
(2012) 07 CHH CK 0025
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 191 of 2004

Rajendra Patel

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 332

Citation : (2012) 4 CGBCLJ 165

Hon'ble Judges : R.S. Sharma, J

Bench : Division Bench

Advocate : N.S. Dhurandhar, for the Appellant; Sandeep Yadav, Deputy Government Advocate, for the Respondent

Judgement

R.S. Sharma, J.—This appeal is directed against judgment dated 11-02-2004 J passed by Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth "the Act, 1989"), Durg in Special Case No. 111/2003. By the impugned judgment, accused/appellant Rajendra Patel has been convicted u/s 332 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 1 year and to pay fine of Rs. 2,000/-, in default of payment of fine, to further undergo rigorous imprisonment for 6 months. Case of the prosecution, in brief, is as under:-

Complainant Tekram Ratre (PW-2) is Satnami by caste, which belongs to Scheduled Caste. He was posted as a Head Master in Primary School, Chicha. On 10-07-2003, at about 10:15 am, he was performing his official duty. At that time, the appellant came there and asked the complainant to admit his niece Nisha in the school who was near about 5 ? years old. Complainant Tekram Ratre (PW-2) told the appellant that his niece was below 7 years of age, therefore, after completion of 7 years of age, she could be admitted in the school. The appellant pressurized the complainant to admit his niece, but the complainant told the appellant to bring the father of his niece. Thereafter, the appellant began to abuse the complainant by using filthy language and assaulted him with a

wooden stick on his head and deterred the complainant from performing his official duties. The incident was witnessed by Gajanan (PW-3) and Pratap (PW-4). The complainant lodged First Information Report (Ex. P-2) in Police Station, Patan. The complainant was sent to Primary Health Centre, Patan for medical examination vide Ex. P-1. Dr. S.A. Ali (PW-1) examined the complainant and gave his report vide Ex. P-1 in which he found vertically placed lacerated wound of 2 cm X % cm over left side of forehead.

In further investigation, copy of attendance register of teachers (Ex. P-7) and Caste Certificate (Ex. P-6) of the complainant were seized vide Ex. P-5.

After completion of the investigation, charge sheet was filed against the appellant in the Court of Judicial Magistrate First Class, Durg, who, in turn, committed the case to the Court of Special Judge under the Act, 1989, Durg, who conducted the trial and convicted and sentenced the appellant as mentioned above.

2. Shri N.S. Dhurandhar, learned counsel for the appellant argued that the prosecution did not prove that the appellant deterred the complainant from performing his official duties. Evidence of complainant Tekram Ratre (PW-2) is not reliable and does not prove that he was deterred from performing any duty at the relevant time. The appellant has been acquitted of the other major charges, therefore, he could not be convicted u/s 332 IPC. There is material contradiction in the evidence of prosecution witnesses. Therefore, the appellant deserves to be acquitted.

3. On the contrary, Shri Sandeep Yadav, learned Deputy Government Advocate for the State/respondent, supporting the impugned judgment, submitted that the conviction and sentence awarded by the learned Special Judge do not warrant any interference by this Court.

4. I have heard the learned counsel for the parties and have also perused the record of Special Case No. 111/2003. The conviction of the appellant is based on the evidence of complainant Tekram Ratre (PW-2), Gajanan (PW-3) and Pratap (PW-4).

5. To hold the appellant guilty, the prosecution examined Dr. S.A. Ali (PW-1), Tekram Ratre (PW-2), Gajanan (PW-3), Pratap (PW-4), Tilochan (PW-5), Sub Inspector Dilip Chandrakar (PW-6), S.L. Mirche (PW-7), Roopsingh (PW-8) and SDO (P) M.D. Tiwari (PW-9). The appellant examined Dr. Pramod Gupta (DW-1) in hi defence.

6. Tekram Ratre (PW-2) deposed that on 10-07-2003, at about 10:15 am, he was performing his official duty. At that time, the appellant came there and asked him to admit his niece Nisha in the school who was near about 5 ? years old. He told the appellant that his niece was below 7 years of age, therefore, after completion of 7 years of age, she could be admitted in the school. The appellant pressurized him to admit his niece, but he told the appellant to bring

the father of his niece. Thereafter, the appellant began to abuse him by using filthy language. He further deposed that he had sent the student to call the Kotwar. At that time, the appellant again abused him, picked up a wooden stick and assaulted on his forehead, due to which, blood oozed out therefrom. He further deposed that he had been deterred from performing his official duties by the appellant.

7. S.L. Mirche (PW-7) deposed that Tekram Ratre (PW-2) was posted as a Head Master in Primary School, Chicha. On the date of incident, Tekram Ratre (PW-2) was present in his school. His presence was recorded in attendance register (Ex. P-7).

8. Gajanan (PW-3) and Pratap (PW-4) deposed that on the date of incidence, Tekram Ratre (PW-2) was posted as a Head Master in Primary School, Chicha. Gajanan (PW-3) deposed that the appellant asked the complainant to admit his niece Nisha in the school who was near about 5½ years old. Complainant Tekram Ratre (PW-2) told the appellant that his niece was below 7 years of age, therefore, after completion of 7 years of age, she could be admitted in the school. The appellant pressurized the complainant to admit his niece, but the complainant told the appellant to bring the father of his niece. Thereafter, the appellant began to abuse the complainant by using filthy language and assaulted him with the wooden stick on his head. He narrated the incident immediately to Pratap (PW-4). Pratap (PW-4) also deposed in similar fashion.

9. Tekram Ratre (PW-2) deposed that he lodged the FIR (Ex. P-2) in Police Station, Patan. Sub-Inspector Dilip Chandrakar (PW-6) registered it on the basis of complaint made by Tekram Ratre (PW-2). Sub-Inspector Dilip Chandrakar (PW-6) deposed that he had sent the complainant to Primary Health Centre, Patan for medical examination. Dr. S.A. Ali (PW-1) deposed that he examined Tekram Ratre (PW-2) on 10-07-2003 and gave his report vide Ex. P-1.

10. The evidence of Tekram Ratre (PW-2) is duly corroborated by Gajanan (PW-3), Pratap (PW-4) and medical evidence.

11. So far as the offence u/s 332 IPC is concerned, intention to prevent or deter a public servant from discharging his duties as such public servant is an essential ingredient of charge under the second part of Section 332 IPC.

12. In the instant case, at the time of incident, complainant Tekram Ratre (PW-2) was discharging his official duties as a Head Master and the appellant was pressurizing him to admit his niece in the school and when the complainant refused to admit his niece, the appellant started abusing him and assaulted him also. Looking to the above circumstance and evidence adduced by the prosecution, it is established that the intention of the appellant was to prevent or deter a public servant from discharging his duties as a public servant.

13. For the foregoing reasons, I do not find any infirmity in the finding of conviction recorded u/s 332 IPC by the learned Special Judge and he rightly

convicted the appellant u/s 332 IPC.

14. As regards sentence, Shri N.S. Dhurandhar, learned counsel for the appellant argued that the incident took place on 10-07-2003 and the case is pending for about 9 years. At the time of incident, the appellant was suffering from Bipolar affective disorder in mania and he has remained in custody for 5 days, therefore, instead of sending him back to jail, fine amount may be enhanced and he may be sentenced for the period already undergone by him.

15. Shri. Sandeep Yadav, learned Deputy Government Advocate for the State opposed the above arguments.

16. Section 332 IPC provides that the offence committed thereunder shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both. A bare perusal of Section 332 IPC makes it evident that jail sentence is not mandatory.

17. Considering the facts and circumstances of the instant case evidence of Dr. Pramod Gupta (DW-1) and that jail sentence is not mandatory for the offence u/s 332 IPC, I do not feel it appropriate to send the appellant back to jail. I am of the view that ends of justice would be met if, while upholding the conviction of the appellant u/s 332 IPC, the jail sentence awarded to him is restricted to the period already served by him besides enhancing the amount of fine. In the result, the appeal is partly allowed. The conviction awarded to the appellant u/s 332 IPC is upheld. However, the jail sentence awarded to him is reduced to the period already undergone by him. So far as the sentence of fine is concerned, the amount of fine is enhanced from Rs. 2,0007/- to Rs. 7,0007/-. The appellant is granted 3 months time to deposit the above amount of fine, failing which, he shall be liable to undergo rigorous imprisonment for 3 months. If any amount has already been deposited towards fine, the same shall be adjusted in the amount of fine enhanced by this Court today.