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**(2010) 02 CHH CK 0021**  
**In the Chhattisgarh High Court**  
**Case No : Criminal Appeal No. 759 of 2001**

Jhumuklal and Others

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

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**Date of Decision :** 11-02-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313

Penal Code, 1860 (IPC) — Section 294, 506

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —  
Section 3(1)(x)

**Citation :** (2013) 1 CG.L.R.W. 229

**Hon'ble Judges :** Pritinker Diwaker, J

**Bench :** Division Bench

**Advocate :** Prafulla Bharat, for the Appellant; Neeraj Mehta and Panel Lawyer,  
for the Respondent

**Final Decision :** Allowed

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## Judgement

Pritinker Diwaker, J.—This appeal is directed against the judgment dated 1-8-2001 passed by Special Judge, Bastar at Jagdalpur, in Sessions Trial No. 144/2000 convicting the accused/appellants for the offences punishable under Sections 294 and 506 -II IPC and u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and sentencing each of them to undergo rigorous imprisonment for one month and pay fine of Rs. 100 u/s. 294, rigorous imprisonment for one year and pay fine of Rs. 200 u/s. 506-II IPC and to undergo rigorous imprisonment for one year and pay fine of Rs. 500 u/s. 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, plus default stipulations. Case of the prosecution in brief is that on 8-11-2000 a written report (Ex. P-1) was lodged by one Shiboram (PW-1) alleging that on 7-11-2000 at about 10 a.m. when he had gone to the field of the accused/appellants to serve the notice of Panchayat of village Bade Alnar and Seoni, the sword was shown to him who after seeing the same ran away from the spot. While he was running away, the accused/appellants chased him saying "Muriya

Sale Jaan Se Marenghe". It is also alleged in the complaint that the accused/appellants also used abusive language in the name of Panchayat. On the basis of this written report an enquiry was conducted by the police and on 29-11-2000 FIR (Ex. P-7) was registered against the accused/appellants.

2. So as to hold the accused/appellants guilty, prosecution has examined 7 witnesses in support of its case. Statements of the accused/appellants were also recorded u/s 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case. This apart, statements of Jhumuklal (DW-1) and Ganesh Baghel (DW-2) were also recorded by the defence in support of its case.

3. After hearing the parties the trial Court has convicted and sentenced the accused/appellants for the offence as mentioned above.

4. Heard counsel for the parties and perused the material available on record including the judgment impugned.

5. Counsel for the accused/appellants submits that present is a case of false implication where on account of some land dispute complainant Shiboram had lodged a false report and unfortunately it is on that false report the appellants have been convicted for the offences as mentioned above. He submits that even if the entire written complaint is taken as it is the offence u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not made out because the basic ingredients of that provision are missing in this case. He submits that as per the requirement of law the prosecution has to establish that Shiboram (PW-1) was intentionally insulted or intimidated by the accused/appellants and the said incident must have taken place in the public view. He submits that in the FIR it is nowhere mentioned by the complainant that he was abused by the accused/appellants intentionally and that the incident was witnessed by any other person. He also submits that only the general allegations have been made by the complainant that the accused/appellants had abused and assaulted him and no specific role has been attributed to any individual and therefore the entire case of the prosecution appears to be a fabricated one on the basis of which the appellants cannot be convicted u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. As regards conviction of the accused/appellants under Sections 294 and 506 -II IPC, counsel for the accused/appellants submits that as per the FIR abusive language was used in the name of the Panchayat and not to the complainant and when no report has been lodged by the Panchayat, the accused/appellants cannot be convicted u/s 294 IPC. He submits that even the case u/s 506-II IPC is not made out against the accused/appellants.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that there is enough evidence on record for convicting the accused/appellants for the offences mentioned above. According to him the findings recorded by the Court below being well reasoned do not call for any

interference in this appeal.

7. From the written report dated 8-11-2000 (Ex. P-1) it is clear that on 7-11-2000 the complainant had gone to serve the notice of the Gram Panchayat to the accused/appellants where he is said to have been threatened and abused by them. In the report it is nowhere alleged as to in what manner the complainant was abused in the name of his caste. He merely states that the accused/appellants had threatened him saying "Muriya Sale Jaan Se Marenge". The written report also shows that the complainant was not abused by the accused/appellants in any manner and the abusive language was used only against the Panchayat. However, in his Court statement this witness appears to have made certain improvement and stated that when he reached the field and tried to give notice of the Panchayat to accused/appellant Jhumuklal, the accused persons made him run away showing sword to him. In the Court statement also this witness has not stated as to which of the accused was carrying sword. However, making improvement in his cross examination, this witness has admitted that the land in question was in possession of accused/appellant Jhumuklal and it is he who was earning from the same. He has stated that with respect to that very land there was some dispute between them for last two years and in the Panchayat meeting a decision was taken that no one would go to the said field. He has also stated that the field where the incident had taken place belongs to him. Thus it is apparent from the statement of this witness that on account of some land dispute a Panchayat meeting was held in which some decision was taken but the prosecution has not filed any such document regarding the decision taken by the Panchayat. It also appears from the record that this witness has tried to improve his version before the Court but nothing specific has been stated by him against any individual. He has also not stated in his evidence that any third person had seen the accused/appellants hurling any abuse against him. Mangal Ram (PW-2) is a hearsay witness and he has merely stated that he was informed about the incident by the complainant himself. Pooran Singh (PW-3) is also a hearsay witness. Bhadru (PW-4) who has been projected by the prosecution as one of the eyewitnesses has stated in his evidence that he had seen the accused/appellants chasing the complainant using abusive language against him. Statement of this witness becomes doubtful for the reason that as per the Court statement of the complainant himself, no other person had seen the incident. From paragraph 10 of the evidence of Bhadru (PW-4) it appears that there are material contradictions and omissions in his Court statement compared to one recorded u/s 161 of the Code of Criminal Procedure. D.C. Uyke (PW-5) is the Investigating Officer. Smt. Sudanti Bai (PW-6) is the author of Ex. P-6 which is the caste certificate of the complainant. In her Court statement this witness has stated that she was not aware of the caste of the complainant.

8. The question which arises for consideration in this case is whether prima facie an offence has been committed u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Section 3(1)(x) states:

3. Punishment for offences of atrocities.--(1) Whoever, not being a member of a Scheduled Castes or a Scheduled Tribes,--

....

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Castes or a Scheduled Tribes in any place within public view.

....

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

In the case in hand the prosecution has utterly failed to prove that the accused/appellants have intentionally insulted or intimidated the complainant in the public view with intent to humiliate him and in these circumstances the conviction of the appellant u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act appears to be palpably illegal.

9. So far as conviction u/s 294 IPC is concerned/in the FIR there is absolutely no allegation that any abusive language was used by any of the accused/appellant against the complainant. The only allegation of abusive language used by the appellants is against the Panchayat and not against any individual. Though in the Court statement the complainant has stated that he was abused, that appears to be an improvement and in this view of the matter conviction u/s 294, IPC also goes.

10. Even in respect of the offence u/s 506-II IPC, the complainant has not specifically stated as to which of the accused/appellants was carrying sword and by whom he was chased and therefore, conviction under this Section is also not in consonance with the material available on record. Thus in view of the inconsistency, contradiction and omissions in the statements of the prosecution witnesses in particular the complainant; accused/appellants are, of course, entitled for benefit of doubt. In view of aforesaid discussion this Court is of the considered view that the impugned judgment being contrary to the material available on record is illegal and liable to be set aside. Accordingly, the appeal is allowed. Impugned judgment dated 1-8-2001 is hereby set aside. Appellants are acquitted of the charge levelled against them. The appellants are on bail. Their bail bonds stand discharged.