

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 288 of 2006

Order reserved on 27.10.2020

Order pronounced on 08.01.2021

Laxmi Bai, W/o Bhagwani Ram Sahu, aged about 44 years,
resident of BhimNagar, Supela, Police Station Supela, District Durg,
Chhattisgarh.

---- **Appellant**

Versus

State of Chhattisgarh, through Special Police Station, Durg (CG).
---**Respondent**

For Appellant : Mr. Praveen Dhurandhar, Advocate.

For State/Respondent : Mr. Sameer Sharma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

On 17.02.2005 Amardas (PW-1) had given a type written complaint to the Superintendent of Police, Durg to the effect that near his residence at Bheem Nagar, Supela (Bhilai) there was a public tap and where his family and also the family of the accused used to fetch water. The complainant also states that on different occasions the present appellant used to abuse his wife and daughter calling them Chamar and saying so they also used to deprive them of fetching water in the public tap. Earlier to this also a report to this effect was given to the Special Police Station, Durg mentioning all these overt acts of the accused/appellant and also her husband but as no action thereupon was taken, type written complaint (Ex.P-1) was required to be made. The type written report also says that the husband of the accused/appellant herein namely Bhagwaniram who was also accused in this case but has been acquitted by the Court below, also used to abuse filthily at PW-1 and packed the water pit

situated near his house. The accused is also stated to have indulged in manhandling with Savita Khare (PW-4) at the public tap. Subsequently, in pursuance of the written complaint an enquiry was conducted and it was found that the version of the complainant was correct and based on that FIR (Ex.P-7) was registered on 02.03.2005 for the offences under Sections 294 IPC and 3 (1)(x) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act (for brevity the “**Special Act**”). After investigation charge-sheet was filed against the accused/appellant herein as also against her husband under Sections 294 IPC and 3(1) (x) and 3 (1) (v) of the Special Act.

2. Learned Court below by its judgment dated 31.03.2006 passed in Special Case No.27/2005 acquitted the accused namely Bhagwaniram but at the same time held the accused/appellant guilty of the charges under Sections 294 IPC and 3 (1) (x) and 3 (1) (v) of the Special Act imposing the sentence of RI for one year with fine of Rs.200/- under Section 294 IPC and RI for 6 years with fine of Rs.500/- under both the sections of the Special Act referred to above. Hence this appeal.

3. Counsel for the accused/appellant submits that while holding the accused/appellant guilty under the provisions of IPC as also the Special Act as referred to above, learned Court below has not considered the evidence of the witnesses in its proper perspective. He submits that even the caste of the complainant party has not been proved by the prosecution beyond all reasonable doubts as the person issuing the caste certificate (Ex.P-4) does not appear to be competent one for the said purpose. He further submits that keeping

in mind the exaggerations contained in the evidence of the witnesses, the same is required to be overlooked and the accused/appellant be given the same benefit like the co-accused Bhagwaniram for the reason that the case of the two rests on the same piece of evidence.

4. State counsel however supports the judgment impugned and submits that the Court below has taken an absolutely rational view while holding the accused/appellant guilty under the IPC as also under the Special Act as referred to above, no interference with the same is called for in this appeal. He submits that PW-4 has made a categorical statement describing the manner in which she was abused and manhandled by the accused in public place and therefore, also the judgment impugned cannot be faulted with requiring any interference in this appeal whatsoever.

5. Heard counsel for the parties and perused the material available on record. One of the important witnesses to the case of the prosecution appears to be Savita Khare (PW-4) who has testified to the effect that whenever she and her mother used to go to the public tap for fetching water, the accused/appellant herein always passed on filthy abuses at her calling her Chamar and many a time she also used to involve in manhandling her. She has further stated that apart from hurling abuses, the accused/appellant also used to deprive her of the basic amenities like water. She has further stated that by caste she belongs to 'Mochi' caste whereas the accused party hailed from the 'Sahu' community. The testimony of this witness has been corroborated by number of witnesses being Amardas (PW-1), Panchsheela (PW-2), Leelabai (PW-3), Jyotibai

(PW-5), Sulochna Khare (PW-6) and Sonabai (PW-8). The testimony of Amardas (PW-1) contains an addition to that of PW-4 that on number occasions the husband of the accused/appellant herein has unnecessarily picked-up a quarrel and also deprived his family of water facility by covering-up water pit dug in front of his house. Krishna Tondon (PW-9) is the witness who issued the caste certificate in the capacity of Corporator of the area – an elected entity, which is Ex.P-4. Of course the instances attributed by PW-4, PW-2 and PW-6 regarding hurling of abuses, calling Chamar and depriving them of water have been fully supported by the above mentioned witnesses but one of the paramount requirements for holding one guilty under the Special Act is the caste certificate on the basis of which it could be determined that the aggrieved party was belonging to a particular caste falling under the special category. Unfortunately, in this case the caste certificate (Ex.P-4) has not been issued by the competent authority and therefore, is not admissible in law. PW-9 being a Corporator of the local area was not competent to issue the said certificate which according to the legal requirements should have issued by competent revenue authorities. It is settled legal position in the case of like nature that for holding the accused/appellant guilty the requirement of requisite certificate to the effect that the victim belongs to scheduled caste or scheduled tribe community is a *sine qua non* and if that requirement is lacking, the conviction under such sections would not follow. Though the caste certificate (Ex.P-4) bears an endorsement to have been issued after being verified by the Teshildar yet no such endorsement by the Tehsildar is there on the said certificate. More surprisingly, PW-9

who himself had issued the caste certificate has clearly stated that caste certificate is normally issued by Tehsildar but in this particular case the endorsement to the effect of being verified by the Tehsildar was mentioned by the complainant himself. He has further stated that he did not see any document with the complainant duly verified by the Naib Tehsildar. Thus the evidence collected by the prosecution does not establish the caste of the complainant and therefore, the conviction of the accused/appellant under the Special Act cannot be made out.

6. In aforesaid view of the matter, this Court is of the opinion that the prosecution has not been able to prove its case beyond all reasonable doubt and so also the Court below has also gone wrong in recording a finding of conviction against the accused/appellant as referred to above. Accordingly, the judgment impugned is hereby set aside, the accused/appellant is acquitted of the charges levelled against her and consequently, the appeal stands allowed.

7. As the appellant is already on bail, no order to set her free etc. is necessary. Appeal is thus allowed.

Sd/-

(Vimla Singh Kapoor)

Judge