

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 521 of 2011

1. Ram Bareth, S/o Badri Bareth, aged about 22 years.
2. Badri Bareth, S/o Chhedi Lal, aged about 62 years.
3. Raju Bareth, S/o Badri Bareth, aged about 25 years.
All R/o Ompur Rajgamar, Qr. No. M/649 O.P. Rajgamar, P.S. Balco District- Korba at present R/o Village- Hardi, P.S. Baloda, District- Janjgir-Champa (C.G.)
4. Suresh Patel, S/o Shri Banwari Lal Patel, aged about 23 years, R/o Ompur Rajgamar, O.P. Rajgamar, P.S. Balco, Korba, at present R/o Jorha Dabri, P.S. Kusmunda, District- Korba (C.G.)
---- Appellants

Versus

State of Chhattisgarh, through O.P. Rajgamar P.S. Balco Nagar, District- Korba (C.G.)
---- Respondent

For Appellants : Mr. Abhijit Sarkar, Advocate.

For State/respondent : Mr. Ishwar Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

JUDGMENT ON BOARD

21/01/2020

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 25.06.2011 passed by Special Judge under (Atrocities) [under Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989], Korba (C.G.) in Special Session Trial No. 07/2009, wherein the said court convicted all the appellants for commission of offence under Sections 452, 323 of IPC, 1860 and Section 5 of the Chhattisgarh Tonahi Pratadna Nivaran Act, 2005 (for short "the Act, 2005") and sentenced to undergo R.I. for 1 year and fine of Rs. 1000/-, R.I. for 1 year & R.I. for 1

year and fine of Rs. 1000/- each respectively with further default stipulations. All the sentences to run concurrently.

2. As per version of the prosecution, all the appellants entered into house of Ram Kumar Jangde situated at Ompur Colony, Rajgamar and assaulted Mohan Singh and Sonai Bai. They also identified Sonai Bai as Tonahi. The matter was reported, the appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.
3. Learned counsel for the appellants submits as under:-
 - (i) The evidence adduced by the prosecution is not sufficient to establish the guilt because the basic ingredients of the offence is lacking in the present case.
 - (ii) The trial court has not evaluated contradiction, omission and exaggeration in statement of the prosecution witnesses, therefore, the finding arrived at by the trial court is not proper.
 - (iii) The trial court has not evaluated the evidence in its true perspective, therefore, the finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel supporting the impugned judgment submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the record.

6. First question for consideration before this Court is whether all the appellants identified Sonai Bai as Tonahi. The Tonahi is defined under Section 2 sub-clause 1 of the Act, 2005 which reads as under:-

“ 'Tonahi' means person indicated by any person or persons that he will harm or possesses power to harm or thereby he intends to harm any other person or persons or society or animal or living things by black magic, evil eye or by any other means, whether known as Dayan, Tonaha or by any other names”

7. As per version of Ram Kumar (PW-1) which is general statement, the appellants uttered word Tonahi against Sonai Bai. The same is the version of Sonai Bai (PW-2) & Mohan Singh (PW-3), but from their evidence, it is not clear that Sonai Bai is possessing any power to harm or thereby she intends to harm any other person or persons or society or animal or living things by black magic, evil eye or by any other means.
8. It is not clear by any of the evidence that any harm was committed by Sonai Bai or she is possessing such power. Mere using word is not sufficient to establish guilt. From evidence on record, the basic ingredients of possessing power to harm by black magic, evil eye or by any other means are lacking. In absence of proving the basic ingredients, commission of offence by the appellants under Section 5 of the Act, 2005 is not established, therefore, the conviction and sentence for commission of offence under Section 5 of the

Act, 2005 is set aside and the appellants are acquitted of the charge under Section 5 of the Act, 2005.

9. Second question for consideration before this Court is whether the appellants made preparation for commission of offence. Preparation is the stage before commission of offence. The only evidence adduced by the prosecution is that the appellants assaulted Mohan Singh & Sonai Bai, but whether they prepared for commission of offence is not clear from the evidence. The preparation means collecting of arms and gathering of persons before commission of crime with intend to commit the crime and that stage is prior to commission of crime. No evidence is adduced regarding preparation before commission of crime, therefore, the offence under Section 452 of IPC is also not established against the appellants, therefore, the conviction and sentence for commission of offence under Section 452 of IPC is set aside and the appellants are acquitted of the charge under Section 452 of IPC.
10. From evidence of Ram Kumar (PW-1), Sonai Bai (PW-2) & Mohan Singh (PW-3), it is established that the appellants assaulted Mohan Singh & Sonai Bai. Their version is supported by version of Dr. M.L. Bhariya (PW-12) who examined Mohan Singh & Sonai Bai and found simple injury on their body. Version of direct and medical evidence is un-rebutted during searching cross-examination. There is nothing on record to say that the appellants have been roped in false

charge for causing injuries these two persons. 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 Mohan Singh & Sonai Bai, therefore, their act is voluntary in nature. The act of the appellants falls within mischief of Section 323 of IPC for which the trial court convicted all the appellants and the same is hereby affirmed.

11. The jail sentence is not compulsory for commission of offence under Section 323 of IPC. Appellant No. 1- Ram Bareth has suffered jail sentence of 17 days and the other appellants have suffered jail sentence of 4 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 of IPC. However, the fine amount is increased to Rs. 2000/- for this offence.
12. As per version of learned counsel for the appellants, all the appellants have already deposited the fine amount of Rs. 2000/- for other offences, therefore, they are not required to pay any fine amount.
13. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge