

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1174 of 2002

Judgment reserved on 04.11.2020

Judgment delivered on 15.01.2021

1. Shanti Kumar Mishra S/o. Thakur Prasad Mishra, Aged 50 years, Occupation Teacher.
2. Chandra Shekhar Mishra, S/o. Shanti Kumar Mishra, Aged 25 years, Occupation Business.

All resident of village Dipopara Bastar, police Chauki Bastar, PS Kotwali Jagdalpur, District Bastar (CG)

---- Appellants

Versus

State of Chhattisgarh, through P.S. A.J.A.K. Jagdalpur, District Bastar (C.G.)

---- Respondent

For Appellants : Mr. Subhash Yadav, Advocate.
For Respondent : Mr. Ravish Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

Complainant (PW-1) Dhurva by caste falling in the category of Scheduled Tribe was at the relevant time Sarpanch of the concerned Gram Panchayat. The accused/appellant on the other hand are said to be the member of the Bhramin community. Being Sarpanch of the Gram Panchayat complainant (PW-1) Ganeshram Baghel came to know that water supply in the area was not

adequate and on inquiry through members of the locality, he came to know that as accused/ appellant Shanti Kumar Mishra had been operating water up for drawing water, the other people of the locality could not get sufficient water supply. Subsequently, he went to the house of the accused/appellant and on complaint being made as to why he was using the water pump and as such depriving others of water, he got enraged and started using filthy abuses at him and also threatened of doing away with. The other accused persons also joined him in abusing and threatening the complainant. On the report lodged by him offence under Section 341, 342, 294, 506/34 IPC and 3 (i) (x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the "Special Act") were registered against all the accused persons, four in number. After completion of investigation challan was also filed under the same sections followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 28.10.2002 passed in Sessions Trial No. 100 of 2002 acquitted the accuseds Ashwani Kumar Mishra @ Buntty, Suryaprakash Mishra of all the charges leveled against them. The Court below also acquitted the accused/appellant of the charges under Section 341, 432, 506 IPC but held them guilty under Sections 294 IPC and 3 (i) (x) of the Special Act. The sentence imposed on the accused/appellant is RI for 1 month under Section 294 IPC and 1

year RI with fine of Rs. 1000/- under the Special Act. Hence, this appeal.

3. Counsel for the appellant submits that the findings of the Court below are not based on the just and proper appreciation of the evidence of the witnesses and therefore, cannot be allowed to stand. He submits that prime requirement for holding one guilty under the Special Act is caste certificate disclosing the caste of the complainant but in the case in hand the same is lacking.

4. State counsel however, supports the impugned judgment to be fully justified that thus requires no interference in this appeal.

5. Of course evidence of complainant (PW-1), Libruram (PW-2) and Gopal Patel (PW-3), makes it clear that on the date of incident some scuffle coupled with hurling of filthy abuses had taken place between the complainant and the accused/appellant. These three witnesses have also admitted that the complainant being Dhruva by caste was member of Scheduled Tribe category whereas the accused persons belonged to Brahmin caste. There is no dispute on this aspect of the matter but merely this does not suffice to hold them guilty under the Special Act. The prosecution was duty bound to prove the caste of the complainant by leading reliable evidence in the form of caste certificate issued by the competent authority mandated under the law. In this case, the prosecution has completely failed to do the same as no such certificate in support of caste of the complainant has been produced by the prosecution. It has been held by the Hon'ble Apex Court in catena of decisions

that certificate disclosing the caste of the complainant that too issued by the competent authority is a *sine qua-non* and in its absence the conviction under the Special Act cannot follow. In this view of the matter, this Court holds the conviction of the accused under the Special Act to be not based on the legal touchstone and therefore, the same is hereby set aside.

6. The conviction of the accused under Section 294 IPC, considering the evidence of the witnesses, is however, maintained but the sentence of imprisonment imposed for that by the Court below is hereby set aside and in its place he is sentenced just to fine amount.

7. In sum and substance, the conviction of the accused/appellant under Section 3(i)(x) of the Special Act is hereby set aside whereas that of section 294 IPC is hereby maintained.

7. The sentence of imprisonment imposed by the Court below under Section 294 IPC is also set aside but the accused/appellant is sentenced just to pay fine amount as imposed by the Court below. The appeal is thus allowed in part to the extent and observation made above. As the appellant is already on bail, his bail bonds stand discharged.

Sd/-

(Vimla Singh Kapoor)
JUDGE