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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 17.03.2021****Judgment Delivered on 10.05.2021****CRA No. 125 of 2021**

1. Prabhakar Yadav, S/o Shri Dhanurjai Yadav, aged 40 years,
2. Sandeep Yadav, S/o Shri Prabhat Yadav @ Prabha @ Prabhakar Yadav, aged 20 years,

Both are resident of Jhagarpur, P.S. Bagecha, District Jashpur, C.G., Civil and Revenue District Jashpur, C.G.

---- Appellants**Versus**

- State of Chhattisgarh, Through Police Station Bagecha, District Jashpur, C.G.

---- Respondent

For Appellants Shri Ajay Mishra, Advocate.

For State Shri Sameer Uraon, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya**C A V Judgment**

1. In this appeal filed under Section 374(2) Cr.P.C., the appellants have challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 09.12.2020 passed by the Special Judge {constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989}, Jashpur, District Jashpur, C.G. in Special Criminal Case under the SC/ST Act No.20/2018, whereby and whereunder the appellants stand convicted and sentenced as under:-

Conviction	Sentence
Under Section 294 of Indian Penal Code	Simple Imprisonment for one month and fine of Rs.100/-, in default of payment of fine to further undergo simple imprisonment for one week
Under Section 323/34 of Indian Penal Code read with Section 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	Simple Imprisonment for six months and fine of Rs.500/-, in default of payment of fine to further undergo simple imprisonment for one month
Under Section 427 of Indian Penal Code	Simple Imprisonment for three months and fine of Rs.1,000/-, in default of payment of fine to further undergo simple imprisonment for one month
Under Section 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act	Simple Imprisonment for six months and fine of Rs.500/-, in default of payment of fine to further undergo simple imprisonment for one month

(All sentences were directed to run concurrently)

2. Case of the prosecution, in brief, is that on the date of incident i.e. 26.02.2018 at about 10:00 am complainant Rishi @ Abhishek Kumar along with Ankur Vishwas, Mohit Gupta, Shubham Jaiswal and Gautam Bhagat went to meet Ajay Suryawanshi in hotel. At that time, accused/appellants came there on motorcycle and due to previous enmity with Shubham Jaiswal, they started quarrelling with him. When complainant Rishi @ Abhishek Kumar and Mohit Gupta tried to pacify the dispute, then accused Sandeep Yadav and Kailash Yadav started quarrelling with the complainant,

abused him filthily in the name of his caste in public place, threatened him to kill and went from there. After some time, Kailash Yadav, Sandeep Yadav and Prabhakar Yadav again came there by Bolero Car and started quarrelling with the complainant, assaulted upon him by club, abused him filthily in the name of caste in public place and also caused damage to his vehicle (motorcycle) and when Mohit Gupta tried to pacify the dispute, they also assaulted upon him by club. Thereafter, written report Ex.P-6 was submitted by Injured- Mohit Gupta informing the police about the incident and on the basis of written report, FIR Ex.P-7 was registered against the accused/appellants on 27.02.2018. On the same day i.e. 26.02.2018, complainant Rishi @ Abhishek Kumar was sent for medical examination and PW-3 Dr. Jayant Ram Bhagat examined him and gave his MLC report vide Ex.P-8 and found one lacerated wound 4 cm x 2 cm x 1 cm on right scalp (blood clot present) on the body of the complainant.

According to him, injury present on the body of the complainant was simple in nature and caused by hard and blunt object. He opined that the injury was caused within six hours prior to his examination.

3. Injured- Mohit Gupta was also medically examined by PW-3 Dr. Jayant Ram Bhagat and he gave his MLC report vide Ex.P-9:-

- Abrasion 1.5 cm x 0.5 cm on right wrist.

- Abrasion 5cm x 1 cm on left neck.
- Abrasion 5cm x 0.5 cm on left cheek.
- Linear abrasion 5 cm x 0.1 cm on left forehead.

According to him, injuries present on the body of the Mohit were simple in nature and caused by friction with rough surface and pointed object. He opined that the injuries were caused within six hours prior to his examination.

4. During investigation, Spot Map was prepared vide Ex.P-.1. Damaged motorcycle of complainant- Rishi Paikara @ Abhishek Kumar Paikara was seized vide Ex.P-2. Caste Certificate of complainant- Rishi @ Abhishek Kumar Paikara Ex.P-3 was seized vide Ex.P-4. *Nuksani* (Damage) Panchnama was prepared vide Ex.P-5. One club and Bolero car were seized from accused- Prabhakar @ Prabha @ Prabhat Yadav vide Ex.P-14. Accused Kailash Yadav and Prabhakar @ Prabha @ Prabhat Yadav were arrested on 16.10.2018 & 05.10.2018 vide Exs.P-13 & 15 respectively and accused Sandeep Yadav was arrested on 21.12.2018. Statements of the witnesses were recorded. After completion of investigation, charge sheet was filed against the appellants under Sections 294, 506(B), 323, 427, 34 of Indian Penal Code and Section 3(1)(द)(घ) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. The trial Court framed the charges under Sections 294, 323 read with 34, 506(B) and 427 of Indian Penal Code and Section 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the appellants which were denied by them and they prayed for trial.

6. So as to hold the accused/appellants guilty, the prosecution examined as many as 10 witnesses i.e. PW-1 Rishi @ Abhishek Kumar Paikara, PW-2 Mohit Gupta, PW-3 Dr. Jayant Ram Bhagat, PW-4 Shubham Jaiswal, PW-5 Gautam Bhagat, PW-6 Sanjay Goswami, PW-7 Prashant Grahi Tigga, PW-8 Padamshri Tamwar, PW-9 Dinesh Rajwade and PW-10 Ankur Vishwas. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no witness was examined by them in their defence.

7. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned in para-1 of this judgment.

8. Learned counsel for the appellants submits that the trial Court has not properly appreciated the overall evidence available on record for holding the appellants guilty. He submits that due to previous enmity between the appellants and the complainant,

they have been falsely implicated in this case by the complainant party. There are material contradictions and omissions in the statements of the complainant and other witnesses. No cogent evidence is available on record against the appellants. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellants be acquitted of the aforesaid charges.

9. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellants are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

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

11. PW-1 Complainant- Rishi @ Abhishek Kumar stated in his deposition that on the date of incident i.e. 26.02.2018 at about 10:00 am he along with Ankur Vishwas, Mohit Gupta, Shubham Jaiswal and Gautam Bhagat went to meet Ajay Suryawanshi in hotel. At that time, accused/appellants came there on motorcycle and due to previous enmity with Shubham Jaiswal, they started quarrelling with him. When he and Mohit tried to pacify the dispute, then accused Sandeep Yadav and Kailash Yadav started quarrelling with complainant, abused him filthily in the name of his caste in public place, threatened him to kill and went from there.

After some time, Kailash Yadav, Sandeep Yadav and Prabhakar Yadav again came there by Bolero Car and started quarrelling with the him, abused him filthily in the name of caste in public place, assaulted upon him by club, as a result of which he suffered injury on his body and became unconscious and they also caused damage to his vehicle and when PW-2 Mohit Gupta tried to pacify the dispute, they also assaulted upon him by club. Thereafter, written report Ex.P-6 was submitted by Injured- Mohit Gupta informing the police about the incident and on the basis of written report, FIR Ex.P-7 was registered against the accused/appellants on 27.02.2018.

12. PW-2 Mohit Gupta is also the injured in this case. He has stated the same facts as stated by PW-1 Rishi @ Abhishek Kumar and supported the prosecution case.

13. PW-3 Dr. Jayant Ram Bhagat medically examined the PW-1 Rishi @ Abhishek Kumar and PW-2 Mohit vide Exs.P-8 & 9 respectively and gave his reports as mentioned in the preceding paragraphs. He has duly proved the said reports. He has also examined the seized club and opined that the injury suffered by the PW-1 Rishi @ Abhishek Kumar could be caused by seized club.

14. PW-4 Shubham Jaiswal stated in his deposition on the date of incident he along with Rishi Paikara, Ankur Vishwas & Gautam Bhagat were discussing about the making of online Aadhar card.

He stated that prior to the incident accused Kailash Yadav had committed marpeet with him and he informed the police about the same. He stated that for taking revenge of the said incident, accused/appellants came in the hotel, quarreled with him, Rishi Paikara and Mohit, abused them filthily and went from there. He stated that after some time accused/appellants again came there by Bolero car, started quarreling with complainant (PW-1) Rishi Paikara, abused him filthily in the name of his caste and assaulted upon him by club, as a result of which complainant sustained injury on his head, blood was oozing from there and he became unconscious and accused/appellants fled from there. Thereafter, he along with his friends took the complainant to hospital for treatment.

15. PW-5 Gautam Bhagat stated in his deposition that on the date of incident appellants quarreled with the complainant, abused him filthily in the name of caste in public place, committed marpeet with him and also threatened him to kill.

16. PW-6 Sanjay Goswami, Assistant Sub-Inspector, went to the spot and prepared the spot map vide Ex.P-1, seized the motorcycle of complainant vide Ex.P-2, prepared the *Nuksani* (Damage) Panchnama of motorcycle vide Ex.P-5, seized the caste certificate of complainant vide Ex.P-3, sent the seized club for examination vide Ex.P-11, arrested the accused- Kailash on 16.10.2018 vide Ex.P-13 and recorded the statements of the witnesses.

17. PW-7 Prashant Grahi Tigga and PW-10 Ankur Vishwas also proved this fact that all three accused persons quarreled with the complainant- Rishi @ Abhishek, abused him filthily in the name of his caste in public place and committed *marpeet* with him by club.

18. PW-8 Padamshree Tawar, SDOP, seized the club vide Ex.P-14, arrested the accused-Prabhakar Yadav vide Ex.P-15 and also recorded the statements of the witnesses.

19. PW-9 Dinesh Rajwade, Assistant Sub-Inspector, registered the FIR Ex.P-7 and sent the injured- Rishi Paikara and Mohit Gupta for medical examination vide Exs. P-17 and P-18 and duly proved the same.

20. On a minute examination of the above evidence, it is clear that on the date of incident i.e. 26.02.2018, the appellants had quarreled with the complainant, abused him filthily in the name of his caste in public place, threatened him of life and committed *marpeet* with him and injured Mohit Gupta by club. The complainant has remained firm during his cross-examination and his statement is also supported by PW-2 Mohit Gupta, PW-4 Shubham Jaiswal, PW-5 Gautam Bhagat, PW-7 Prashant Grahi Tigga and PW-10 Ankur Vishwas.

21. The next question which arises for consideration by this Court is whether the finding recorded by the trial Court as to the caste of the complainant is correct or not.

22. In this case, it is not disputed by learned counsel for the parties that complainant Rishi @ Abhishek Kumar Paikara belongs to the Gond Scheduled Tribe Community. PW-1 complainant also stated in his deposition that he belongs to Kavar Caste which comes under the category of Gond Scheduled Tribe Community and that fact is uncontroverted in the cross-examination and also proved by the seized caste certificate of complainant vide Ex.P-3. Thus, from the material collected by the prosecution, I am of the view that the prosecution has succeeded in proving the caste of the complainant as Scheduled Tribe.

23. Thus, considering the facts and circumstances of the case and the manner in which the offence took place as stated by the complainant- Rishi @ Abhishek Paikara which is duly corroborated by the evidence of PW-2 Mohit Gupta, PW-4 Shubham Jaiswal, PW-5 Gautam Bhagat, PW-7 Prashant Grahi Tigga & PW-10 Ankur Vishwas; the prompt FIR; the medical reports (Ex.P-8 & P-9) proved by treating doctor PW-3 Dr. Jayant Ram Bhagat and further considering the fact that there is no major contradiction or omission in the complainant's statement as well as in the statements of supporting witnesses affecting the credibility of his version, no any evidence was adduced by the defence to prove false implication of the appellants, the entire evidence available on record, oral and documentary, adduced by the prosecution, the nature of injuries suffered by the complainant and injured Mohit Gupta and proved by the prosecution, it stands proved beyond all reasonable doubt that it is the accused/appellants who on

26.02.2018, quarreled with the complainant, abused him filthily in the name of his caste in public place, assaulted upon him and injured Mohit by club and caused damage to the vehicle (motorcycle) of the complainant by assaulting with a club, resulting in loss of Rs.10,000/- (approx.) to the complainant. Therefore, this Court is of the opinion that the trial Court was fully justified in convicting and sentencing the appellants by the impugned judgment and as such no interference is called for by this Court.

24. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 01.03.2021 submitted by Jail Superintendent, District Jail, Jashpur, District Jashpur, C.G., the appellants having completed the jail sentence have been released from jail on 31.12.2020. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellants.

**Sd/-
(Gautam Chourdiya)
Judge**