

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 590 of 2003**

1. Kabbu @ Kambu, S/o Bhagatu Mahara, aged about 27 years, R/o Karpavand, Outpost Karpavand, Police Station – Bhanpuri, District Bastar (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through District Magistrate, Jagdalpur, District Bastar (C.G.)

---- Respondent

For Appellant	:	Shri Akash Pandey, Advocate.
For Respondent/State	:	Shri Ashish Gupta, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****21/01/2020**

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 02/05/2003 passed by Special Judge, S.C. & S.T. Act, Bastar, Place Jagdalpur (C.G.) in Session Trial No. 71/2003; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 294 of Indian Penal Code (in short "IPC")	R.I. for 1 month.
U/s. 323 of IPC	R.I. for 6 months & fine of Rs. 500/- in default of fine additional R.I. for 1 month.
U/s. 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "SC/ST Act")	R.I. for 1 Year & fine of Rs. 500/- in default of fine additional R.I. for 2 months.
(All sentences were directed to run concurrently)	

- 2) Case of the prosecution in brief is that FIR is lodged by complainant Baliram Bhatra on 27/08/2002 at around 08:05 AM

stating that on 26/08/2002 at around 20:00 PM near house of Vishnu at village Devada, appellant Kabbu @ Kambu Mahra pulled his towel (Gamcha) and assaulted by hand and fist on his face near lips as a result of which he sustained injury and the appellant also abused complainant saying Madarchod, Bihari Ka Naukar Bhatra, Sale Konda Bolta Hai. Since it was night and he was waiting for his employer he lodged report on 27/08/2002 as per Ex. P-4. Spot map prepared by I.O. as per Ex. P-2. Caste certificate of complainant was obtained from the village Sarpanch as per Ex. P-1. Baliram complainant was examined by PW-07 Dr. Subhau Kashyap who found 1cmx2cm lacerated wound in the lips of the complainant which was simple in nature. After completion of usual investigation charge-sheet was filed against the accused for the offence punishable under Sections 323, 294 and 506 of IPC and Section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

- 3) The Trial Court framed charges under Sections 294, 506 Part-I, 323 of IPC and Section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the accused/appellant. The accused abjured his guilt and prayed for trial.
- 4) The prosecution in support of its case examined as many as 07 witnesses namely PW-01 Baliram (complainant), PW-02 Sukal, PW-03 Birendra Prasad Gupta, PW-04 Mangribai (Sarpanch), PW-05 D.R.S. Uike (D.S.P), PW-06 Hari Nandan Singh (ASI) and PW-07 Dr. Subhau Kashyap (Assistant Surgeon). The 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 implications. However, two witnesses DW-01 Dhanoram and DW-02 Damru were examined by him in his defence.
- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above in para 1 of this

judgment.

- 6) Learned counsel for the appellant submits that the accused appellant himself belongs to scheduled caste as mentioned in statement of PW-01 complainant that accused belongs to Mahra caste and Mahra caste in Chhattisgarh is covered under Scheduled Caste. This fact is also proved by other prosecution witnesses and defence witnesses. Therefore, looking to the fact that the appellant belongs to scheduled caste and complainant belongs to scheduled tribe, offence under Section 3(1)(x) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not proved because the main ingredients of the said offence have not been proved by the prosecution against the appellant. The complainant admitted himself in his deposition that in village every person is called and asked by their caste just like Bhadra, Bihari and Mahra. Therefore, there was no intention on the part of the appellant to commit any offence on caste basis of the complainant and as such, the offence under Section 3(1)(10) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not made out against the appellant.
- 7) As per prosecution witnesses, no any filthy language or obscene words were used by the appellant and looking to the particular area of the village, such utterance as has been made by the appellant is commonly made between the villagers. Only one injury which was simple in nature of size 1/2cmx1/2cm is found on the lips of the complainant and that injury can be caused due to falling down on the floor or ground. Therefore, no any offence is made out against the appellant under Sections 294 and 323 of IPC also and hence the appeal may be allowed and the appellant be acquitted of all the charges.
- 8) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that as per the complainant he belongs to Bhadra Adivasi Community and as per the notification of the Government regarding the scheduled Tribe, Bhadra is covered under Serial No. 5, therefore, no any

evidence is adduced by the prosecution in this regard or otherwise by the defence or any witness and it is not controverted that complainant belonged to Bhadra caste. On the date of incident accused assaulted the complainant by hand and fist by using filthy/obscene language in a public place as stated by the eyewitnesses, therefore, offence under Section 294 of IPC is duly made out against the appellant.

- 9) He further submits that the injury was found on the body of the complainant as mentioned in his MLC vide Ex. P-5A and he promptly lodged the FIR against the appellant. Therefore, the prosecution has proved his case beyond all reasonable doubt and the learned Trial Court has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) It is not disputed by both the counsel for the parties that the complainant belongs to Bhadra community and he is covered under the Scheduled Tribe at Serial No. 6 of the notification. Both counsel admitted this fact that the accused belongs to Mahra community and Mahra is also covered under scheduled caste as per notified list of the Government. Therefore, regarding the SC/ST Act when the complainant and accused both belong to SC and ST community, this Act is not applicable and therefore offence under Section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not made out looking to evidence available on record regarding the caste of both the complainant and appellant.
- 12) DW-01 Dhonoram also proved this fact that accused belongs to Mahar caste and DW-02 Damru also proved that the accused belongs to Mahar caste. Defence and prosecution witnesses both have proved that accused belongs to Mahar caste which is notified as Scheduled Caste in the State of Chhattisgarh at serial

No. 33.

- 13) It is also admitted by the complainant Baliram PW-01 in Para 5 of his statement that in village every person is called by his surname just like Mahra, Bhadra and Bihari. Looking to this fact, if the appellant was asking or calling complainant as a Bhadra it cannot be construed that the appellant intended to insult or humiliate the complainant on the basis of his caste. For offence under section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 it is mandatory to prove that a person not being a member of SC or ST community intentionally insults or intimidates with intent to humiliate a member of scheduled castes or scheduled tribes in any public place within the public view. Therefore, the *mens rea* on the part of the appellant in this case regarding intentional insult or intimidation with intent to humiliate or insult the complainant is absolutely missing. There is no evidence available on record to prove the above fact. Therefore, for both these reasons the offence under section 3(1)(x) of SC/ST Act is not made out against the appellant and the learned Trial court wrongly convicted the appellant under section 3(1)(x) of SC/ST Act.
- 14) So far as the offence under sections 294 and 323 of IPC is concerned, PW-01 Baliram stated in his statement has stated that the accused was in drunken condition and met him in the public place and assaulted him on his mouth by hand using filthy language Madarchod, Bihari Ka Naukar Bhatra, Sale Konda Bolta Hai and that language was used by appellant in a public place which caused annoyance to the complainant and other witnesses who were present at the place of incident or public place. Statement of PW-01 Baliram is also supported by PW-02 Shukal who was present on the time of incident. Just after the incident, the incident was narrated to PW-03 Birendra Kumar Gupta and he has also supported the prosecution case. As per PW-07 Dr. Subhau Kashyap he examined complainant and found 1/2cmx1/2cm lacerated wound in the lips of the complainant which was simple in nature as per MLC vide Ex. P-

5A. Thus, on the basis of above ocular and medical evidence, the prosecution has duly proved its case beyond all reasonable doubt against the appellant under Sections 294 and 323 of IPC.

- 15) So far as the evidence of defence witnesses is concerned, DW-01 Dhonoram and DW-02 Damru have not been mentioned anywhere as eyewitness in this case nor suggested by the defence to the prosecution witnesses that these defence witnesses were also present at the time of incident. Therefore, the prosecution case is proved beyond all reasonable doubt under sections 294 and 323 of IPC.
- 16) As regards the sentence, considering the facts and circumstances of the case giving rise to the incident, the fact that the accused/appellant was aged about 27 years at the time of incident, the incident happened on 26/08/2002 i.e. now near about 18 years ago, the appellant has no criminal antecedents, the appellant caused only one lacerated wound on the body of the complaint of size 1/2cmx1/2cm which was simple in nature, 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 ends of justice would be served if instead of awarding jail sentence to the appellant, he is sentenced to fine amount of Rs.2,000/- with default sentence of 15 days' RI under Section 294 of IPC and likewise, the fine sentence of Rs.500/- under Section 323 of IPC is enhanced to Rs.1,000/- with default sentence of 15 days' RI.
- 17) In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 3(1)(x) of the SC/ST Act, his conviction under Sections 294 & 323 of IPC is maintained, however, jail sentence imposed thereunder by the Trial Court is set aside. He is sentenced to pay fine of Rs. 2,000/- under Section 294 of IPC. The fine sentence of Rs.500/- imposed by

the trial Court under Section 323 of IPC is enhanced to Rs. 1,000/-. In default of payment of above fine amounts, the appellant shall suffer additional RI for 15 days respectively. Out of the fine amount deposited by the appellant, Rs. 1,000/- shall be given to the complainant as compensation under section 357 of Cr.P.C. by the trial Court after due verification. The fine amount already deposited by the appellant shall be adjusted accordingly.

- 18) Since the appellant is reported to be on bail, his bail bond shall remain in force for a period of six months from today in view of provision of section 437A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant