated that she was assaulted by the accused appellants on the basis of her caste with intention to insult or intimidate or humiliate her. Likewise, PW-08 Patribai has also not stated in her deposition that the accused appellants quarreled with PW-07 and herself (PW-08) beat them on the basis of their caste. Thus, in this case no evidence has been adduced by the prosecution to prove that the appellants assaulted the complainant Rambai with intention to insult or intimidate or humiliate her. As per the caste certificates Ex. P-6 and Ex. P-7 of the complainant PW-07 Rambai and PW-08 Patribai which have been proved by PW-05 N.K. Sharma, Tehsildar it is established that PW-07 and PW-08 are scheduled caste (Satnami) but looking to the manner in which the incident occurred on account of grazing of the field of the appellants by the cattle of the complainant and the lack of evidence on record to show that the appellants intentionally assaulted or abused or humiliated the complainant party on the basis of their caste, it would not be appropriate to hold them guilty of the offence under Section 3(1)(x) of SC/ST Act. Therefore, their conviction under Section 3(1)(x) of SC/ST Act is liable to be set aside.

- 15) So far as the sentence part is concerned, considering the facts and circumstances of the case, the fact that the incident took place 14 years back, the age of the appellants at the time on incident, they have remained in jail from 31/07/2006 to 02/08/2006, the fact that they have no criminal antecedents, dispute arose between the party over a trivial issue of grazing of cattle in which the complainant party suffered injuries which were simple in nature, they are on bail since 2007, keeping in view the judgment of Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already

undergone, this Court is of the opinion that the ends of justice would be served if the appellants are sentenced to the period already undergone by them and each of them is directed to pay a fine of Rs. 200/- on each count.

- 16) In the result the appeal is allowed in part. The appellants are acquitted of the charge under Section 3(1)(x) of SC/ST Act. While maintaining the conviction of the appellant Punwa under Section 323 of IPC on two counts and that of appellants Rajkumar and Dhannu under Section 323 of IPC, their jail sentence is reduced to the period already undergone by them. This apart each of the appellants shall pay a fine of Rs. 200/- on each count, failing which they shall have to suffer additional R.I. for 1 month. If the fine amount under Section 3(1)(x) of SC/ST Act has already deposited by the appellants, the same shall be adjusted accordingly. Out of the total amount of Rs. 800/-, Rs. 300/- shall be payable to the complainant PW-07 Rambai and Rs. 300/- shall be payable to the complainant PW-08 Patribai as compensation under Section 357 of Cr.P.C. by the Trial court after due verification. Since the appellants are reported to be on bail, therefore, their bail bonds shall remain in force for a period of six months from today in view of provision of Section 437-A of Cr.P.C.

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