

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 283 of 2009

1. Kaleshwar Prasad, S/o Jagnathi Kashyap, aged about 25 years.
2. Hriday Lal @ Bhodu, S/o Firat Ram Kurmi, aged about 35 years.

Both R/o Village- Rajkamma, P.S. Pali, District- Korba (C.G.)

---- Appellants

Versus

State of Chhattisgarh, through Police Station- Pali, District- Korba (C.G.)

---- Respondent

For Appellants : Mr. Bharat Rajput, Advocate.

For State/respondent : Mr. Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

JUDGMENT ON BOARD

02/01/2020

1. Mr. L.N. Agrawal, Advocate has been engaged for arguing the case on behalf of the appellants. Despite repeated calls, he has not appeared when the case is called for final hearing, therefore, Mr. Bharat Rajput, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellants.
2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 26.02.2009 passed by Special Judge under Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (for short "the Act, 1989"), Korba (C.G.) in Special Session Trial No. 15/2006, wherein the said court convicted both the appellants

for commission of offence under Sections 323/34 of IPC, 1860 & 3(1)(x) of the Act, 1989 and sentenced to undergo R.I. for 6 months and fine of Rs. 500/- each on both counts with further default stipulations.

3. In the present case, name of the complainants are Narmada Bai and her husband namely Omprakash Khairwar. To substantiate the charge, the prosecution examined as many as 12 witnesses. Narmada Bai (PW-1), Omprakash Khairwar (PW-2) & Devilal (PW-5) are eye-witnesses account to the incident. Dr. M. Kujur (PW-7) is medical expert who examined the complainant- Omprakash Khairwar.
4. For establishing the charge under Section 3(1)(x) of the Act, 1989, it has to be established that the appellants are not members of Schedule Caste or Schedule Tribe while Narmada Bai (PW-1) and Omprakash Khairwar (PW-2) are members of Schedule Tribe and the appellants have insulted or intimidated them on account of their caste.
5. Narmada Bai (PW-1) and Omprakash Khairwar (PW-2) deposed before the trial court that the appellants stated that they will not improve and they will remain as it is. From the evidence, it is not clear as to who really uttered such words. Evidence on this count is shaky in nature. From their evidence, the incident took place because the complainant side have been allotted a pond in the village for fishing and the appellant side was also fishing in the pond. The incident did not take place because of caste of any party, but it is a dispute

regarding fishing in a pond. Nothing is done on the basis of caste and the evidence on this count is not established that any intimidation is given by the appellants or they have been insulted on the basis of caste, therefore, the charge under Section 3(1)(x) of the Act, 1989 is not established against both the appellants. The conviction and sentence of the appellants is set aside and they are acquitted of the charges framed against them under Section 3(1)(x) of the Act, 1989.

6. From evidence of Omprakash Khairwar (PW-2), it is established that both the appellants assaulted him, but this witness is not clear about any weapon used by the appellants. Dr. M. Kujur (PW-7) who examined the complainant-Omprakash Khairwar and found simple injury on his shoulder, back, near right eye and elbow. The case of the appellants does not fall on any of the exception and the appellants had knowledge about their act causing pain in body of the complainant. The act of the appellants falls within mischief of Section 323/34 of IPC for which the trial court convicted both the appellants and the same is hereby affirmed.

Heard on the point of sentence.

7. The jail sentence is not compulsory for offence under Section 323/34 of IPC. The appellants have suffered jail sentence of 5 days. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellants are sentenced to the jail sentence of the period already undergone by them. According, their sentence

is reduced to the period already undergone by them for commission of offence under Section 323/34 of IPC. The fine amount imposed by the trial court shall remain intact.

8. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun