

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 343 of 2004

Judgment reserved on 04.11.2020

Judgment pronounced on 15.01.2021

Sitaram S/o Beer Singh, aged 36 years, Occupation – Agriculture,
R/o Kulnar, P.S. Nagarnar, District Central Bastar. CG.

---- Appellant

Versus

State of Chhattisgarh through Police Station A. Ja. K. Jagdalpur,
CG.

---- Respondent

For Appellant	:	Shri Subhash Yadav, Advocate
For Respondent	:	Shri Ravish Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

Facts of the prosecution case go to show that in the night hours of 29.07.2003 when he was on the way to his home, the accused/appellant met him on the way and calling him *Bhatra*- the community he belongs to, inflicted the blow with the piece of bamboo stick on his head as a result of which he fell down on the ground. The report also shows that the caste *Bhatra* which he belongs to falls in the category of scheduled tribe whereas the accused/appellant hails from a non scheduled caste category namely *Rawat*. On the basis of report lodged by the complainant (Ex. P-4) offences under Sections 294 and 323 IPC and Section 3 (1) (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the “**Special Act**”) were registered against him. After completion of investigation charge-sheet was also filed against the accused/appellant under the same sections followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 20.02.2004 passed in Sessions Trial No. 474/2003 found the accused/appellant guilty under Sections 323 IPC and 3 (1) (x) of the Special Act with imposition of sentence of RI for 6 months with fine of Rs. 500/- u/s 323 IPC and one year RI with fine of Rs. 1000/- under the Special Act, plus default stipulations. Hence this appeal.

3. Counsel for the accused/appellant submits that the judgment impugned being not in conformity with the evidence collected by the prosecution cannot be allowed to sustained. He further submits that prosecution has not even proved that the complainant belongs to a scheduled tribe category by adducing reliable evidence as required under the law.

4. State counsel supporting the judgment impugned submits that the findings of conviction recorded by the Court below are strictly in accordance with law and there is no illegality or infirmity in the same calling for interference by this Court.

5. Though the complainant Chinta (PW-1) has stated that by calling him *Bhatra* publically the accused/appellant has committed an offence under Section 3 (1) (x) of the Special Act yet this fact has not been established by the prosecution by adducing cogent and clinching evidence. The other witnesses being Maan Singh (PW-2) and Magalram (PW-3) have also corroborated the version of the complainant to the effect that he belongs to *Bhatra* caste falling in the category of scheduled tribe. Dhaniram (PW-4) is the witness who in the capacity of *Sarpanch* had issued the caste certificate (Ex.P-2) to the effect that the complainant belongs to *Bhatra* community falling in

the scheduled tribe category. Of course, the witnesses examined by the prosecution have stated that the complainant belongs to *Bhatra* community and a certificate to this effect has also been issued by the *Sarpanch* of the village, this Court is not in a position to accept the complainant to be belonging to Bhatra caste falling in the category of scheduled tribes because the *Sarpanch* who is elected by the public does not appear to be competent to issue the caste certificate Ex. P-2. In addition to this, while deposing in the Court the witness who issued the caste certificate has categorically stated that the same was issued in his personal capacity without passing any resolution to that effect in the *Gram Panchayat*. This Court therefore, has no hesitation to hold that the prosecution has utterly failed to prove the caste of the complainant by adducing any trustworthy evidence and the caste certificate issued by the *Sarpanch* is not sufficient to be relied upon for holding the accused/appellant guilty under the Special Act, for the reason that the *Sarpanch* is not competent to issue such caste certificate. It is a settled legal position that to hold one guilty under the Special Act, the caste certificate as required under the law is a *sine qua non* and in the absence thereof, no one can be convicted under the Special Act. Conviction under the Special Act is accordingly set aside.

6. As regards conviction of the accused/appellant under Section 323 IPC where the complainant is stated to have suffered injury on his head caused by the accused/appellant with the help of bamboo stick is hereby maintained keeping in mind the fact that the complainant has denied that such an injury was suffered by him either by fall or any accidental event. On the contrary, he has stated

that it is the accused/appellant who caused the said injury with the help of a bamboo stick. In this view of the matter, the conviction of the accused/appellant under Section 323 IPC is hereby maintained. The sentence of imprisonment under this Section is also set aside. Interest of justice would however be served if he is sentenced with fine only as has been imposed by the Court below. Order Accordingly.

7. Appeal thus allow in part.

Sd/-

(Vimla Singh Kapoor)

Judge