

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 63 of 2008**

1. Nawdha Chandra, S/o Kirtan Chandra, aged about 45 years,
2. Ganpati Chandra, S/o Nawdha Chandra, aged 23 years,

Both are resident of Khaira, P.S. Dabhra, District Janjgir-Champa, C.G.

---Appellants**Versus**

- State of Chhattisgarh, Through Police Station Dabhra District Janjgir-Champa, C.G.

---- Respondent

For Appellants	Shri Gurudev I. Sharan, Advocate.
For Respondent/State	Shri Vimlesh Bajpai, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****15/09/2020**

1. The appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 11.01.2008 passed by Sessions Judge, Janjgir-Champa, C.G. in Special Sessions Trial No. 113/07, whereby the appellants stand convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Special Act')	Rigorous imprisonment for two years and pay a fine of Rs. 500/-, in default of payment of fine to further undergo rigorous imprisonment for three months.

Under Section 323/34 of Indian Penal Code (for short 'IPC')	Rigorous imprisonment for three months
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(All sentences were directed to run concurrently)

3. Case of the prosecution, in brief, is that on 18.04.2007 at about 7:00 am, complainant went to attend the nature's call. After attending the call of nature, he went to fetch the water from boring where appellants were bathing. Then, appellants tried to stop complainant to fetch water from boring and started abusing filthily and threatening the complainant of life and thereafter assaulted him and also pushed him on the floor. Thereafter, complainant went to the police station and lodged written complaint Ex.P-1 against the appellants. On the basis of written complaint Ex.P-1, enquiry was made and on the same day FIR Ex.P-2 was registered against the appellants under Crime No.104/07 in police Station Damra, Janjgir. Complainant was sent for medical examination who was examined by PW-2 Dr. N.P. Mishra and he submitted his report vide Ex.P-6 as under:-

1. Bruise on left side of forehead size 3" x 2" inch.
2. Bruise on left shoulder joint size 3" x 2 ½ inch.
3. Bruise on right knee joint size 1 x ½ inch.

According to the doctor, the injuries were simple in nature and were caused by hard and blunt object and duration was about 12 hours.

4. During investigation, spot map was prepared vide Ex.P-5 and one caste certificate of complainant was seized vide Ex.P-3.

Accused/appellants were arrested on 06.05.2007 vide Exs.P-7 & P-8. After recording statements of the witnesses, charge sheet was filed against accused/appellants under Sections 506, 294, 323, 34 of IPC and under Section 3 (1) (x) of the Special Act.

5. The trial Court framed charges under Sections 294, 323/34 and 506 Part II of IPC and under Section 3 (1) (x) of the Special Act against the accused persons which were denied by them and they prayed for trial. The prosecution examined 8 witnesses in support of its case i.e. PW-1 Complainant, PW-2 Dr. N.P. Mishra, PW-3 Tulsi Bai, PW-4 Nakul, PW-5 Pancho Bai, PW-6 Nepal Ram, PW-7 G.B. Sahu and PW-8 N.R. Arya. Statements of accused/appellants were recorded under Section 313 Cr.P.C. in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined only one witness i.e. Neelamber.
6. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellants as mentioned above.
7. Learned counsel for the appellants submits that in this case no offence was committed by the appellants to intentionally insult or intimidate with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. He also submits that on the date of incident, dispute arose between them due to fetching of water from boring and the complainant

had first started using filthy language against the appellants, therefore, a free fight took place between the parties and both the parties had sustained injuries. He further submits that firstly appellants had lodged the complaint against the complainant and due to this reason, appellants have been falsely implicated in this case by the complainant. Further, no ingredients of the alleged offence were proved by the prosecution against the appellants. In these circumstances, conviction and sentence of the appellants under Section 323/34 of IPC and Section 3 (1) (x) of the Special Act are not sustainable and they deserve to be acquitted of the said charges.

Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellants are guilty of the offence under Section 323/34 of IPC, considering the fact that the incident took place around 13 years ago, the age of the appellants at the relevant time were 45 and 23 years respectively and they have no criminal antecedent, they have already remained in jail for 12 days, therefore, in these circumstances, the accused/appellants be sentenced to the period already undergone by them.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellants are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

9. Heard learned counsel for the parties and perused the material available on record.
10. PW-1 Complainant stated in his deposition that on the date of incident at about 7:00 am, he went to attend the nature's call. After attending the call of nature, he went to fetch the water from boring where appellants were bathing. When he started to fetch water, accused/appellants stopped him, took the bucket from him and threw it and started abusing filthily about his caste and threatening him of life. They assaulted him and also pushed him on the floor as a result of which he sustained injuries on his body. Thereafter, his wife came there and pacified the dispute between them. Then, he went to the police station and lodged written complaint Ex.P-1 against the accused/appellants and on the basis of written complaint, FIR Ex.P-2 was registered against them. He also admitted in para 5 of his cross-examination that when any person returns after attending the nature's call, they do not use the water of boring and if anyone touches that water, then nobody uses that water. He also admitted in para 1 of his statement that dispute arose between them because he came to fetch water from boring after attending the nature's call and appellants were bathing there and they tried to stop him from fetching water from boring.
11. PW-2 Dr. N.P. Mishra medically examined the complainant vide Ex.P-6 and gave his report as mentioned in the preceding paragraph. He has duly proved the said report.
12. PW-3 Tulsi Bai is the wife of complainant PW-1. She has also stated the same facts as stated by the complainant. She also

admitted in para 3 that we did not want to lodge the report against the appellants but firstly accused persons lodged the report against her husband, therefore, her husband went to the police station and lodged the report against the accused persons.

13. PW-4 Nakul is the witness of seizure of caste certificate of complainant vide Exs. P-3 and P-4.

14. PW-5 Pancho Bai stated in her deposition that she had heard about the dispute which took place between complainant and appellants but she is not aware of the cause of dispute between them.

15. PW-6 Nepalram stated in his deposition that on the date of incident when he reached the place of occurrence he saw that no quarrel or fight took place between appellants and complainant. He also stated that he is not aware of the cause of dispute between them.

16. PW-7 J.B. Sahu, Assistant Sub-Inspector, who registered the FIR Ex.P-2 on the basis of written report Ex.P-1 has duly proved the same. He has also sent the complainant for medical examination vide Ex.P-6A.

17. PW-8 A.N. Arya, Section Officer in Police Station Sakti, has stated in his deposition that on 06.05.2007, he went to the spot and prepared the spot map Ex.P-5, arrested the accused persons vide Exs. P-7 to P-9 and also seized the caste certificate of complainant vide Ex.P-3.

18. DW-1 Neelambar has stated that on the date of incident first complainant had started quarrel with appellants when they were

bathing near boring. He also admitted in cross-examination that his relations with complainant were not good and complainant took his parents for evidence by saying that he would bear the expenses of their conveyance.

19. So far as offence under Section 3(1)(x) of the Special Act is concerned, considering the entire evidence of PW-1 Complainant which is duly supported by the evidence of PW-3 Tulsi Bai, wife of the complainant, it clearly shows that the appellants used the filthy language against PW-1 complainant, but the appellants had not abused against PW-1 Complainant in the name of his caste or they intentionally insulted or intimidated with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view and also no caste based dispute arose between them on the date of incident. Therefore, considering the facts and circumstances of the case, this Court is of the opinion that the main ingredients of the offence under Section 3(1)(x) of the Special Act has not been proved by the prosecution as required under the law. Thus, in these circumstances the offence under Section 3(1)(x) of the Special Act is not made out against the appellant and the same is liable to be set aside.

20. So far as offence under Section 323/34 of IPC is concerned, in the totality of facts and circumstances of the case, considering the evidence of the complainant as well as the evidence of PW-3 Tulsi Bai, who has duly supported the evidence of the complainant, it stands proved that it were the accused/appellants who voluntarily caused hurt to PW-1 Complainant when he was trying to fetch the

water from boring as a result of which he suffered simple injuries on his body. There is no major contradictions or omissions in the statements of the above witnesses which could suggest of false implication of the appellants in the crime in question. The evidence of the complainant also finds corroboration from the FIR and medical report. The evidence of the defence witness, as discussed above, is of no help to the appellants as he has not stated anything specific in favour of the appellants. In these circumstances, this Court is of the opinion that the prosecution has successfully proved its case under Section 323/34 of IPC against the appellants.

21. As regards the sentence, considering the facts and circumstances of the case, the fact that the appellants were first offender of 45 and 23 years respectively on the date of incident, they have no criminal antecedent, they have remained in jail for 12 days, the incident took place around 13 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 the appellants back to jail at this stage and the ends of justice would be served if they are sentenced to the period already undergone by them. However, they are directed to pay a fine of Rs.500/- each, in default thereof

to undergo additional rigorous imprisonment for 3 months.

22. In the result, the appeal is allowed in part. The conviction and sentence awarded to the appellants by the trial Court under Section 3(1)(x) of the Special Act are set aside and they are acquitted of the said charge framed against them. While maintaining the conviction of the appellants awarded by the trial Court under Section 323/34 of IPC, they are sentenced to the period already undergone by them. However, they are directed to pay a fine of Rs.500/- each, in default thereof to undergo additional rigorous imprisonment for 3 months. Out of the total fine of Rs.1,000/-, a sum of Rs.500/- shall be payable to the prosecutrix as compensation by the trial Court after due verification. The fine amount already deposited by the appellants shall be adjusted accordingly.

23. 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 the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh