

Dharamdas Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-29-2012

Appellant : Dharamdas

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. N. S. Ruprah

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SB: Honble Mr. Justice N.K.Gupta, J.Criminal Appeal No.1448 of 1996 Dharamdas alias Kunjilal Vs. State of Madhya Pradesh

----- Shri N. S. Ruprah, counsel for the appellant. Shri G. S. Thakur, Panel lawyer for the respondent-State.

JUDGMENT

th (Delivered on the 29 day of June, 2012) The appellant has preferred this appeal against the judgment dated 8.8.1996 passed by the Second Additional Sessions Judge, Mudwara (Katni) as a Special Judge under SC/ ST (Prevention of Atrocities) Act in Special Case No.39/1995 whereby the appellant was convicted for offence punishable under Section 294 of I.P.C and Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989 (hereinafter it is mentioned as Special Act.) and sentenced with fine of Rs.250/- and six months rigorous imprisonment with

fine of Rs.250/- and in default of payment of fine he was to undergo for one month simple imprisonment for each default.

2. Prosecution's case in short is that the complainant Cheti Bai was a Sweeper by caste. She was elected as a Sarpanch of Gram Panchayat, Gurjikan. Being a Sarpanch 2 Criminal Appeal No.1448 of 1996 she was making construction of Waiting house. The appellant went to the spot and abused her on basis of the caste and insulted her. He also told her that he was Post Master of the Village and he will destroy postal Dak of the complainant. A written report Ex.P/1 was sent to the Additional Superintendent of Police, Katni. From Janpad Panchayat Rithi some letters were sent to SHO, Police AJ.Omti, Jabalpur. At Police Station AJK, Omti FIR was registered on 12.4.1995 and matter was taken into investigation. After due investigation charge sheet was filed before Sessions Judge/Special Judge, Jabalpur and case was transferred to second Additional Sessions Judge/Special Judge Mudwara (Katni) District Jabalpur.

3. The appellant abjured his guilt. He took a plea that Panchayat was making a Waiting house on the land belonging to the appellant and therefore, the appellant had lodged a civil suit before concerned Civil Court at Kani and an injunction was given by that Court. Under such circumstances, there was no reason for the appellant to quarrel with the complainant in such a manner. Since the complainant who was bent upon to construct a building on the land of the appellant and she could not do so and she was also summoned by the civil Court in a contempt matter therefore, a false FIR was lodged against the appellant. However, no defence evidence was adduced. 3 Criminal Appeal No.1448 o

4. After considering the prosecution's evidence the learned Additional Sessions Judge/Special Judge acquitted the appellant from the charges of offence punishable under Section 506-B of I.P.C and convicted him for offence punishable under Section 294 of I.P.C and Section 3(1)(x) of the Special Act and sentenced as mentioned above.

5. I have heard the learned counsel for the parties at length 6. Learned counsel for the appellant has submitted that a false case was lodged by Cheti Bai by taking advantage of her caste. The appellant had a stay order of a competent Court in his

favour and therefore, there was no need for the appellant to take quarrel with the complainant. Secondly for consideration of offence punishable under Section 3(1)(x) of the Special Act place of incident should be a public place whereas the victim Cheti Bai (P.W.2) has admitted in her statements that quarrel took place in the house and therefore, no offence punishable under Section 3(1)(x) of the Special Act will be constituted. Similarly no witness told about any obscene words told by the applicant and therefore, no offence punishable under Section 294 of I.P.C may be constituted.

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

8. Cheti Bai (P.W.2) has stated that she was directed by Tahsildar for construction of Waiting house and therefore, 4 Criminal Appeal No.1448 of 1996 she started to construct a Waiting house at the place where plinth was constructed. She has stated that the appellant abused her that she remains to be Mehetrani. Tatti Saaf Karnewali. and if she became a Sarpanch then she is not a Lord Commander.. In support of the complainant Sudama (P.W.1), Sitaram (P.W.3), Siyabai (P.W.4) and Keshav Prasad (P.W.5) were examined. Out of them Siyabai and Keshav Prasad turned hostile whereas, Sudama and Sitaram supported the prosecution story. However, in the cross- examination Cheti Bai herself accepted in para 7 that a competent Court has granted stay against the construction which was being done by the Gram Panchayat. She has also accepted that a case of contempt was also pending against her in Civil Court because she did not comply the order passed by the Civil Court. She has submitted that she was complying with the order given by the Tahsildar and she does not knot that whether the Civil Court is superior than Tahsildar or not. In para 9 she has admitted that appellant gave such abuses after entering in her house and at that time there was nobody present in the house. Under such circumstances, it appears that Sudama and Sitaram are concocted witnesses. They were not present at the time of incident.

9. Under such circumstances, where Sitaram has told that incident took place at the spot where construction was going on and Sudama has told that he was standing below a neem tree in front of the house of the complainant, a lot of

material 5 Criminal Appeal No.1448 of 1996 contradiction is visible in their entire evidence with respect to the evidence of the complainant. Sudama has accepted in para 7 of his statement that he was also a witness of the complainant Cheti Bai in a Civil Case which was pending before the Civil Judge Class II. He has accepted in para 8 that when he was called by the Sarpanch thereafter, he went to the spot. Under such circumstances, it would be clear that Sudama was not at all an eye witness. He has also accepted in para 7 that he was a member of the Janpad Panchayat from that Village and therefore, he gave a letter Ex.P/7 to SHO, Police Station AJK, Omti, Jabalpur and copy was given to the Additional Superintendent of Police, Katni Ex.P/8. It appears that being a Member of Janpad Panchayat he was interested in construction of that Waiting house and therefore, to create a pressure upon the appellant he wrote such a letter to SHO by which a case was registered though there was a stay granted by the Civil Court against the construction. Under such circumstances, Sudama appears not only to be an interested witness but he is the person who constructed a case for the complainant.

10. The complainant Cheti Bai has accepted that on the next day of the incident, she went to the Police Station Sallaiya but, she was not sure as to whether any FIR was registered or not but, she has accepted that SHO Sallaiya has done some proceedings. Report lodged at Police Station Sallaiya was an FIR which is not produced in the present case 6 Criminal Appeal No.1448 of 1996 therefore, it would be apparent that case is cooked thereafter. FIR Ex.P/1 written to the Additional S.P., Katni was written much after the date of the incident. No date is mentioned on that application Ex.P/1. However, the case was registered on 12.4.1995 i.e approximately four months after the incident. Looking to the conduct of the Member, Janpad Panchayat, a doubt is created that after four months of the alleged incident a false FIR was prepared and lodged. If text of the FIR is perused then it would be clear that since she was unable to construct a Waiting house and therefore, she had shown her inability in that complaint and allegations were made against the appellant.

11. The complainant has accepted that the incident had taken place in her house where nobody was present then if names of some witnesses were mentioned in

the FIR which was given approximately four months after the incident then it is apparent the FIR was cooked one, prepared with due deliberations. When the appellant had an order of stay from Civil Court and he had also lodged a contempt matter when the complainant was not complying with the order of the Civil Court then there was no need for him to go and make quarrel with the complainant. Under such circumstances, it appears that a false case has been created by the complainant Cheti Bai with help of Sudama, Member of Janpad Panchayat of that village. It is not proved beyond doubt that the appellant 7 Criminal Appeal No.1448 of 1996 insulted the complainant on the basis of the caste or abused her with words based upon the caste.

12. Learned counsel for the appellant has rightly observed that since incident took place in the house of the complainant which was not a public place and therefore, if the appellant has abused her in a manner as stated by the complainant then still offence punishable under Section 3 (1) (x) of the Special Act shall not be made out because for constitution of that offence the place of incident should be a public place and house of the complainant was not a public place at all. Under such circumstances, no offence punishable under Section 3 (1)(x) of the Special Act was made out against the appellant. Learned Special Judge erred in convicting the appellant for that offence.

13. Since story of the complainant is not at all believable however, she has not stated that any obscene words were uttered by the appellant. Words told by the complainant are different than the words narrated in the FIR and therefore, it cannot be said that what were the exact words told by the appellant. Under such circumstances, it cannot be presumed that the appellant told some obscene words to the complainant. Similarly for constitution of offence punishable under Section 294 of I.P.C place of incident should be a public place and as it is discussed above place of incident was not a public place and therefore, no offence punishable under Section 294 of I.P.C was constituted 8 Criminal Appeal No.1448 of 1996 against the appellant. Learned Special Judge erred in convicting the appellant for offence punishable under section 294 of I.P.C.

14. On the basis of the aforesaid discussion it appears that appellant could not be convicted for either offence punishable under Section 294 of I.P.C or Section 3(1)(x) of the Special Act and therefore, appeal appears to be acceptable. Consequently, appeal filed by the appellant is hereby allowed. Conviction and sentence directed by the trial Court for offence punishable under Section 294 of I.P.C and Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act are hereby set aside. He is acquitted from all the charges appended upon him. He is entitled to get the fine amount back if he has deposited before the trial Court.

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

16. Copy of the judgment and file of the trial Court be sent to the trial Court for information and compliance. (N.K.Gupta) Judge 29/06/2012 bina

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