NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 509 of 2005

1. Mundu @ Shivcharan S/o Bihari Yadav, aged about 27 years, R/o Village Barikpali, Police Station – Basana, District Mahasamund (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, through Station House Officer, P.S. Basana, District Mahasamund (C.G.)

---- Respondent

For Appellant	:	Shri Ajay Chandra, Advocate.
For Respondent/State	:	Ms. Fouzia Mirza, Addl. A.G.

Hon'ble Justice Shri Gautam Chourdiya

Judgment On Board

21/07/2020

1) The matter is heard through video conferencing.

2) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 14/06/2005 passed by Special Judge, Special Court Raipur (C.G.) (constituted under Scheduled Castes and Scheduled Tribes “Prevention of Atrocities” Act 1989) in Special Session Trial No. 130/2003; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s 323 of Indian Penal Code (in short “IPC”)	R.I. for 6 months

3) Case of the prosecution in brief is that on the date of incident i.e. 23/07/2003 at around 09:00 PM complainant Samaru alongwith Prahalad Sahu went to the house of Mohar Sai Sahu in connection with party meeting. At that time the accused appellant, who was having land related dispute with Mohar Sai

Sahu, reached the house of Mohar Sai Sahu and started beating his door by filthily abusing Mohar Sai Sahu in the name of his mother and sister. On this, Charo Bai wife of Mohar Sai Sahu and his son-in-law Raju Sahu opened the door and objected to the act of the accused appellant whereupon the appellant also filthily abused them. Seen this, the complainant came out of the house of Mohar Sai Sahu and was going to his house. The accused appellant started abusing the complainant in the name of his caste which was objected by the complainant. The complainant went to the veranda of the house of Kumar Sahu. Kumar Sahu asked the complainant as to why they are quarreling. At that time the accused/appellant came there and dragged the complainant by his hair and pressed his mouth and neck. When the complainant screamed, his father Manjhi Kumar Sahu and Mahesh separated the accused/appellant and the complainant. The incident was witnessed by Prahlad and Mohar Sai Sahu. Thereafter, FIR was lodged by the complainant Samaru Ram Gond on 24/07/2003 vide Ex. P-1 at the Police Station. During investigation the complainant was medically examined vide Ex. P-4 by Doctor A.K.S. Ratre PW-06.

Injuries sustained by complainant:-

(i) tenderness over left and right cheek with slight tenderness with swelling over both side of cheeks.

The injuries were caused within 20-22 hours by hard and blunt object and were simple in nature.

4) After completion of usual investigation charge-sheet was filed against the accused person for the offence punishable under Sections 294, 323 of IPC and Section 3(1)(x) of SC/ST Act.

5) The Trial Court framed charges under Section 294, 323 of IPC and Section 3(1)(x) of SC/ST Act against the accused/appellant. The accused appellant abjured his guilt and prayed for trial.

6) The prosecution in support of its case examined as many as 06 witnesses namely PW-01 Samaru (complainant), PW-02 Manjhi (father of complainant), PW-03 Maheshram Sai, PW-04 Kumar Sahu, PW-05 Mohar Sai Sahu and PW-06 Dr. A.K.S. Ratre. The statement of the accused 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 implications. No witness was examined by him in his defence.

7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above in para 2 of this judgment.

8) Learned counsel for the appellant submits that learned Trial acquitted appellant of offence under Section 294 of IPC and Section 3(1)(x) of SC/ST Act. The offence under Section 323 of IPC is not proved by the prosecution beyond reasonable doubt against the appellant. He submits that the appellant has been falsely implicated in this case due to previous enmity with the complainant and no eye witness supported the prosecution case. In these circumstances the conviction of the appellant under Section 323 of IPC is also not sustainable and is liable to be set aside.

9) He lastly submits that if this Court ultimately confirms the conviction of the appellant under Section 323 of IPC, considering the facts and circumstances of the case, the fact that the incident took place around 17 years back, the appellant is the first offender having no criminal antecedents, his age at the time of incident i.e. 27 years, he may be given the benefit of Probation of Offenders Act and the sentence be reduced to the period already undergone by him.

10) On the other hand, learned counsel for the respondent/State supports the impugned judgment and submits that the Trial

Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.

11) Heard counsel for the parties and perused the material available on record.

12) PW-01 Samaru (complainant) has stated in his deposition in para 1 to 3 that on the date of incident accused was using filthy language and when complainant Samaru was coming out from the house of Mohar Sai, the accused assaulted upon him and pressed his mouth and caught hold of his hair. Complainant promptly lodged FIR Ex. P-1 and spot map vide Ex. P-2 was prepared in presence of witness Samaru.

13) PW-02 Manjhi and PW-03 Maheshram both have stated that when they reached the place of occurrence, the appellant and complainant were quarreling. PW-04 Kumar Sahu stated that when he reached the place of occurrence, the accused was pulling complainant Samaru and accused was quarreling with the complainant.

14) PW-05 Mohar Sai also stated that accused caught hold of the hair of the complainant Samaru and was pulling his hair and assaulted upon complainant. The statement of the complainant was supported by prompt FIR Ex. P-1 and medical evidence MLC report Ex. P-4 proved by Dr. A.K.S. Ratre PW-06 who founds swelling on both cheeks of complainant and he was complaining pain. There is no major contradiction and omission in his statement, his statement is supported by eye witnesses who saw that the accused was pulling complainant, caught hold of his hair and assaulted upon him.

15) Considering the evidence of the injured witnesses PW-01 complainant which is also supported by their medical report Ex. P-4 and the evidence of Doctor PW-06 A.K.S. Ratre as also the

promptly lodged FIR Ex. P-1 naming the appellant as the assailant and the evidence of eye witness Prahlad, Mohar Sai, the prosecution has successfully proved the guilt of the appellant under section 323 of IPC. Therefore, the learned Trial Court has rightly convicted the appellant under Section 323 of IPC.

16) So far as the sentence part is concerned, considering the facts and circumstances of the case, the fact that the incident took place 17 years back, the age of the appellant at the time on incident i.e. 27 years, he has remained in jail for 02 days, the fact that he has no criminal antecedents, the complainant suffered injury which was very simple in nature as only tenderness and swelling found in cheeks, he is on bail since 2005, keeping in view the judgment of 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 and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that the ends of justice would be served if the appellant is sentenced to the period already undergone by him and is directed to pay a fine of Rs. 500/- with default sentence.

17) In the result the appeal is allowed in part. While maintaining the conviction of the appellant under Section 323 of IPC, his jail sentence is reduced to the period already undergone by him. This apart the appellant shall pay a fine of Rs. 500/-, failing which he shall have to suffer additional R.I. for 2 months. Since 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 provision of Section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant