

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1031 of 2003**

- Dhirmani W/o Dinesh Kumar, 22 years, resident of village Balikonta, P. S. Frezarpur, District- Bastar (C.G.)

**---- Appellant****Versus**

- State Of Chhattisgarh Through District Magistrate, Jagdalpur, District- Bastar (C.G.)

**---- Respondent**


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| For Appellant        | : Shri Aakash Pandey, Advocate on behalf<br>of Shri Prafull N. Bharat, Advocate |
| For Respondent/State | : Shri Vikash Shrivastava, Panel Lawyer                                         |

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**Hon'ble Shri Gautam Chourdiya, J**  
**Judgment On Board**

**21/01/2020**

1. This appeal arises out of the judgment of conviction and order of sentence dated 18.7.2003, passed by Special Judge (S. C./S. T. Act), Bastar place at Jagdalpur, in S.T. No. 44/2003, convicting the accused/appellant under Section 323 of the Indian Penal Code and Section 3 (1) (x) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act (henceforth "SC/ST Act") and sentencing her to undergo rigorous imprisonment of six months and to pay fine of Rs.500/- with default stipulation on both counts. Both the jail sentences were ordered to run concurrently.

2. Brief case of prosecution is that on 02.10.2002 at about 3.00 pm, complainant – Sonadai, who is a member of Aboriginal Tribe, was

going towards the house of one Dayalu, on the way, she met with appellant -Dhirmani. The appellant asked her as to why she told Raimati that she has illicit relation with Bhaira. On which, the complainant told her to confirm from Raimati about the aforesaid fact, thereafter, both of them went to the house of Raimati, where without asking anything from Raimati, the appellant started abusing the complainant and also beat her with slippers (*Chappal*). Panchayat meeting was also convened for resolving the aforesaid dispute, in which the appellant/accused had admitted her guilt thereafter complainant lodged written report Ex. P/1 before the concerned police station. On the basis of written report, after due enquiry FIR (Ex. P/4) was lodged on 21.12.2002 in Scheduled Caste & Scheduled Tribe Police Station being Criminal Case No. 79/2002 and offence punishable under Section 355 of IPC and Section 3 (1) (x) of the SC/ST Act was registered against her.

3. After usual investigation, charge sheet was filed against the accused/appellant under Section 355 of IPC and Section 3(1) (x) of the SC/ST Act. The trial Court framed charge under Section 323 of the IPC and Section 3(1) (x) of the SC/ST Act. Accused denied the charges framed against her and prayed for trial.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 witnesses namely- Smt. Sonadai (PW-1), Lakheshwar Kashyap (PW-2), Smt. Raimati (PW-3), Smt. Rambati (PW-4), Samdhu (PW-5), D.R.S. Uike (PW-6) & F.J. Minj (PW-7). Statement of the accused was also recorded under Section 313 of the Cr.P.C., in which she denied the circumstances appearing against her.

In reply to question No. 23, she stated that she belongs to Scheduled caste (Dom) and she has falsely been implicated in the crime in question as she opposed the accusation of being characterless leveled by the witnesses. No defence witness has been examined on behalf of the appellant.

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 accused/appellant submits that complainant has failed to prove that she belongs to Scheduled Caste community as no any specific caste certificate was produced to that effect, regarding the said fact only Sarpanch of the Village has stated in his evidence that complainant belongs to Scheduled Caste. He further submits that that complainant lodged the FIR after inordinate delay of 10 days of the incident and there is no sufficient and valid reasons assigned by the complainant for the said delay. He submits that the accused/appellant has falsely been implicated in the crime in question as there is no evidence on record connecting the appellant with the crime in question. He further submits that the complainant, in her statement, admitted that she belongs to Bhatra Jati Schedule Caste whereas accused/appellant belongs to Mahar (Dom) community which is Scheduled caste but no any certificate was produced by the complainant showing that she belongs to Scheduled Caste community, therefore, there is no intention on the part of appellant to insult the complainant and, she may be acquitted of the charges levilled against

her.

7. Learned counsel for the State, while supporting the impugned judgment, submits that as per statement of the prosecution witnesses, the appellant beat the complainant with slipper (*Chappal*) and due to which an injury was caused to her. He further submits that looking to fact that the Bhatra Caste is covered under Anusuchit Janjati under the provisions of SC/ST Act, therefore, the learned Trial Court has rightly convicted and sentenced the accused/appellant, which does not call for any interference in the instant appeal.

8. Heard & perused the record.

9. First this Court shall consider whether the complainant belongs to Scheduled Tribes community or not on the basis of material available on record.

10. Sonadai (PW-01) states in paragraph 1 of her deposition that she belongs to Bhatra, Schedule Tribe community and the accused/appellant is of *Mahar Jati*. Lakheshwar Kashyap (PW-02) village *Sarpanch* has also stated that Smt. Sonadai (PW01), complainant belongs to *Bhatra community* which is ab-original Tribes. He states in paragraph 2 that he had given a caste certificate to this effect to Sonadai (PW01) that she belongs to *Bhatra Community* which is ab-original Tribe.

11. Smt. Raimati (PW03) also states that complainant Sonadai (PW01) belongs to *Bhatra* community which is scheduled Tribe. According to the complainant- Sonadai (PW01), she admits that the accused/appellant is of *Mahar* community. As per notification of the State Government, in the State of Chhattisgarh *Mahar* is included in

Scheduled Caste under the Constitution (Scheduled Castes) Order, 1950. Therefore, in view of the admission of the complainant- Sonadai (PW01) and the aforesaid notification it is also proved that the accused/appellant belongs to Scheduled Caste.

12. Apart from the offence under Section 323 of IPC, the appellant also been convicted under Section 3(1) (x) of the Act reads as under:

**“intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”**

13. From careful perusal of the evidence of complainant- Sonadai (PW01) it is seen that no allegation made by the complainant against the accused/appellant that she was intentionally insulted or intimidated by the appellant on the ground that she was the member of Scheduled Tribe. Sonadai (PW01) states that the dispute arose between her and accused/appellant as the complainant had been making allegation against the appellant regarding her illicit relation with Bhaira. Therefore, the prosecution has failed to prove the necessary ingredients for bringing home the charge under Section 3(1) (x) of the SC/ST Act against the appellant on the basis of evidence adduced by it. As such the conviction of the accused/appellant under Section 3 (1) (x) of the Act is not sustainable and is liable to be set aside.

14. So far as conviction under Section 323 of IPC is concerned Sonadai (PW01) has categorically stated that during quarrel she was beaten by the appellant with slippers and this fact is also duly proved by Smt. Raimati (PW03), Smt. Rambati (PW04) & Samdhu (PW05). Thus, conviction of the appellant under Section 323 of IPC is based on just and proper appreciation of the evidence and is hereby affirmed.

15. So far sentence under Section 323 of IPC is concerned, considering the facts & circumstances of the case, the fact that the incident took place around 18 years ago over a dispute where the complainant was making allegations on the character of the appellant, there is no criminal antecedent of the appellant, she is a young offender aged about 22 years, looking to the nature of injuries suffered by the victim which is simple in nature, she was on bail during trial, as well as during pendency of the appeal, 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 as also the long passage of time, this Court is of the opinion that the ends of justice would be served if instead of awarding jail sentence to the appellant, the fine sentence of Rs. 500/- with default stipulation as imposed by the trial Court is directed to remain intact.

16. Resultantly, the appeal is allowed in part. Conviction under section 3 (1) (x) of the "SC/ST Act" is hereby set aside. However, while maintaining conviction of the appellant under Section 323 of IPC, the jail sentence imposed therein by the Trial Court is set aside whereas the fine of Rs. 500/- with default sentence of one month is kept intact.

The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

**(Gautam Chourdiya)**  
**Judge**