

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 958 of 2005

Order reserved on 01.07.2020

Judgment pronounced on 17.08.2020

1. Laxmi Prasad S/o. Shivcharan Kashyap, aged about 23 years,
2. Deonaryan S/o. Shivcharan Kashyap, aged about 21 years,
Both R/o. Village -Sarva, Police Station Kasdol, District Raipur,
CG.

---Appellants

Versus

State of Chhattisgarh, through Station House Officer Police
Station AJK, Raipur, CG.

--- Respondent

For Appellant	: Mr. Ranbir Singh Marhas, Advocate.
For State	: Mr. Raghvendra Verma, GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Judgment

The incident is said to have arisen out of some land dispute between Mehtar Mahipal (PW-5) and one Kirti Kumar for which after giving an amount of Rs. 5,500/- an agreement to that effect was entered into between them on 12.07.1997. It is said that after the death of Kriti Kumar, the sale proceedings were carried forward to one of the co-sharer of the said land namely Ganesh son of Shiv Prasad and an amount of Rs. 65,000/- towards the deal and Rs. 10,000/- towards the registration expenses was given to Ganesh on different dates. When the registry of the said land could not be done for one reason or the other, Gangabai (PW-1) along with Jamuna Bai (PW-2) went to the house of the accused/appellants to persuade them for getting the registry done, both the accused/appellants herein who happened to be the real brothers started abusing her filthily and also refused to return the amount given to Kriti and Ganesh. Apart from this, both the accused/appellants also abused PW-1 in the name of caste calling her "Chamarin". Accused – Laxmi

is also said to have jolted PW-1 as a result of which she fell down on the ground and suffered an injury on her left elbow. Written report (Ex.P-1) was lodged by Ganga Bai (PW-1) on 06.08.2003 on the basis of which FIR (Ex.P-2) was registered against the accused/appellants under Sections 294, 323 IPC and Section 3 (1) (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the “**Special Act**”). During investigation statements of the witnesses under Section 161 Cr.PC were also recorded and after completion of investigation charge-sheet was filed against both the accused persons as per the FIR (Ex. P-2). The learned Court below however, framed the charge against the accused Laxmi under Section 3 (1) (x) of the Special Act and 323 IPC whereas against other accused Devnarayan the charge framed was only under the Special Act.

2. Learned Court below vide its judgment dated 23.12.2005 passed in Special Case No. 60/2004 convicted accused Laxmi under Section 3 (1) (x) of the Special Act and 323 IPC sentencing him to undergo RI for 6 months with fine of Rs.500 under the Special Act and to pay fine of Rs. 500/- u/s 323 IPC. However, other accused Devnarayan has been convicted only under the Special Act with imposition of sentence as has been awarded to accused Laxmi. Hence this appeal.

3. Learned counsel for the accused/appellants submits that though the prosecution has failed to prove the fact that complainant PW-1 belonging to the caste falling under the Scheduled Caste category yet learned Court below has held them guilty under Section 3 (1) (x) of the Special Act which is illegal and arbitrary. He submits that here the caste certificate has been issued by the Sarpanch of

the concerned Gram Panchayat to the effect that the complainant belongs to Satnami caste yet on account of his non-examination in the Court below such certificate loses its evidentiary value particularly when no other document has been produced by the prosecution. He also submits that this caste certificate has been issued by the Sarpanch of the Gram Panchayat and not by the competent authority empowered by the State Government in this regard. Furthermore, the said Sarpanch has not been put to dock to be confronted in this respect. He further submits that from the record it appears that the incident had not taken place in public view which is one of the basic ingredients to hold one guilty under Section 3 (1) (x) of the Special Act, therefore, conviction of the accused/appellants under the special Act is liable to be set aside.

4. On the other hand, State counsel supports the judgment impugned and submits that there is ample evidence on record to show that when PW-1 insisted accused/appellants for getting the registry of the land done in her favour, instead of doing that they started hurling filthy abuses including in the name of caste, and also refused to return the money paid earlier for that purpose. According to the State counsel, the judgment impugned is fully justified and based on the evidence of the witnesses examined by the prosecution and being so, no interference therewith is required by this Court.

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

6. From the evidence of complainant (PW-1) and her sister-in-law Jamuna (PW-2) who had accompanied her to the house of the

accused/appellants to persuade them for getting the registry of the land done, they hurled abuses at PW-1; also called her "Chamar" and refused to return the money paid earlier. From their evidence it is apparent that accused Laxmi also gave jolt to PW-1 as a result of which she fell down on the ground and suffered an injury on her left elbow. According to them, in the house of accused/appellants other persons were also there and saw the act of the accused/appellants. One of the basic requirements to hold one guilty under Section 3 (1) (x) of the Special Act is intentional insult or intimidation with intention to humiliate a member of Scheduled caste or Scheduled Tribes category within the public view. Here in this case none of the witnesses has stated that the accused/appellants had abused PW-1 in the name of caste within the public view. Even PW-1 and PW-2 have stated that the incident had occurred in the house of the accused/appellants. From the record it appears that the persons said to be present at the relevant time were belonging from the same family and none of them was the outsider. The family members can by no stretch of imagination be held as public and therefore, any incident of abuses being hurled to PW-1 by the accused/appellants in their house cannot be said to have taken place within the public view. Even otherwise, the Sarpanch of the concerned Gram Panchayat who is said to have issued the caste certificate to the complainant has not been examined in the Court. Though husband of Ganga Bai (PW-1) who has been examined as PW-5 has made number of allegations against the accused/appellants yet his testimony cannot be attached much significance because he himself had not seen the incident with his own eyes but was informed about the same by PW-1. Satrugan (PW-8) who is said to have been

present at the time of incident, has also not supported the case of the prosecution and been declared hostile. PW-1 and PW-2 however have stated that when PW-1 insisted upon the accused/appellants to return the money or get the registry of the land done, accused Laxmi lost his temper and pushed aside Ganga Bai making her fall down on the ground and suffer injury on her left elbow.

7. In view of the aforesaid factual discussion, this Court is of the considered opinion that the prosecution has failed to prove its case beyond reasonable doubts in particular the offence punishable under Section 3 (1) (x) of the Special Act. Accordingly, both the accused/appellants are acquitted of the charges under Section 3 (1) (x) of the Special Act. Nevertheless, looking to the evidence of PW-1 and PW-2 that accused Laxmi made PW-1 fall down by giving a jolt as a result of which she suffered injury on her elbow, his conviction under Section 323 IPC is maintained. The only sentence imposed on accused Laxmi u/s 323 IPC is fine of Rs. 500/- which as per the appeal memo has already been deposited by him. Hence no order on sentence part of accused Laxmi is required to be passed.

8. Resultantly, appeal of accused Deonarayan is held to be allowed as a whole with his acquittal of the sole charge u/s 3 (1) (x) of the Special Act. Likewise, appeal of accused Laxmi Prasad is allowed in part by setting aside his conviction under Section 3 (1) (x) of the Special Act and acquitting him of the said charge, but maintaining the one u/s 323 IPC.

Sd/

(Vimla Singh Kapoor)

Judge