

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 403 of 2004**

1. Santuram @ Santosh, S/o Nakul Ram Kewat, aged about 22 years, Occupation Driver
2. Hemant Kumar, S/o Nakul Ram Kewat, aged about 20 years, Occupation Student,

Both are resident of Sanjay Nagar Kanker, Thana Tahsil and District Kanker, C.G.

----Appellants**Versus**

- State of Chhattisgarh, Through District Magistrate Jagdalpur, District Bastar, C.G.

---- Respondent

For Appellants	Shri Sunil Sahu, Advocate.
For Respondent/State	Shri Pawan Kesharwani, Advocate.

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

1. This appeal arises out of the judgment of conviction and order of sentence dated 08.04.2004 passed by learned Special Judge, S.C.S.T. Act, Bastar place Jagdalpur, C.G. in Sessions Trial No. 484/2003, whereby, the appellants stand convicted and sentenced as under:-

Conviction	Sentence
Under Section 294 of IPC	One month rigorous imprisonment
Under Section 323/34 of IPC	6 months rigorous imprisonment and fine of Rs.500/-, in default of payment of fine amount one

	month additional rigorous imprisonment
Under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act)	One year rigorous imprisonment and fine of Rs.1,000/-, in default of payment of fine amount 2 months additional rigorous imprisonment

2. Case of the prosecution in brief is that on 30.07.2003, at about 2:30 pm, appellants went near the house of complainant and asked her as to why she is permitting one Anita Rangare to stock the bricks in the land. Upon which she said this land belongs to her, so she allowed Anita Rangare to put bricks in her *Badi*. Hearing this, both the appellants started abusing her by using filthy language and appellant Hemant pressed her neck and threatened to kill and appellant Santuram hit her with a rod, as a result of which she sustained simple injury near the eye. At the time of incident, Anita, Rasid Begam, Umeshwari, Babita, Rambai etc. were present there, who witnessed the incident. After that FIR Ex.P-1 was lodged by prosecutrix and she was sent for medical examination where she was examined by PW-4 Dr. Bal Krishna Verma vide Ex.P-2 who noticed the following injuries:-

- (i) Abrasion mark over right and left side anterior part of neck, three in number, size 1x2 cm.
- (ii) Left eye redness and swelling over lateral aspect of left orbital region with pain, swelling and tenderness.
- (iii) Complaining of pain over right hand, slight tenderness and swelling over dorsum aspect of hand present.

The Doctor advised for examination of injury No.2 by Ophthalmologist. According to Doctor, injuries Nos. 1 & 3 were

simple in nature and caused by hard and blunt object which could be healed within 7-10 days on proper treatment.

3. After due investigation charge sheet was filed against the appellants under Sections 294, 506, 323/34 of IPC and under Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (prevention of Atrocities Act). The trial Court framed the charges under Sections 294, 323/34 and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (prevention of Atrocities Act) against the appellants which were denied by them and they prayed for trial.
4. So as to hold the accused/appellant guilty, the prosecution examined as many as 8 witnesses i.e. PW-1 Smt. Subhadra Nag, PW-2 Anita Markam, PW-3 Rashid Begam, PW-4 Dr. Bal Krishna Verma, PW-5 Dr. Vijay Shukla, PW-6 V.R. Jurri, PW-7 N.K. Gautam and PW-8 Rajendra Prasad Bhaiya. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no witness was examined by them in their 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 appellants as mentioned in para-1 of this judgment.

6. Learned counsel for the appellants submits that prosecutrix did not belong to the Scheduled Tribe community. He also submits that prosecutrix herself admitted in para 4 of her deposition that she and her father belong to the *Kshatriya* community, therefore, the offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (prevention of Atrocities Act) is not made out against the appellants. He further submits that as per the statements of prosecution witnesses at the time of incident both the parties were abusing each other by using filthy language, so offence under Section 294 is also not made out against the appellants.

Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellants are guilty of the offence under Section 323 read with 34 of IPC, considering the fact that the incident took place around 16 years ago, the age of the appellants at the relevant time i.e. 20-22 years and the fact that they have no criminal antecedent, only abrasion and swelling simple injuries were found on the body of the victim, therefore, the fine amount is sufficient as imposed by the trial Court.

Reliance has been placed on the decision of Hon'ble Supreme Court in the matter of ***Sunita Singh Vs. State of Uttar Pradesh and others, (2018) 2 SCC 493.***

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellants 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. It is not disputed by State counsel also that prosecutrix herself admitted that she originally belongs to the *Kshatriya* Community which comes under the general category status and not under the SC & ST Category. As per Ex.P-4 certificate issued only on the basis of caste of her husband but it was not enquired by the authority whether she belongs to the *Kshatriya* Community which comes under the general category, therefore, the offence 3(1)(x) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) was not made out against the appellants.
10. In the matter of Sunita Singh (supra), the Hon'ble Supreme Court observed as under:-

“5. There cannot be any dispute that the caste is determined by birth and the caste cannot be changed by marriage with a person of Scheduled Caste. Undoubtedly, the appellant was born in “Agarwal” family, which falls in general category and not in the Scheduled Caste. Merely because her husband is belonging to a Scheduled Caste category, the appellant should not have been issued with a caste certificate showing her caste as Scheduled Caste. In that regard, the orders of the authorities as well as the judgment of the High Court cannot be faulted.”
11. So far as the charge under Section 294 of IPC is concerned, looking to the statements of the complainant PW-1 Subhadra Nag, PW-2 Anika Markam and other witnesses, all of them have stated that at the time of incident both the parties were abusing each other by using filthy language, therefore, the offence under Section 294 was also not made out against the appellants.

12. Only simply injuries were caused by both the appellants as per the statements of PW-1 Subhadra Nag which was also supported by independent witnesses PW-2 Anita Markam & PW-3 Rashid Begam and prompt FIR was also lodged by complainant vide Ex.P-1. PW-4 Dr. Bal Krishna Verma also proved the injuries on the body of the complainant as mentioned in Ex.P-2, therefore, the offence under Section 323 read with 34 is proved by the prosecution beyond all reasonable doubt against the appellants. In these circumstances, I am of the opinion that the trial Court did not commit any illegality in convicting the appellants under Section 323/34 of IPC.
13. So far as sentence is concerned, at the time of incident, the appellants were 20-22 years of age, therefore, considering the fact that they are the young offenders and there is no previous antecedent of their involvement in any other crime and that only abrasion and swelling simple injuries were caused by them, this Court is of the opinion that the fine amount of Rs.500/- as imposed by the trial Court is sufficient to serve the ends of justice.
14. In the result, the appeal is allowed in part. While acquitting the appellants of the charges under Sections 294 of IPC and Section 3(1)(x) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), their conviction under Section 323/34 is hereby maintained. However, the jail sentence imposed under Section 323/34 of IPC is set aside and they are only sentenced to the fine of Rs.500/- as imposed by the trial Court. On fine amount being deposited by the appellants, the same shall be disbursed as

compensation under Section 357 Cr.P.C to the complainant/Smt. Subhadra Nag by the trial Court after due verification.

15. The appellants are reported to be on bail, therefore, their bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

-Sd/-
Gautam Chourdiya
Judge

Akhilesh