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Ramdeen Jat Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Oct-12-2012

Appellant : Ramdeen Jat

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. Rajesh Nema

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH : HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.988/1997 Ramdeen Jat VERSUS State of Madhya Pradesh ---------- Shri Rajesh Nema, counsel for the appellant. Shri Puneet Shroti, Panel Lawyer for the State/respondent. ----------

JUDGMENT

(Delivered on the 12th day of October, 2012) The appellant has preferred this appeal against the judgment dated 23.4.1997 passed by the learned Special Judge under SC/ST (Prevention of Atrocities) Act, 1989, Sehore in Special case No.195/1995, whereby the appellant was convicted for the offence punishable under section 3 (1) (x) of the SC/ST (Prevention of Atrocities) Act, 1989 (hereinafter it will be referred to as 'Special Act') and sentenced for 6 months' rigorous imprisonment with fine of Rs.2,000/- and in default of payment of fine, 1

month's additional rigorous imprisonment was also directed.

2. The prosecution's case, in short, is that, on 6.9.1995, the complainant Ramgopal Malviya (P.W.1), who -:- 2 -:- Criminal Appeal No.988 of 1997 was a teacher in Middle School, Khachrod was teaching in the school. At about 12.45 p.m. in the noon, the appellant came inside the class and directed the complainant to go with him. In recess, when the complainant and his companions Radheshyam Sharma (P.W.3) and Saeed Ahmed Khan (P.W.2) and other teachers were going to take tea to a square near Bus Stand Khachrod, the appellant met the complainant and abused him by obscene words and words relating to his caste. He has also stated that he will push a shoe in the mouth of the complainant and thereafter, he tried to assault the complainant but, the companions of the complainant held the hands of the appellant and ultimately, the appellant left the spot, after giving threat to the complainant. The complainant Ramgopal had lodged an FIR, Ex.P/2 at Police Station Siddiqueganj at about 6 p.m. in the evening. Certificates were given in favour of the complainant that he was working as an Assistant Teacher in the Middle school, Khachrod and he was of caste Balai. and therefore, he was a member of a scheduled caste. After due investigation, a charge-sheet was filed before the Special Judge, Sehore, camp at Ashtha.

3. The appellant abjured his guilt. He has stated before the trial Court that he gave a sum of Rs.2,000/- to the complainant and therefore, he was demanding the money -:- 3 -:- Criminal Appeal No.988 of 1997 from the complainant. When he demanded the money before the companions of the complainant, he had lodged a false FIR against the appellant, so that a pressure may be created over the appellant and the appellant could not recover the amount. However, no defence evidence was adduced.

4. The learned Special Judge, after considering the evidence adduced by the parties, acquitted the appellant from the charges of offence punishable under section 506 of IPC but, convicted him for the offence punishable under section 3 (1) (x) of the Special Act and sentenced him as mentioned above.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the appellant has submitted that the incident took place in the month of September, 1995, whereas the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Rules were enacted in the month of June, 1995. According to the Rule 7 of those rules, the investigation was to be done by a police officer, not below the rank of Deputy Superintendent of Police, whereas the investigation was done by Sub Inspector Shri B.S.Parihar (P.W.5) and therefore, such mistake was fatal in nature. It was not proved beyond doubt that the complainant was a member of scheduled caste. Similarly, it was not proved beyond doubt that the appellant insulted the victim on the -:- 4 -:- Criminal Appeal No.988 of 1997 basis of the caste. Under such circumstances, the learned Special Judge has committed an error in convicting the appellant for the offence punishable under section 3 (1) (x) of the Special Act and therefore, it is prayed that the appellant may be acquitted.

7. On the other hand, the learned Panel Lawyer has submitted that the conviction as well as sentence directed by the trial Court appears to be correct.

8. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is to be considered as to whether violation of Rule 7 of the aforesaid rules was done by the investigation officer?. If yes, then, what would be the effect?. Whether the caste of the complainant was not proved?. And whether the appeal filed by the appellant can be accepted?.

9. It is true that the investigation in the case was done by Sub Inspector Shri B.S.Parihar (P.W.5), whereas according to the Rule 7 of the aforesaid rules of 1995, investigation was to be done by a police officer, not below the rank of Deputy Superintendent of Police. In this context, the judgment passed by the Single Bench of this Court in case of Dhanraj Singh Vs. State of Madhya Pradesh. [(2006) (1) MPJ.70]. may be referred, in which it is held that those -:- 5 -:- Criminal Appeal No.988 of 1997 rules are mandatory and therefore, if Rule 7 was flouted then, the entire investigation is vitiated and conviction for the offence punishable under the Special Act cannot be maintained but, the accused can be convicted for other offences including the IPC offences. In the present case, if the appellant

cannot be convicted for the offence punishable under section 3 (1) (x) of the Special Act then, in alternate, no offence is made out against him according to the provisions of any other Act or IPC.

10. Ramgopal (P.W.1) has stated that he was Balai by caste and caste certificate, Ex.P/4 was given by the Head Master of the school. Saeed Ahmed Khan (P.W.2) has proved the caste certificate, Ex.P/4 but, he could not say that who issued the certificate at that time because, the witness Saeed Ahmed Khan was not the Head Master of the school at that time. If a person who is appointed to do some Government job then, certainly he may be appointed on the basis of the caste and reservation and his caste may be noted in his service book and if controlling officer has given a certificate about the caste of the complainant then, it cannot be said that the certificate was issued by any unauthorized person. The Head Master of the school could issue a certificate on the basis of the service record of the complainant and therefore, if he has issued a certificate that the complainant -:- 6 -:- Criminal Appeal No.988 of 1997 was of the caste Balai then, it should be accepted. Hence, the testimony of the complainant about his caste is duly corroborated by the caste certificate, Ex.P/4 issued by his controlling authority and therefore, it was proved that the complainant was Balai by caste and therefore, he was a member of scheduled caste.

11. The complainant had lodged an FIR at Police Station Siddiqueganj, in which he has stated that he was a public servant and such a crime was done with him as a public servant. FIR was registered for the offence punishable under section 353 of IPC but, the trial Court did not frame the charges of that offence and therefore, it is apparent that the complainant was not considered as a public servant at the time of the incident. The complainant has stated that the appellant entered in his class room and abused him in the class room, whereas, it was no where mentioned in the FIR that any quarrel took place in the class room. On the contrary, it was mentioned in the FIR that when the complainant was going to the tea stall, a quarrel took place in the way. The complainant Ramgopal has tried to show that the incident took place at two places. Firstly in the class room and secondly near the hotel. However, the eye witnesses Saeed Ahmed Khan (P.W.2), Radheshyam (P.W.3) and Kamal Singh (P.W.4) have proved that the quarrel took

-:- 7 -:- Criminal Appeal No.988 of 1997 place between the complainant and the appellant in the way. Looking to their testimony, it is proved beyond doubt that a quarrel took place between the appellant and the complainant and the basis of the quarrel was that the appellant was demanding a sum from the complainant, whereas the complainant had stated that he gave a sum of Rs. 2,000/- to the appellant.

12. The most important fact in the case is that as to whether any insult was caused by the appellant of the complainant on the basis of the caste?. It is apparent that quarrel took place due to a money transaction. If the appellant had any hatred with scheduled caste persons then, it was not possible for him to enter into a money transaction with the complainant and therefore, it cannot be said that the quarrel took place due to caste of the complainant.

13. The complainant Ramgopal has stated that the appellant abused him on the basis of the caste. He has stated that the appellant said before so many persons Madarchod Ballatte, tere muh me gu (tatti) ka juta ghused dunga. but, the other eye witnesses namely Saeed Ahmed Khan, Radheshyam and Kamal Singh did not corroborate that the appellant said something to the complainant on the basis of the caste. Saeed Ahmed Khan has stated that the appellant abused the victim with some -:- 8 -:- Criminal Appeal No.988 of 1997 filthy abuses, whereas Kamal Singh has stated that exchange of words took place between them, whereas Radheshyam has stated that the appellant abused the victim with routine filthy abuses. All the three witnesses were declared hostile by the prosecution. However, they were the co-teachers of the complainant and there was no possibility that they could support the appellant. If they would have supported the appellant then, they would have turned hostile in toto, whereas they said about the incident and quarrel. Under such circumstances, the testimony of the complainant is not acceptable being not corroborated by other eye witnesses that the appellant abused him on the basis of the caste.

14. The complainant has stated that he had lodged an FIR at outpost Khachrod and thereafter, he went to the Police Station Siddiqueganj, where he had submitted a written report. No report has been submitted alongwith the charge-

sheet, which was lodged at outpost Khachrod. Similarly, no report was submitted along with the charge- sheet by the police. On the contrary, it appears that the incident took place at about 12.45 p.m. and the complainant had an opportunity to visit the Police Station Siddiqueganj within one or two hours but, he went to the Police Station in the evening. If the incident took place in the campus of the -:- 9 -:- Criminal Appeal No.988 of 1997 school then, it was for the complainant to submit a report to the Head master and got it forwarded to the SHO Police Station Siddiqueganj. If the teaching was over at 4.30 p.m. then, the complainant could go to the Police station Siddiqueganj on a motorcycle within half an hour and therefore, the FIR which was lodged at 6.40 p.m. in the evening, appears to be lodged with delay of atleast 2 hours and therefore, it appears that the complainant after due deliberations with his friends etc. lodged an FIR against the appellant and implicated him for the offence punishable under section 3 (1) (x) of the Special Act, otherwise, if the appellant abused him on the basis of the caste then, there was no reason by which other witnesses could not have corroborated him for that offence. Under such circumstances, where the independent witnesses are not corroborating the testimony of the complainant and FIR lodged by the complainant was delayed by atleast 2 hours, testimony of the complainant cannot be believed. It is not proved beyond doubt that the appellant abused the complainant on the basis of the caste.

15. As discussed above, it is not proved beyond doubt that the appellant abused the victim on the basis of the caste. The quarrel did not take place on the basis of the caste but, it took place due to a money transaction between -:- 10 -:- Criminal Appeal No.988 of 1997 the parties. Under such circumstances, it is not proved that the appellant insulted the complainant on the basis of the caste and therefore, the appellant could not be convicted for the offence punishable under section 3 (1) (x) of the Special Act. Hence, the appeal filed by the appellant appears to be acceptable. Consequently, it is hereby accepted. The conviction as well as the sentence directed against the appellant for the offence punishable under section 3 (1) (x) of the SC/ST (Prevention of Atrocities) Act is hereby set aside. The appellant is acquitted from the aforesaid charges. He would be entitled to get the fine amount back, if he has deposited the same.

16. At present, the appellant is on bail. His presence is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged.

17. A copy of the judgment be sent to the trial Court along with its record for information and compliance. (N.K.GUPTA) JUDGE 12 10/2012 Pushpendra

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