

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 833 of 2004**

- Mangal Das Baba, aged about 50 years, Son of Narsingh Das Vaishnav, Occupation Labourer, Resident of Village Pasaud (Pasid), Chowki Kausir, P.S.Sarangarh, District Raigarh, C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through Police Station Sarangarh, District Raigarh, C.G.

---- Respondent

For Appellant	Shri Pawan Kesharwani and Shri Sabyasachi Bhaduri, Advocates.
For Respondent/State	Shri Ashish Gupta, P.L.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****02/01/2020**

1. The appellant would call in question the legality and validity of the judgment dated 17.09.2004 passed by the Special Judge, Raigarh, C.G. in Special Case No.08/02 whereby appellant stands convicted under Section 427 of Indian Penal Code and sentenced to fine of Rs.6,000/-, in default thereof to suffer three months R.I.
2. Case of the prosecution in brief is that the complainant Amritlal belongs to the Scheduled Caste and the accused Mangal Das Baba does not belong to the Scheduled Caste or Scheduled Tribe community. The complainant had obtained a loan in his name as also in the name of his brother Krishna Kumar. He

purchased a bus bearing registration No.MP55-F/0008. The said bus was plying in the route between Sarangarh to Singhanpur via Kisi, Lendra, Sarangarh and Jashpur. On 23.09.01, at about 1:30 pm, complainant Amritlal, owner of the bus, while returning from Sarangarh along with his Driver Dharmendra, when reached at village Pasid, the accused holding a club stopped the bus and started abusing, at that time, in the bus driver Dharmendra and cleaner Radheshayam were also present. When complainant Amritlal came out of the bus and asked as to what is the problem, the accused kept the lathi and caught hold the shirt of the complainant and slapped him. He also abused the complainant and threatened to kill him. It is further alleged that the accused also abused the appellant by saying that you belong to the Scheduled Caste. When the complainant boarded the bus and asked the driver to drive the bus, the accused gave a lathi blow on the front glass of the bus, as a result of which glass was broken and complainant suffered a loss of Rs.5,000/-(approx). On the same day, FIR Ex.P-1 was lodged by complainant. During investigation, Caste Certificate Ex.P-2 was seized. Spot Map Ex.P-5 was prepared. One club was also seized as per Ex.P-6 and Spot Map was prepared by Patwari vide Ex.P-9. *Nuksani (Damage)* Panchnama was prepared vide Ex.P-12. After completion of investigation, charge sheet was filed against the appellant under Sections 341, 294, 323, 506B 427 of IPC and under Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (prevention of Atrocities Act).

3. The trial Court framed the charges under Sections 294, 506B, 323, 427 of IPC and under Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (prevention of Atrocities Act) against the appellant which were denied by him and he prayed for trial.
4. So as to hold the accused/appellant guilty, the prosecution examined as many as 13 witnesses i.e. PW-1 Chet Ram, PW-2 Lekhram Vare, PW-3 Dharmendra Das, PW-4 Radheshayam, PW-5 Dr. S.K. Tiwari, PW-6 Jawaharlal Yadav, PW-7 R.K. Kesharwani, PW-8 Shayamlal Kanwar, PW-9 Bagha Singh, PW-10 Ravichandra Painkara, PW-11 Arti Kumar, PW-12 Tijendra Kumar and PW-13 G.S. Otti. Statement of the accused 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 and false implication. However, no witness was examined by him in his defence.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.
6. Learned counsel for the appellant submits that due to previous enmity between the appellant and Amritlal complainant, appellant (Mangal Das Baba) has been falsely implicated in this case. He also submits at that time no incident had happened, therefore, the trial Court has acquitted the appellant of the charges under Sections 341, 294, 323, 506B of IPC and under Section 3 (1)(x)

of the Scheduled Castes and Scheduled Tribes (prevention of Atrocities Act) and only convicted for the offence under Section 427 of IPC. He further submits that in this case no independent witness supports the prosecution case and looking to the omission and contradiction in the statements of prosecution witnesses, learned trial Court wrongly convicted the accused/appellant for the said offence.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/Mangaldas Baba is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. Heard learned counsel for the parties and perused the material available on record.
9. PW-1 Amritlal is the owner of the vehicle i.e. Bus bearing No.MP55-F/0008 and his vehicle was driven by PW-3 Dharmendra (Driver) and both are the eye-witnesses in this case. One independent witness Radheshayam was also examined by prosecution. PW-1 Amritlal, PW-3 Dharmendra and PW-4 Radheshyam have proved this fact that when they reached at village Pasid, the accused holding a club stopped the bus and started abusing, at that time in the bus driver Dharmendra and cleaner Radheshayam were also present. When complainant Amritlal came out of the bus and asked as to what is the problem, the accused abused the complainant and threatened him. When

the complainant entered the bus and asked the driver to drive the bus, the accused gave a lathi blow on the front glass of the bus, as a result of which glass was broken. Statement of PW-1 Amritlal was also supported by PW-3 Dharmendra and PW-4 Radheshayam and there is no major contradiction or omission in their statements. On the same day, FIR Ex.P-1 was lodged by complainant. Spot Map Ex.P-5 was prepared and proved by PW-1 Amritlal and other witnesses. One club was also seized as per Ex.P-6 and Spot Map was prepared by Patwari vide Ex.P-9 which was proved by PW-6 Jawaharlal Yadav. PW-9 Bagha Singh, Motor Mechanic, also proved the damage caused to the vehicle of the complainant as per Ex.P-12. Looking to the entire evidence, oral and documentary, adduced by the prosecution it stands proved beyond all reasonable doubt that it is the accused/appellant who on 23.11.2001 caused damage to the vehicle of the complainant by assaulting with a club, resulting in loss of Rs.5,000/- (approx.) to the complainant. Being so, conviction of the appellant under Section 427 of IPC cannot be faulted with.

10. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

11. This Court vide order dated 19.10.2004 had suspended the fine sentence by directing the appellant to deposit 50% of the fine amount. Learned counsel for the appellant submits that the appellant has already deposited 50% of the fine amount with the

trial Court. Since the appeal has been dismissed, the appellant is directed to deposit the remaining amount of fine with the trial Court within a period of 2 months from today.

Sd/-
Gautam Chourdiya
Judge

Akhilesh