

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1191 of 2001

- Chandrabhushan Sinha son of Mohanlal Sinha, aged 25 years, resident of Kalindarchal Ward No. 15, Rajnandgaon, P.S. & District, Rajnandgaon (C.G.)
---- Appellant

Versus

- State of Chhattisgarh, Through : Special Police Station (A.Ja.K.)
Rajnandgaon, District Rajnandgaon (C.G.)
---- Respondent/State

For Appellant	:	Shri Ashok Kumar Shukla, Advocate
For Respondent/State	:	Shri N.K. Mehta, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

20.02.2020

1. This appeal arises out of the judgment of conviction and order of sentence dated 05.11.2001 passed by the Special Judge, Rajnandgaon (C.G.) in Special Sessions Case No. 43 of 2001, whereby the appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 294 of Indian Penal Code (for short 'IPC')	R.I. for one month
Under Section 355 of IPC	R.I. for one month
Under Section 506 Part II of IPC	R.I. for one month
Under Section 323 of IPC	R.I. for one month
All the sentences to run concurrently	

2. Facts of the case, in brief, are that on 02.04.1999 at about 04:00 pm, complainant Sanjay Rangari (PW-5) had parked the vehicle Jeep bearing registration No. MP-23-G-1689 near Imam Chowk, Rajnandgaon. Due to parking of the said vehicle, dispute arose between the appellant and Sanjay Rangari (PW-5). On this, the appellant was using filthy language about caste of PW-5, the appellant was also threatening PW-5 that he (appellant) will kill him and assaulted him by hands, fists & leg. As per information given by

PW-5, Ex.-P/1A *Roznamchasahana* was recorded in the Special Police Station on the same day. Injured Sanjay Rangari (PW-5) was medically examined by Dr. Rajesh Sharma (PW-3) who gave his MLC report (Ex.-P/5) and found following injuries on the body of Sanjay Rangari (PW-5) :-

- 1) Contusion in size of 1 inch x ½ inch on the right parotid region (below the ear).
- 2) Contusion in size of ½ inch x ½ inch on the right upper lip.

Doctor opined that the injuries were caused by hard & blunt object and were simple in nature.

3. On the basis of *Roznamchasahana* (Ex.-P/1A), F.I.R. (Ex.-P/3) was registered by PW-2 Sub-Inspector R.R. Sande (PW-2) in Special Police Station, Rajnandgaon under Sections 323, 294, 506 & 355 of IPC against the appellant. Spot map (Ex.-P/4) was prepared. The incident was witnessed by PW-4 Rakesh Kumar.
4. After completion of investigation charge-sheet was filed by the police for the offence under Sections 323, 294, 506 & 355 of IPC and Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the appellant/accused. While framing the charge, the Special Judge framed the charges against accused/appellant under Sections 294, 355, 506 Part-II & 323 of IPC and Sections 3(2)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Special Act') which were denied by him and he prayed for trial.
5. So as to hold the appellant/accused guilty, the prosecution examined as many as 05 witnesses. Statements of the accused person was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence for false implication and in his defence, no witness has been examined.
6. The Special Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment

while acquitting the appellant of the charge under Section 3(2)(x) of the Special Act, convicted and sentenced him as mentioned in para-1 of this judgment.

7. Learned counsel for the appellant submits that offence under Sections 294, 506 Part-II and 355 of IPC is not made out looking to the fact that no any assault or criminal force with intent to dishonour the victim by the appellant has been proved by the prosecution. He submits that due to parking of the vehicle, dispute arose between both the parties. He further submits that PW-4 Rakesh Kumar is an eyewitness to the incident and he stated in his cross-examination that only verbal dispute arose between the appellant and PW-5 Sanjay Rangari, therefore, the appellant has been falsely implicated in this case. He submits that main ingredients for offence under Section 294 of IPC i.e. doing of any obscene act in any public place or utterance of any obscene song, ballad or words, in or near any public place to the annoyance of others, are completely missing in this case as no any witness has stated that the accused/appellant did any kind of such act in public place to the annoyance. Likewise, offence under Section 355 of IPC is also not made out against the appellant as there is no evidence to show that the appellant assaulted the victim or used criminal force with intent to dishonour him. Further, he submits that as per prosecution case itself, the appellant only told the victim that he will kill him in verbal quarrel between them for parking of the vehicle which itself does not constitute offence under Section 506 Part-II of IPC. Lastly, he submits that at the most, the offence under Section 323 of IPC can be said to have been made out against the accused/appellant and considering the fact that the appellant has already remained in jail for about four days, in the given facts and circumstances of the case, the manner in which the incident occurred and the long elapsed of time, he may be sentenced to the period already undergone by him.
8. On the other hand, learned counsel for the State supports the judgment

impugned. It has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

9. Heard learned counsel for the parties and also perused the records of the trial Court.
10. PW-5 Sanjay Rangari lodged *Roznamchasahana* Ex.-P/1 before the police officer and stated that due to parking of the vehicle, dispute arose between complainant PW-5 and the appellant and PW-5 was threatened by the appellant saying that he will kill you abusing filthy language and assaulted upon PW-5.
11. PW-4 Rakesh Kumar is the eyewitness to the incident. He stated in paras 1 & 2 of his court deposition that the appellant was using filthy language and assaulted upon Sanjay Rangari (PW-5) due to dispute over parking of the vehicle and the appellant was also saying that he will kill PW-5.
12. Except the aforesaid evidence of PW-4 and PW-5, there is nothing on record which could substantiate the offence under Sections 355 & 506 Part-II of IPC. From the above evidence, it could not be said that the appellant assaulted PW-5 or used criminal force against him with intent to dishonour him. Mere saying that I will kill you, is not constituted the offence under Section 506 Part-II of IPC in absence of *mens rea* on the part of the appellant giving a reasonable apprehension in the mind of the victim of danger to his life. Therefore, the prosecution has failed to prove the offence under Sections 355 & 506 Part-II of IPC against the accused/appellant.
13. PW-5 Sanjay Rangari has stated in para-3 of his deposition that the appellant told him "*Saley Mahara Chamra Maadarchod*" and assaulted him. PW-4 Rakesh Kumar has also supported the evidence of PW-5. As per MLC of PW-5 (Ex.-P/5), the victim suffered contusions on right parotid region and on right upper lip which were caused by hard and blunt object and were simple in nature. MLC (Ex.-P/5) of the victim has been duly proved by PW-3 Dr. Rajesh Sharma. Thus, prosecution has been successfully in proving guilt

of the appellant under Sections 294 & 323 of IPC beyond all reasonable doubt.

14.As regard the sentence, considering the facts and circumstances of the case, the fact that over trivial issue of parking of the vehicle dispute arose between the appellant and PW-5 in which PW-5 sustained simple injuries, the fact that the appellant was a young offender of 25 years on the date of incident, he has no criminal antecedent, he has remained in jail for four days and is on bail since 14.12.2001, the incident took place around 20 years back, keeping in view of the judgment of the 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 in the present case also no useful purpose would be served in again sending him back to jail at this stage and the ends of justice would be served if he is sentenced to the period already undergone by him for the offence under Sections 294 & 323 of IPC.

15.In the result, the appeal is allowed in part. The conviction and sentence awarded to the appellant by the trial Court under Sections 355 & 506 Part-II of IPC are set aside and he is acquitted of the said charges framed against him. While maintaining the conviction of the appellant awarded by the trial Court under Sections 294 & 323 of IPC, he is sentenced to the period already undergone by him. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge