

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 848 of 2005

- Rohit Sahu, aged about 23 years, S/o Maansingh Sahu, R/o Tupakbora, P.S. Baghbahra, District Mahasamund (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through, District Magistrate, District Mahasamund (C.G.)

---- Respondent/State

For Appellant : Shri Raja Sharma, Advocate

For Respondent/State : Shri H.S. Ahluwalia, Deputy Advocate General

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

02.09.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 07.11.2005 passed by the Special Judge, under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Raipur (C.G.) in Special Sessions Trial No. 154/2003, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentences</u>
Under Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Special Act')	Simple imprisonment for six months and pay a fine of Rs. 500/- and in default of payment to further undergo simple imprisonment for fifteen days
Under Section 323 of Indian Penal Code (for short 'IPC')	Pay a fine of Rs. 500/- and in default of payment to further undergo simple imprisonment for fifteen days

3. Prosecution case in brief is that F.I.R. (Ex.-P/1) was lodged by PW-2 Naresh Kanwar on 26.10.2003 at about 21:20 hours informing the police that on the same day at about 18:00 hours, on the occasion of *Gowardhan*-festival, he alongwith about 30-40 people of village was going to Kherkhadand. When

they reached the house of Maansingh, they were dancing and singing couplet (*Doha*). At that time, appellant Rohit Sahu (son of Maansingh) came there and told Naresh (PW-2) not to dance here saying 'साले कंवर गोड़ होकर गंदी-गंदी गालिया दिया' and assaulted him (PW-2) on the head by means of club as a result of which the blood was oozing from his head and also threatened him to kill. The incident was seen by Nizaam, Roshan Pandey, Bulchu and Gajadhar. It was also mentioned in the F.I.R. that appellant Rohit Sahu intentionally insulted or intimidated with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Therefore, the F.I.R. (Ex.-P/1) under Sections 341, 294, 506B and 323 of IPC and Section 3(1) (x) of the Special Act was registered against the appellant in Police Station Baghbahra, Mahasamund under Crime No. 284/2003.

4. *Nazrinaksha* (Ex.-P/2) was prepared and case diary statements of witnesses were recorded. After investigation, the charge-sheet was filed against the accused/appellant under Sections 341, 294, 506B and 323 of IPC and Section 3(1) (x) of the Special Act and while framing the charges, the Special Judge framed the charge under Section 3(1) (x) of the Special Act and Sections 323 & 506 of IPC against the appellant.
5. So as to hold the accused/appellant guilty, the prosecution examined six witnesses namely PW-1 Nizam, PW-2 Naresh Kunwar, PW-3 S.R. Pathare, PW-4 Gajdhar, PW-5 Roshan and PW-6 Kunjlal Yadav. Statement of the accused/appellant 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 implication.
6. After appreciation of the evidence available on record, the learned Special Judge, Raipur (C.G.) by the impugned judgment, while acquitting the appellant/accused of the charge under Section 506 of IPC, convicted and sentenced him as mentioned in para- 2 of this judgment, hence this appeal.

7. Learned counsel for the appellant submits that in this case, first F.I.R. relating to same incident was also lodged by the family member of the appellant against PW-2 Naresh Kunwar and the case is pending in Criminal Court at Mahasamund and this fact is admitted by PW-2 in para-6 of his evidence. He further submits that thereafter the complainant (PW-2) lodged the F.I.R. (Ex.-P/1) against the appellant. He submits that as per evidence of PW-1 Nizaam, PW-4 Gajadhar, PW-5 Roshan and PW-6 Kunjlal Yadav, they have not stated that the appellant was abusing the complainant (PW-2) in the name of his caste, therefore, looking to the entire facts and circumstances, there was no dispute regarding caste of PW-2 that the appellant intentionally insulted or intimidated with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. He also submits that on the date of incident, the complainant had started using filthy language against the appellant, therefore, a free fight started between the parties and both the parties sustained injuries. He submits that prosecution has failed to prove the caste of the complainant that he belongs to scheduled caste or scheduled tribes community, nor any medical evidence adduced by the prosecution. He submits that any offence under the Special Act is to be investigated by an officer not below the rank of Deputy Superintendent of Police but in this case, it was not proved that the investigation has been conducted by an officer not below the rank of Deputy Superintendent of Police and only it has come in the evidence that the FIR (Ex.-P/1) was registered by Sub-Inspector who is prosecution witness namely S.R. Pathare (PW-3). Therefore, entire investigation stands vitiated as per Rule 7 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules 1995 (hereinafter referred to as the 'Rules 1995'). In these circumstances, conviction of the appellant under Section 323 of IPC and Section 3 (1) (x) of the Special Act is not sustainable and he deserves to be acquitted of the said charges.

8. On the other hand, supporting the impugned judgment learned Deputy Advocate General for the State submits that as per evidence of PW-1 Nizaam, PW-4 Gajadhar, PW-5 Roshan and PW-6 Kunjlal Yadav, they have seen the appellant assaulting the complainant (PW-2) by means of club. He further submits that though the caste certificate of the complainant was not proved by the prosecution, but the appellant had knowledge that PW-2 was a member of scheduled caste or scheduled tribe community. Therefore, Special Court rightly convicted and sentenced the appellant by the impugned judgment which needs no interference by this Appellate Court.
9. Heard counsel for the parties and perused the evidence on record.
10. PW-1 Nizaam is the brother of PW-2 Naresh Kanwar (complainant). PW-1 has only stated in his deposition that when on the date of incident he alongwith PW-2 and other person was going to Goverdhan Bhata, the appellant and his family members were using filthy language against them and the appellant assaulted upon his brother Naresh by means of club as a result of which Naresh fell down and became unconscious, then he (PW-1) took Naresh to his house.
11. PW-2 Naresh Kanwar is the complainant who lodged F.I.R. (Ex.-P/1) against the appellant. PW-2 has stated in his deposition that on the date of incident at about 04:00, he was going to Goverdhan Bhatha, the appellant was abusing him saying “नीच जाति का कंवर लोंड़ा के, तेरी दाइ बहनी की ऐसी की तैसी” and assaulted him (PW-2) on the head by means of club due to which he became unconscious. Thereafter, his brother Nizaam (PW-1) took him to his house. On the same day, PW-2 lodged the F.I.R. (Ex.-P/1), thereafter, the police personnel got him medically examined in the hospital. He has further stated that when the police personnel came for investigation, he informed about the place of occurrence to the police where the incident occurred and the police prepared the map vide Ex.-P/2 in which he admitted his signature.

PW-2 has admitted in para-6 that on the same incident, the report was lodged by the family members of the appellant against him (PW-2) and that case is pending at Mahasamund Court. He has also stated that on the date of incident, the first report was lodged by the appellant against him (PW-2).

12. PW-3 S.R. Pathare, Sub-Inspector, has registered the F.I.R. (Ex.-P/1) and has duly proved the same.

13. PW-4 Gajadhar has stated that on the eve of *Gowardhan-Puja*, the village people were dancing and singing couplet (*Doha*) and when they reached near the house of appellant, the appellant assaulted Naresh by means of club due to which Naresh became unconscious. PW-4 has also stated that they were going alongwith the persons of band-party and they were teasing the appellant, then the appellant used filthy language. PW-4 has stated in para-3 that Naresh (PW-2) had kept the *pooja*-plate in procession and the couplet (*Doha*) which was being recited in procession, the appellant felt bad and wielded his club in the crowd, by mistake the club hit Naresh. PW-5 Roshan has also supported the evidence of PW-4 Gajadhar.

14. PW-6 Kunjlal Yadav has stated that on the date of incident, when the couplet (*Doha*) was being recited by the village people in procession, the appellant felt bad and the family members of the appellant were abusing filthy language. Then the appellant came in the crowd and assaulted Naresh (PW-2), thereafter he went to his house. Naresh sustained injury on his head and became unconscious.

15. So far as offence under Section 3(1)(x) of the Special Act is concerned, considering the entire evidence of PW-1 Nizam, PW-4 Gajadhar, PW-5 Roshan and PW-6 Kunjlal Yadav, it clearly shows that the appellant had used the filthy language against PW-2 Naresh (complainant), but, the appellant had not abused PW-2 in the name of his caste or the appellant intentionally insulted or intimidated with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

Further, the prosecution has also failed to prove the caste of the complainant (PW-2 Naresh Kunwar). Therefore, considering the facts and circumstances of the case, this Court is of the opinion that the main ingredients for the offence under Section 3(1)(x) of the Special Act has not been proved by the prosecution as required under the law. This apart, the prosecution has neither examined any Investigating Officer, nor did adduce any evidence to prove that the investigation was conducted by an officer not below the rank of Deputy Superintendent of the Police. Thus, in these circumstances, the offence under Section 3(1)(x) of the Special Act is not made out against the appellant and the same is liable to be set aside.

16. So far as offence under Section 323 of IPC is concerned, in the totality of facts and circumstances of the case, though no any medical evidence was adduced by the prosecution but considering the evidence of Nizam (PW-1), Gajadhahr (PW-3), Roshan (PW-5) and Kunjlal Yadav (PW-6), it stands proved beyond all reasonable doubt that it is the accused/appellant who voluntarily caused hurt by club to PW-2 Naresh Kunwar. Further, as per the evidence of complainant Naresh Kunwar (PW-2) in para-6 of his deposition, on the same incident, first the report was lodged by the family members of the appellant against him (PW-2) and thereafter, he lodged the F.I.R. (Ex.-P/1). Being so, conviction of the appellant under Section 323 of IPC by the Special Court appears to be just and proper warranting no interference by this Court as the same has been duly proved by the prosecution beyond all reasonable doubt.

17. So far as sentence part under Section 323 of IPC is concerned, it is punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. The Special Court has sentenced the appellant with fine of Rs.500/- plus default sentence of fifteen days. In the given facts and circumstances of the case, the manner in which the incident occurred and

the appellant assaulted the complainant (PW-2), this Court is of the opinion that the sentence awarded by the Special Court is just and proper and needs no interference by this Court.

18. In the result, the appeal is allowed in part. The conviction and sentence awarded to the appellant by the Special Court under Section 3(1)(x) of the Special Act are set aside and he is acquitted of the said charge framed against him. However, the conviction and sentence awarded by the Special Court to the appellant under Section 323 of IPC are hereby maintained. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge