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Rameshwar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-13-2012

Appellant : Rameshwar

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. Y.K.Gupta

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH : HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.1839/1998 Rameshwar VERSUS State of Madhya Pradesh ---------- Shri Y.K.Gupta, counsel for the appellant. Shri Ajay Tamrakar, Panel Lawyer for the State/ respondent. ----------

JUDGMENT

(Delivered on the 13th day of July, 2012) The appellant has preferred this appeal against the judgment dated 24.7.1998 passed by learned Special Judge under SC/ST (Prevention of Atrocities) Act, Raisen in Special case No.283/1996, whereby the appellant was convicted for offence punishable under section 3 (1) (x) of SC/ST (Prevention of Atrocities) Act (hereinafter it will be referred to as 'Special Act') and sentenced for 6 months' simple imprisonment with fine of Rs.200/-. In default of payment of fine, simple imprisonment for one month was also directed.

2. Prosecution's case, in short, is that, on 18.5.1994 at about 11.00 a.m. in the morning, the appellant Rameshwar was taking bath in a hand-pump situated at ::

2. :: Criminal Appeal No.1839 of 1998 village Gahalpur, Police Station Badi, District Raisen. The prosecutrix Munni Bai (P.W.1) came to the spot along with Leelawati Bai (P.W.2) and Guddi Bai (P.W.5) to fetch some water. Since the appellant was bathing there and therefore, he prohibited her from taking water by the hand-pump. He shouted that the prosecutrix was Chamar by caste and therefore, if some water from her utensil comes over the appellant then, it would be objectionable for the appellant on the basis of the caste and therefore, the appellant had thrown her utensils from the hand-pump and thereafter, the appellant and other co-accused persons had assaulted the prosecutrix as well as other victims. The prosecutrix had lodged an FIR, Ex.P/1 at Police Station Badi on the same day at about 6.30 p.m. There was no visible injury to any of the victims and therefore, they were not sent for their medical examination. After due investigation, a charge-sheet was filed before the Sessions Judge/Special Judge under the Special Act.

3. The appellant abjured his guilt. He did not take any specific plea in defence but, he has stated before the trial Court that he was taking bath in that hand-pump and the prosecutrix was making hurdle in his bathing and therefore, she was directed to fetch the water after sometime but, she shouted upon the appellant and thereafter, with ::

3. :: Criminal Appeal No.1839 of 1998 help of her relatives, a false report was lodged against the appellant. However, no defence evidence was adduced from the side of the appellant.

4. Learned Special Judge after considering the evidence adduced by the prosecution, acquitted the appellant from the charges of offence punishable under section 3 (1) (xi) of the Special Act whereas, other co-accused persons were acquitted from the charges of offence punishable under sections 3 (1) (x) and (xi) of the Special Act but, the appellant was convicted and sentenced as mentioned above.

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

6. Learned counsel for the appellant submits that there was an equal allegation against all the three accused persons. There is a lot of contradiction in the statements of the eye witnesses. They have stated in a tainted manner. They tried to save other co-accused persons and made allegations against the appellant in an afterthought manner and therefore, the trial Court has acquitted the other co-accused persons on the same ground whereas, the appellant was convicted for that offence. Under such circumstances, it is prayed that the appeal filed by the appellant may be accepted. ::

4. :: Criminal Appeal No.1839 o

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

8. It is apparent from the case file of the trial Court that the appellant did not challenge that the prosecutrix was of scheduled caste. He did not challenge that the incident took place at a public place. Defence of the appellant is that he was bathing and therefore, he prohibited the prosecutrix and other women from taking water till he takes bath, whereas it is alleged by the witnesses that the appellant insulted them on the basis of their caste and prohibited them from taking water by that hand-pump. In this context, if evidence of the prosecutrix Munni Bai (P.W.1) , Leelawati Bai (P.W.3) and Guddi Bai (P.W.5) is perused then, it would be clear that there is a lot of contradiction between their statements and also there are contradictions between their present statements and statements given to the police. Statement given by Munni Bai is having material contradiction with the FIR lodged against the appellant. In FIR, it is no where alleged that the appellant assaulted the victim Munni Bai by Chappal. It is alleged against the appellant in the FIR that the appellant did not permit them to take water from the hand-pump till he takes bath and thereafter it is alleged that the appellant raised from the ::

5. :: Criminal Appeal No.1839 of 1998 hand-pump and threw utensils of the prosecutrix, whereas other co-accused persons had assaulted the victim by Chappal etc. At present, Guddi Bai has stated that the appellant Rameshwar

assaulted the victim Munni Bai by a Chappal.

9. All the three witnesses have stated against the accused Shyam and Barelal but, their evidence was disbelieved by the trial Court and therefore, accused Shyam and Barelal were acquitted. In para 5 of her statement, the prosecutrix Munni Bai has stated that when she reached to the hand-pump, Rameshwar and Shyam were taking bath. Thereafter, Rameshwar prohibited her that they should not take water till they take bath otherwise by process in which they would take water, water will fall upon them but the prosecutrix did not accept the prohibition and she held the handle of the hand-pump. She has accepted that the appellant did not assault her. She has also accepted that she did not snatch her hand from the handle of the hand- pump but, he threw her utensils of water from that place. Similarly, Leelawati Bai (P.W.3) has accepted in her cross- examination that allegations made in her examination-in- chief were not the same as mentioned in her case diary statement Ex.D/3. She has accepted that she did not inform the police that the appellant assaulted the victim Munni Bai ::

6. :: Criminal Appeal No.1839 of 1998 by a Chappal. Similarly, Guddi Bai (P.W.5) has alleged that the appellant Rameshwar told them that Thadi Raho chamariyo, hum naha le, nal Chitha ho jayega.. Thereafter, Guddi Bai and Munni Bai kept their utensils below the hand-pump and started flowing water and therefore, Rameshwar threw their utensils. Such type of allegation, which is told by the witness Guddi Bai in her examination-in-chief is no where mentioned in the FIR. It appears that the prosecutrix and her relatives were bent upon to allege that the appellant was interested in prohibiting the prosecutrix etc. to take water from the hand- pump on the basis of the caste but, if their evidence is considered consolidately then, it would be apparent that prior to that day they were never prohibited to take water from that hand-pump by the appellant or anyone in the village. Since the appellant was taking bath and the prosecutrix and her companions were taking water forcefully from the hand-pump therefore, it appears that the appellant threw their utensils in anger. He never said that being members of scheduled caste, they were not entitled to get water from that hand-pump. If the appellant was intended to prohibit the prosecutrix and her companions for that reason then, he should not have prohibited them for that small period until he

takes bath but, he could have ::

7. :: Criminal Appeal No.1839 of 1998 prohibited them that they should not take water from that hand-pump because they were of the scheduled caste.

10. Under such circumstances, where FIR was lodged with delay of atleast six hours, it appears that a quarrel took place at the hand-pump because the appellant prohibited the prosecutrix etc. not to take water when he was bathing and thereafter, an exaggerated FIR was lodged after consultation with some other members of that community. Otherwise, the incident took place at about 11 a.m. in the morning and the police station was hardly 6 kms away from there then, the prosecutrix could have reached to the police station within two hours but, FIR was lodged at 6.30 p.m. in the evening and therefore, it is delayed by at least 5-6 hours. Under such circumstances, after considering the evidence of the prosecutrix and her companions, which are not supported by any independent witness, it appears that a small quarrel took place at the hand-pump because the appellant prohibited them to take water during his bath, was produced in a tainted manner that the prosecutrix and her companions were deprived to take water from the hand- pump on the basis of their caste. It is no where proved that the appellant prohibited the prosecutrix and her companions from taking water from the hand-pump on the basis of the caste and therefore, no insult has been caused to the ::

8. :: Criminal Appeal No.1839 of 1998 prosecutrix on the basis of the caste. In such a case, the appellant could not be convicted for offence punishable under section 3 (1) (x) of the Special Act. Learned Special Judge has erred in convicting the appellant for that offence, whereas he acquitted the other 2 accused persons having the same allegations against them. Appreciation of evidence was not properly done by the learned Special Judge and therefore, this anomaly was caused.

11. On the basis of the aforesaid discussion, it is apparent that the appellant cannot be convicted for offence punishable under section 3 (1) (x) of SC/ST (Prevention of Atrocities) Act and therefore, appeal filed by the appellant appears to be acceptable and hence, it is accepted. Conviction as well as sentence directed against the appellant by the trial Court is hereby set aside. The appellant

is acquitted from the charges of offence punishable under section 3 (1) (x) of SC/ST (Prevention of Atrocities) Act. He is entitled to get the fine amount back from the trial Court, if he has deposited it.

17. Presence of the appellant is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged. ::

9. :: Criminal Appeal No.1839 o

18. Copy of the judgment be sent to the trial Court with its record for information and compliance. (N.K.GUPTA) JUDGE 13 7/2012 Pushpendra

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