

Prahlad Vs. the State of Mp.

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Court : Madhya Pradesh

Decided On : Sep-24-2013

Appellant : Prahlad

Respondent : The State of Mp.

Advocate for Pet/Ap. : Shri. Umesh Trivedi

Judgement :

1 HIGH COURT OF JUDICATURE AT JABALPUR (M.P.) Criminal Appeal No.1607/1996 PRESENT : HON'BLE SHRI JUSTICE G.S. Solanki Prahlad S/o Badri Prasad Upadhyay Versus The State of Madhya Pradesh
----- Shri Umesh Trivedi, Advocate for the appellant. Shri C.K. Mishra, GA for the State. Shri S.D. Mishra, Advocate for the complainant.. Date of hearing:

24. 09.2013 Date of Judgment:

24. 09.2013

JUDGMENT

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure being aggrieved by the impugned judgment dated 12.9.1996 passed by the Special Judge (Prevention of Atrocities Act) (hereinafter referred to as 'the Act'), Mandla in Special Case No.33/1996 whereby the appellant has been convicted under Section 354 of the Indian Penal Code and Section 3(1)(xi) of the

Act and sentenced to undergo rigorous imprisonment for 6 months and fine of Rs. 250/- and rigorous imprisonment for 6 months and fine of Rs. 250/- in default he shall further undergo rigorous imprisonment for two months (on each count).

2. It is undisputed on record that complainant Sita Dehariya and appellant entered into a compromise and filed the applications and settled their dispute out of the Court. On 2 the basis of the aforesaid compromise the appellant has already been acquitted to the charge under Section 354 of IPC.

3. Prosecution case, in brief, is that complainant Sita Dehariya on 30.4.1995 went to answer the call of nature at Nalla where appellant caught hold her and tried to drag her towards Nalla. On listening hue and cry, Kaliram Gond (PW2) came there and scolded the appellant, the appellant fled away from the spot. Thereafter, the complainant went to her house, she narrated the incident to her mother Kuntibai and Kotwaran Ramkali. On the next day i.e. 1.5.1995 she lodged a report Ex.P/1 at Police Station Maharajpur. On the basis of aforesaid report, crime under Section 354 of the IPC and Section 3(1)(xi) of the Act was registered against the appellant and the appellant has been arrested.

4. After usual investigation, appellant was charge sheeted before the Special Judge of the Act. The learned Special Judge, Mandla framed the charge against the appellant under Section 354 of the IPC and Section 3(1)(xi) of the Act.

5. Appellant abjured the guilt and pleaded false implication.

6. On appraisal of the evidence on record, though appellant has been acquitted to the charge under Section 354 of the IPC but he has convicted to the charge under Section 3(1)(xi) of the Act and sentenced him as mentioned hereinabove, hence this appeal. 3 7. Learned counsel for the appellant submitted that from the evidence on record only offence under Section 354 of IPC has been proved, for which the appellant and complainant have entered into a compromise and appellant has been acquitted to the charge under Section 354 of IPC. He further submitted that prosecution has not filed any caste certificate in regard to the fact that complainant was a member of Schedule Caste, therefore, trial Court has committed illegality in recording the conviction under Section 3(1)(xi) of the Act,

therefore, same is liable to be set aside.

8. On the other hand, learned counsel for the State has supported the impugned judgment and justified the finding recorded by the trial Court.

9. I have perused the impugned judgment, evidence and other material on record.

10. It is true that prosecution has not filed any caste certificate of the complainant and trial Court was of the view that appellant had admitted this fact in his statement recorded under Section 313 of Cr.P.C. that prosecutrix/complainant belongs to Mehra caste, therefore found proved that prosecutrix belonged to Scheduled Caste.

11. It is established principle of law that admission under Section 313 of Cr.P.C. is not substantive evidence. At the most, same may be used as corroborative piece of evidence. In this case, no substantive evidence has been adduced on behalf of the prosecution. Thus, mere admission of the fact that prosecutrix is belonging to Mehra caste can not be used as proof against the appellant. As far as other fact of the case is concerned, on the basis of statement of the prosecutrix Sitabai (PW1) and other eye witness Amarlal (PW2), it is proved on record that appellant had used a criminal force against the prosecutrix. In these circumstances, offence under Section 354 of IPC is duly proved, for which the appellant has already been acquitted on the basis of compromise made between the parties.

12. In the result, the appeal is allowed in part. The conviction and sentence recorded under Section 3(1)(xi) of the Act is hereby set aside. The conviction recorded by the trial Court under Section 354 of IPC, is hereby affirmed, for which appellant has already been acquitted on the basis of compromise as mentioned hereinabove.

13. Appellant is on bail. His bail bonds and surety bonds shall stand discharged. If the fine amount is deposited, same be returned back to the appellant.

14. Record of the trial Court be sent back alongwith the copy of the judgment. (G.S. Solanki) JUDGE ravi 5 Cr.A. No. 1607/1996 24.09.2013 Shri Umesh Trivedi, learned counsel for the appellant. Shri C.K. Mishra, GA for the State. Shri S.D.

Mishra, learned counsel for the complainant. Complainant and appellant are also present in the Court. They are identified by their respective counsel. Their presence be marked. Heard on IA No.3948/2013, an application under Section 320(2) of the Code of Criminal Procedure. Learned counsel for the complainant Sita Dehariya and appellant/accused submitted that complainant and appellant are resident of the same village. They settled their dispute out of Court therefore, prays for grant of permission to compound the offence. I have perused the impugned judgment and record of the trial Court. On perusal of the record, it reveals that appellant was convicted under Section 354 of IPC and Section 3(1)(xi) of the Schedule Castes & Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'the Act'), out of which Section 3(1)(xi) of the Act is noncompoundable and Section 354 of IPC is compoundable, therefore, I am of the view that the application is partly allowed. IA No. 3949/2013, an application under Section 320(5) of the Code of Criminal Procedure for compounding the offence is considered. Since the complainant and appellant has entered into the compromise and they want to live peacefully, therefore compromise filed by the parties is verified and accepted. Appellant is acquitted from the charges under Sections 354 of IPC. As far as Section 3(1)(xi) of the Act is concerned, with the consent of the parties, the matter is finally heard. Judgment dictated, typed separately, signed and dated. (G.S. Solanki) JUDGE ravi

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