

IN THE HIGH COURT OF JHARKHAND AT RANCHI**Cr. Appeal [SJ] No.289 of 2012**

1.Mithilesh Kumar Saw @ Mithlesh Saw

2.Kamlesh Sao

3.Awadhesh Saw @ Awadesh Sao Appellant(s)

Versus

The State of Jharkhand

.. .. Respondent(s)

CORAM : HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant (s) : Mrs. J. Mazumdar, Advocate

For the State : Mr. Shailesh Kr. Sinha, APP

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04/ 10.01.2024. Heard, learned counsel for the parties.

1. The instant Criminal Appeal is directed against the judgment of conviction and order of sentence dated 14.02.2012 passed by learned Additional District & Sessions Judge-I, Dhanbad, in C. P. Case No.2400 of 2008, whereby and whereunder the appellants have been convicted under Sections 448, 323, 354 IPC and 3(x) of the SC. ST. Act and sentenced to undergo simple imprisonment for six months each under Sections 448, 323, 354 IPC and further sentenced to undergo simple imprisonment for one year each under Section 3(x) of the SC. ST. Act. They have been acquitted under Section 427 IPC, whereas the other accused persons were convicted under Section 427 IPC and were released on admonition under Section 3 of the Probation of Offenders Act.
2. Learned counsel for the appellants has submitted that it was a case of free fight between both the sides being neighbours over a minor dispute of drainage. Offence under S.C. and S.T. Act will not be made out, as the incidence did not take place in public view and further there was material contradiction in the statement of the witnesses regarding the words used in calling the Complainant by his caste name. It is alleged that they had threatened to set on fire the house of the complainant, but there is no evidence of act of arson.
3. Furthermore, the offence under Section 354 IPC will also not be made out as there is nothing on record to suggest that there was intention to outrage the modesty of the complainant. The fact of the case is about house trespass and assaulting altogether by 7 persons conjointly in which four persons were females. Therefore, the question of outraging the modesty did not arise.
4. There is material contradiction in the statement of the witnesses as out of five material witnesses examined on behalf of the prosecution, only P.W.1, P.W.3 and P.W.4, have stated that abuse was hurled by taking the accused name and they have been mutually conflicting the statement regarding the caste name. P.W.1 has stated the caste name as *Paswan*, and P.W.3 has also stated the same thing whereas P.W.4 has called by naming them as *Chamar*. P.W.4 has admitted

in Para-2 of the cross-examination that there was case and counter-case regarding the said incidence.

5. It is further argued that there is inordinate delay of six days in filing the instant complaint case as the alleged incidence took place on 14.12.2008 whereas the complaint was lodged on 20.12.2008, but without any explanation for such delay. The oral testimony is not supported by any medical evidence.
6. Learned APP for the State has defended the impugned judgment. It is submitted that the witnesses have consistently stated about the incidence. On the point of delay in filing the complaint, it is submitted that the complainant had approached the Superintendent of Police and Deputy Commissioner for the same, but no action was taken which resulted in such delay in lodging the complaint.
7. Having heard learned counsel for both the sides and perusing the materials on record, it is evident that the incidence took place on a minor dispute over the drainage between the complainant-party(s) and the accused persons who are adjoining neighbours. The case and counter-case were filed, as admitted in cross-examination by the prosecution witnesses. The incidence took place on the spur of the moment and there is nothing to suggest that anybody sustained any injury.
8. For offence under Section 354 IPC, intention to outrage modesty of a woman, is the fundamental ingredient. Touch caused otherwise during the course of a fight, between two warring section cannot be called an act to outrage the modesty. If in a free fight wearing apparels are torn, it will not invariably make out an offence under this Section. On a combined reading of testimony of the witnesses, it is apparent that out of 7 accused persons, four were females and the predominant motive was free fight and not to outrage the modesty. The evidence on record does not make out offence under Section 354 IPC.
9. With regard to offence under Section 3(x) of the S.C. and S.T. Act, there is much force in the argument advanced on behalf of the appellants that in each case of altercation or dispute involving a member of Scheduled caste and Scheduled tribe and another person, the offence, as stated, will not be made out until and unless the victim was subjected to assault and abuse because of his caste identity.
10. Further, regarding words of verbal abuse, there is much conflicting version and it has not been stated as to who had used those words. Some witnesses have stated that they had identified the complainant-party as 'Chamar' whereas the other witnesses have named them as 'Paswan'.

On these sketchy evidence, this Court is of the view that the offence under SC/ ST Act would not prove beyond the shadow of probable doubt.

As far as offence under Section 323 IPC is concerned, the case of the complainant is consistent regarding the incidence and all the witnesses have stated that the appellants/accused conjointly assaulted the complainant and others by brick-batting. The delay in lodging has been explained in the complaint petition itself that they had approached the Superintendent of Police and Deputy Commissioner which resulted in delay of six days.

Under the circumstances, the prosecution has proved the charge under Sections 448 / 323/ 34 IPC against the appellants and the conviction under these sections is affirmed.

Charges under Section 354 IPC and 3 (x) of the SC and S.T. Act is not proved for which they are acquitted of the charges.

On the point of sentence, considering the nature of offence, appellants are directed to be released on admonition under Section 3 of the Probation of Offenders Act, 1958.

With the modification, the instant Criminal Appeal is partly allowed.

(Gautam Kumar Choudhary, J.)