



2026:CGHC:4092

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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 838 of 2005

- Paras Ram Rathore, S/o Late Meluram Rathore, Aged About 58 Years, Occupation Labourer, R/o. Village Bhalpahari, Police O.P. Hardibazar, P.S. Kusmunda, District Korba (C.G.)

... Appellant

versus

- State Of Chhattisgarh Through S.C. & S.T. Thana Korba, Tahsil & District Korba (C.G.)

... Respondent

For Appellant : Mr. Ashok Kumar Shukla, Advocate
For State : Ms. Prachi Singh, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

Judgment on Board

23.01.2026

- The appellant has filed present criminal appeal under Section 374(2) of the Criminal Procedure Code against judgment of conviction and order of sentence dated 28.09.2005 passed by learned Special Judge, Korba, District Korba (C.G.) in Special Session Case No. 15/2004 whereby the appellant has been convicted and sentenced in the following manner:-

Conviction		Sentence
U/s 294 of I.P.C.	:	R.I. for 3 months with fine of Rs. 500/- in default of payment R.I. for 15 days
U/s 3(1)(x) of S.C. S.T. (Prevention of Atrocities) Act, 1989	:	R.I. for 2 years, with fine of Rs. 1,000/- in default of payment R.I. for one month.

(Both sentences are directed to run concurrently).



2. Case of the prosecution, in brief, is that the complainant has filed a complaint before the Police Station Incharge, Hardi Bazar alleging that the persons belonging to Satnami Community have constructed structure in the year 1993-94 at village Bhalpahari and the same has been broken by the appellant along with Rajesh @ Komal S/o Paras Ram, Ku. Manju D/o Paras Ram and Ram Dulari W/o Paras Ram. It has also been contended by the complainant that when other persons objected them then they assaulted them with stick, axes and sword, abused by caste and also threatened that they will kill them if the said structure is re-constructed by them. On the basis of complaint filed by the complainant FIR bearing Crime No. 33 of 2002 dated 25.10.2002 was registered before the SC ST Police Station Korba for commission of offences under Sections 294 and 506 of I.P.C. The prosecution after completing the investigation submitted the charge-sheet before the learned Magistrate who has committed the matter to Special Judge Korba (Atrocities Act) for trial.
3. The prosecution to prove its case has examined witnesses namely Samelal Satnami (PW-01), Jethuram (PW-02), Itwar Singh (PW-03), R.P. Tandan, Dy. Superintendent of Police, AJAK, Korba (PW-04), Johan (PW-05), Kanhaiya (PW-06), Ayodhya Prasad (PW-07), A.W. Khan, Sub Inspector (PW-08) and has also exhibited documents namely complaint (Ex.P/1), F.I.R. (Ex. P/2), Caste Certificate dated 11.11.2002 issued by Sarpanch, Village Bhalpahari, Janpad Panchayat Pali, District Korba (Ex. P/3), domicile certificate (Ex. P/4), najri naksha (Ex. P/5), seizure (Ex. P/6) and arrest/Court surrender memo (Ex. P/7 & P/8).
4. The accused have not examined any witness but they were examined under Section 317 of Cr.P.C. wherein it has been stated that the



villagers have abused them and also filled the pit which has been dug out by him, also demolished Parasram's house, broken the fence and plea of false implication has been taken. To substantiate their innocence exhibited the documents namely statements of Samelal (Ex. D/1), Johan (Ex. D/2), Kanhaiya (Ex. D/3) and Ayodhya (Ex. D/4).

5. Learned trial Court on the basis of the evidence and material on record has convicted the accused as stated above but acquitted them for commission of offence under Section 506 of the I.P.C.. Learned trial Court while recording the conviction of the accused under Section 3(1) (x) of the S.C. and S.T. (Prevention of Atrocities) Act has taken into consideration the statement recorded under Section 313 of Cr.P.C., particularly in question No. 2 wherein the accused has admitted that complainant Samelal Satnami belongs to Scheduled Caste community, as such the fact that the complainant belonging to Scheduled Caste community is proved, therefore, on the basis of admission under Section 313 Cr.P.C. the trial Court has convicted the accused. So far as conviction under Section 506 is concerned, the accused has been discharged by the trial Court and with regard to Section 294 the trial Court has recorded its finding in para 18 that the present appellant has abused them and accordingly, it has convicted the present appellant for the offence as stated above. Being aggrieved with the judgment of conviction, the appellant has filed this appeal.
6. Learned counsel for the appellant would submit that even if the appellant has admitted the fact of the caste of the complainant under Section 313 Cr.P.C. still it cannot be a ground to convict as the prosecution has to prove their case beyond reasonable doubt and on the basis of the material collected by them during investigation. He would further submit that the statement recorded under Section 313



Cr.P.C cannot be used as evidence against the accused for conviction.

He would further submit that the caste certificate dated 11.11.2002 has been issued by the Sarpanch after the date of incident, therefore, it has no evidentiary value and even it has not been issued by the competent person, as such it cannot be taken into consideration that the appellant belongs to Scheduled Caste/Scheduled Tribe community and would submit that conviction of the appellant under Section 3(1)(x) of the S.C. and S.T. (Prevention of Atrocities) Act is illegal and liable to be set-aside by this Court. He would further submit that so far as Section 294 is concerned, there is no evidence brought on record to substantiate that the appellant has abused the complainant and the trial Court on perverse finding without appreciating evidence of the complainant has convicted the appellant and for the same set of evidence has acquitted the other accused namely Rajesh Kumar, therefore, on the same set of evidence, two contradictory views are not permissible under the Criminal Procedure Code and would pray for allowing the appeal.

7. Per contra learned counsel for the State opposing the submission would submit that finding recorded by learned trial Court is legal and justified. She would further submit that the accused himself has admitted in question No. 2 recorded under Section 313 Cr.P.C. that the complainant belongs to scheduled caste community, therefore, no further evidence is required to be adjudicated by the prosecution and even the caste certificate has already been proved as Sarpanch was examined before the learned trial Court as PW-03 and no cross-examination with regard to authority of the Sarpanch to issue such certificate has been made, as such, the submission made by learned counsel for the appellant cannot be considered at this juncture and would pray for rejection of the appeal. She would further submit that so



far as Section 294 is concerned, there was clinching evidence, particularly statement of victim who is best witness of the incident and there is no cross-examination to rebut the same, therefore, she would submit that judgment of conviction is legal, justified and does not warrant interference by this Court and would pray for dismissing the present appeal.

8. I have heard learned counsel for the parties and perused the records of the trial Court.
9. From the submission made by learned counsel for the parties, the point emerged for determination of this Court is:

"Whether specific admission of the accused under Section 313 of Cr.P.C. and exhibition of caste certificate (Ex. P/3) issued by the Sarpanch, the conviction of the appellant under Section 3(1)(10) of the S.C. and S.T. (Prevention of Atrocities) Act can be sustainable by this Court?"

10. To appreciate this point, this Court has to examine the scheme of Section 313 of Cr.P.C. which reads as under:

"313. Power to examine the accused. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court--

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has



committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.]"

11. From perusal of the provision, it is quite vivid that statement under Section 313 Cr.P.C. cannot be treated as evidence even accepted by the accused in his examination unless prosecution placed on record sufficient material to prove the guilt of the accused. The record of the case clearly demonstrates that the accused in question No. 2 has admitted the fact about the caste but in question No. 4 that the caste certificate of Samelal (Ex.P/3) has been issued by the witness according to which he is member of the Scheduled Caste community then he answered "I don't Know". In question No. 2 he has admitted and in question No. 4 he has denied the same, as such, there itself is contradiction in the statement of accused and also considering the well settled position of law that merely on the basis of statement made under Section 313 Cr.P.C. the conviction of accused cannot be ordered.
12. The Hon'ble Supreme Court in case of ***Bishnu Prasad Sinha and Another Vs. State of Assam*** reported in ***(2007) 11 SCC 467*** has examined the scheme of Section 313 and its evidentiary value and paragraphs 33 to 39 reads as under:

"**33.** We are not oblivious of the general proposition of law that confession would not ordinarily be considered the basis for a conviction. We must, however, at this stage, notice that this is one of those rare cases where an appellant had stuck to his own confessional statements. He did not make any attempt to retract. He even did not state that it was not truthful or involuntary.

34. It is well settled that statements under Section 313 of the Code of Criminal Procedure, cannot form the sole basis of conviction; but the effect thereof may be considered in the light of other evidences brought on record. (See Mohan Singh v.



Prem Singh [(2002) 10 SCC 236], State of U.P. vs. La..... [(1998) 4 SCC 336], and Rattan Singh vs. State of HP. [(1997) 4 SCC 161].}

35. In Alope Nath Dutta v. State of W.B. [2007 (12) SCC 230], this Court noticed the law in regard to the effect of a confessional statement of the accused in the following terms:

"102. Sections 24 to 30 deal with confession. Section 24 speaks of the effect of a confession made by an accused through inducement, threat or promise proceeding from a 'person in authority', whereas Section 25 and Section 26 deal with situations where such 'person in authority' is police. It is an institutionalized presumption against confession extracted by police or in police custody. In that frame of reference, Section 24 is the genus and Sections 25 and 26 are its species. In other words, Section 25 and Section 26 are simple corollaries flowing out of the axiomatic and generalized proposition (confession caused by inducement where inducement proceeds from a person in authority, is bad in law) contained in Section 24 . They are directed towards assessing the value of a confession made to a police officer or in police custody.

103. The policy underlying behind Sections 25 and 26 is to make it a substantive rule of law that confessions whenever and wherever made to the police, or while in the custody of the police unless made in the immediate presence of a magistrate, shall be presumed to have been obtained under the circumstances mentioned in Section 24 and, therefore, inadmissible, except so far as is provided by Section 27 of the Act.

104. Section 164, however, makes the confession before a Magistrate admissible in evidence. The manner in which such confession is to be recorded by the Magistrate is provided under Section 164 of the Code of Criminal Procedure. The said provision, inter alia, seeks to protect an accused from making a confession, which may include a confession before a Magistrate, still as may be under influence, threat or promise from a person in authority. It takes into its embrace the right of an accused flowing from Article 20(3) of the Constitution of India as also Article 21 thereof. Although, Section 164 provides for safeguards, the same cannot be said to be exhaustive in nature. The Magistrate putting the questions to an accused brought before him from police custody, should some time, in our opinion, be more intrusive than what is required in law. [See Babubhai Udesinh Parmar v. State of Gujarat 2006 (12) SCC 268]

105. In a case, where confession is made in the presence of a Magistrate conforming the requirements of Section 164, if it is retracted at a later stage, the court in our



opinion, should probe deeper into the matter. De-...
procedural safeguards contained in the said provision. 2024 CGHC:4092
our opinion, the learned Magistrate should satisfy himself
that whether the confession was of voluntary nature. It has
to be appreciated that there can be times where despite
such procedural safeguards, confessions are made for
unknown reasons and in fact made out of fear of police.

106. Judicial confession must be recorded in strict
compliance of the provisions of Section 164 of the Code of
Criminal Procedure. While doing so, the court shall not go
by the black letter of law as contained in the
aforementioned provision; but must make further probe so
as to satisfy itself that the confession is truly voluntary and
had not been by reason of any inducement, threat or
torture."

It was further opined :

"109. In a case of retracted confession, the courts while
arriving at a finding of guilt would not ordinarily rely solely
thereupon and would look forward for corroboration of
material particulars. Such corroboration must not be
referable in nature. Such corroboration must be
independent and conclusive in nature."

36. In *State (NCT of Delhi) v. Navjot Sandhu* [(2005) 11 SCC
600], this Court stated :

"32. As to what should be the legal approach of the court
called upon to convict a person primarily in the light of the
confession or a retracted confession has been succinctly
summarised in *Bharat v. State of U.P.* [(1971) 3 SCC 950]
Hidayatullah, C.J., speaking for a three-Judge Bench
observed thus: (SCC p. 953, para 7)

"7..... Confessions can be acted upon if the court is
satisfied that they are voluntary and that they are true.
The voluntary nature of the confession depends upon
whether there was any threat, inducement or promise
and its truth is judged in the context of the entire
prosecution case. The confession must fit into the
proved facts and not run counter to them. When the
voluntary character of the confession and its truth are
accepted, it is safe to rely on it. Indeed a confession, if it
is voluntary and true and not made under any
inducement or threat or promise, is the most patent
piece of evidence against the maker. Retracted
confession, however, stands on a slightly different
footing. As the Privy Council once stated, in India it is
the rule to find a confession and to find it retracted later.
A court may take into account the retracted confession,
but it must look for the reasons for the making of the
confession as well as for its retraction, and must weigh
the two to determine whether the retraction affects the



voluntary nature of the confession or not. If the court is not satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its use. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an afterthought and that the earlier statement was true"

37. We may also notice that in *Sidharth v. State of Bihar* [(2005) 12 SCC 545], this Court opined :

"16. The confession made by the appellant Arnit Das is voluntary and is fully corroborated by the above items of evidence. The Sessions Judge was perfectly justified in relying on the confession made by the appellant Arnit Das."

38. In a case where sufficient materials are brought on records to lend assurance to the Court in regard to the truthfulness of the confession made, which is corroborated by several independent circumstances lending assurance thereto, even a retracted confession may be acted upon. {See *State of Tamil Nadu v. Kutty* [(2001) 6 SCC 550]; *Bhagwan Singh v. State of M.P.* [(2003) 3 SCC 21]; and *Sarwan Singh Rattan Singh v. State of Punjab* [AIR 1957 SC 637].}

39. We have analysed at some length the corroborative nature of evidences brought on records by the prosecution. The fact that the appellants were seen talking to each other, absence of the appellant No.2 from the bus in question, his effort to sleep in another bus leaving his own bus, his absence for about 1 to 1^{1/2} hour, injury/stains on his face and change of his garments during that period, all stand well proved. They, in our considered view, lend corroboration to prosecution case as also the judicial confession made by the appellant No.1. Indeed corroboration to the said confession and the circumstantial evidences as noticed hereinbefore can also be judged from the statements made by the appellant No.2 in his examination under Section 313 of the Code of Criminal Procedure. "

13. Similarly, the Hon'ble Supreme Court in case of ***Edmund S. Lyngdoh vs. State of Meghalaya*** reported in **(2016) 15 SCC 572** wherein paragraph 21 reads as under:



"21. Where the accused gives evasive answers in his cross examination under Section 313 Cr.P.C., an adverse inference can be drawn against him. But such inference cannot be a substitute for the evidence which the prosecution must adduce to bring home the offence of the accused. The statement under Section 313 Cr.P.C. is not an evidence. In *Bishnu Prasad Sinha v. State of Assam* [(2007) 11 SCC 467], this Court held that conviction of the accused cannot be based merely on his statement recorded under Section 313 Cr.P.C. which cannot be regarded as evidence. It is only the stand or version of the accused by way of explanation explaining the incriminating evidence/circumstances appearing against him. The statement made in defence by the accused under Section 313 Cr.P.C. can certainly be taken aid of to lend credence to other evidence led by the prosecution. The statements made under Section 313 Cr.P.C. must be considered not in isolation but in conjunction with the other prosecution evidence."

14. In light of the above stated position and taking into consideration that on the basis of the statement made under Section 313 Cr.P.C. the accused cannot be convicted, I am of the view that the finding recorded by the learned trial Court on the basis of question made under Section 313 Cr.P.C. cannot be a sole ground for conviction unless the other material is brought on record by the prosecution to prove the case of the accused beyond reasonable doubt.
15. The prosecution to prove the caste of the complainant has placed on record the certificate issued by the Sarpanch and also examined Sarpanch before the trial Court but the certificate has not been issued by the competent authority as per law laid down by the Hon'ble Supreme Court in case of **Kumari Madhuri Patil vs. Addl. Commissioner** reported in **1994 (6) SCC 241**. This Court relying upon the judgment of **Kumari Madhuri Patil (supra)** and other judgments in case of **Pilla Bai and Others vs. State of Chhattisgarh** in **CRA No. 340/2004** decided on 05.01.2023 has held that temporary caste certificate issued after the date of incident by the Sarpanch has no evidenciary value for determination of caste of the victim to attract the



offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and has held in paragraph 21 as under:

"21. The procedure for issuance of caste certificate has been well prescribed by the Hon'ble Supreme Court in the matter of **Ku. Madhuri Patil** (supra) which laid down the forum and procedure for issuance of/assailing caste certificate and the status of candidate. Thus, in view of the aforesaid dictum of Hon'ble the Supreme Court, the aforesaid caste certificate has no evidentiary value, as it has not been issued by incompetent authority and the prosecution has failed to discharge his burden to prove the caste as discussed above. Apart from this, from the perusal of evidence available on record, it is evident that the appellants have not abused the complainants in filthy language knowing that they belong to Scheduled Tribe Community. This can be fortified from the bare perusal of the statement of the victim – Rupnath."

16. Considering the law laid down by the Hon'ble Supreme Court, evidence and material on record, it is quite vivid that the prosecution has failed to prove the caste of the complainant beyond reasonable doubt, therefore, the conviction of the appellants for commission of offence under Section 3(i)(x) of the SC/ST Act and also considering that solely on the basis of the statement of the accused made under Section 313 of Cr.P.C the conviction of the appellant for commission of offence under Section 3(1)(x) of the S.T. S.C. (Prevention of Atrocities) Act deserves to be set-aside and accordingly, appellant is acquitted from this charge.
17. So far as conviction of the appellant under Section 294 of IPC is concerned wherein the appellant has been convicted for three months R.I. with fine of Rs. 500/-, it has been contended by the learned counsel for the appellant that the mitigating factors are available on record as the incident took place on 24.10.2002 and more than 23 years have already been lapsed, the appellant has already undergone the jail sentence of 04 days, after releasing on bail he never misused the liberty granted to him and except this case, he has no past criminal



antecedents. The appellant is now aged about 85 years and settled with the family, as such, he would pray that the sentence imposed by the learned trial Court may be reduced to the period already undergone by him.

18. Before advertng to the submission advanced by counsel for the appellant, this Court has to ascertain what may be mitigating factors to apply the principle of sentence already undergone. The mitigating factors are always subject to examination by Hon'ble the Supreme Court and various High Courts. Hon'ble the Supreme Court in case of **State of M.P. Vs. Najab Khan [(2013) 9 SCC 509]** and **Raj Bala Vs. State of Haryana & others [(2016) 1 SCC 463]**, **Kokaiyabai Yadav vs State of Chhattisgarh [(2017) 13 SCC 449]** and has held that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix i.e. nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which should be considered and no undue sympathy should be considered by the Court while reducing the sentence. The Court has also held that the Court while reducing the sentence should consider the criminal behavior of the accused.
19. In light of the law laid down by Hon'ble the Supreme Court and the facts of the case, it is quite vivid that the assault was made in intoxication condition and appellant remained in jail during trial for 04 days along with fine amount of Rs. 500/- and now the accused must have been aged about 85 years as at the time of trial, he was 58 years old. The prosecution has also not placed any material on record indicating the criminal antecedents of appellant, he has been regularly



attending the trial Court after releasing by this Court on bail and has not misused the liberty granted to him while granting bail by this Court, I am of the view that there are sufficient mitigating factors available on record to reduce the sentence to the period already undergone by the appellant.

20. Accordingly, affirming the conviction under Section 294 of IPC, the sentence is reduced to the period already gone by the appellant by enhancing the fine amount from Rs. 500/- to Rs. 2,000/-. The difference amount of fine i.e. Rs. 1,500/- (Rs. Ten Thousand only) shall be deposited by the appellant before the trial Court within two months from the date of receipt of copy of this order and the same shall be payable by the trial Court to the victim as per Section 357 (3) of the Cr.P.C. as compensation within further one month from the date of deposit by the appellant.
21. Consequently, the instant appeal is partly allowed to the extent indicated hereinabove.
22. From the records, it appears that the appellant is on bail and his bail bonds shall continue for a further period of six months from today in view of Section 437-A of the Code of Criminal Procedure, 1973.
23. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-
(Narendra Kumar Vyas)
Judge