

Rahman and Others Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-17-2015

Judge : N.K. Gupta

Appeal No. : Criminal Appeal No. 969 of 1996

Appellant : Rahman and Others

Respondent : State of Madhya Pradesh

Judgement :

1. The appellants have preferred the present appeal being aggrieved with the judgment dated 23.5.1996 passed by the Special Judge under SC/ST (Prevention of Atrocities) Act, Khandwa in Special Case No.27/95, whereby the appellants have been convicted of offence under Section 147 of the IPC and Section 3(1) (xv) of the SC/ST (Prevention of Atrocities) Act (hereinafter it would be referred as 'the Special Act') and sentenced to six months R.I. on each count.

2. The prosecution's case in short is that the complainant Om Prakash (PW-2) was resident of village Gandhwa (Police Station Piplod, District Khandwa). He had constructed a hutment on a disputed land since last 12-13 years. On 9.6.1995 at about 8:00 a.m., the appellants gathered at the spot having various arms in their hands and started destroying the house of the complainant. They uttered filthy abuses as well as abuses dependent upon the caste of the complainant. When the complainant and his wife Vandana (PW-3) had tried to prohibit the appellants, they

assaulted them and consequently, Vandana had sustained abrasions on her wrists. The incident was being seen by Shaligram (PW-5), Ishram (PW-6) and so many persons. The complainant and his wife wanted to go the Police Station, Piplod to lodge the FIR but due to fear from the appellants, they went to Khandwa. The FIR Ex.P/3 was prepared and submitted to the S.P. Khandwa, who sent that report to the In-charge of AJK, Prakoshta and thereafter, an FIR Ex.P/6 was recorded. The matter was transferred to the Police Station, Piplod. The victim Vandana was sent to the hospital for her medico legal examination. Dr. C.K. Sharma (PW-1) examined her at District Hospital, Khandwa and found one abrasion on her each wrist. He gave a report Ex.P/2-A. After due investigation, the charge sheet was filed before the Special Court.

3. The appellants abjured their guilt. They took a plea that the disputed land was a land of Imambada and the complainant Om Prakash had tried to encroach on the land by digging the plinth therefore, when he was stopped by the appellants, a false case has been lodged against the appellants. In defence Satish Chandra Patidar (DW-1) and Mehrab (PW-2) have been examined.

4. The Special Judge after considering the evidence adduced by the parties, convicted and sentenced the appellants as mentioned above.

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

6. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, it appears that the trial Court did not append the charges under Sections 323, 323/149, 427 or 435 of the IPC. The case was tried since the year 1995 and therefore, at this belated stage, it would be inappropriate to remand the case back for framing of such charges. Hence, the matter may not be considered for the aforesaid charges.

7. Learned senior counsel for the appellants has submitted that the complainant could not prove his caste. No certificate has been submitted to show that he was a member of scheduled tribe as claimed by him. In this connection, learned senior counsel for the appellants has placed his reliance upon a judgment passed by the Single Bench of this Court in the case of "Shankarlal Vs. State of M.P." [2005(1)

M.P.L.J. 449], in which it is held that it is for the complainant to establish that he was a member of scheduled caste or scheduled tribe by a certificate duly issued by the competent officer. In the present case, the complainant Om Prakash (PW-2) and his wife Vandana (PW-3) have claimed that they were the member of scheduled tribe, but no caste certificate has been filed before the trial Court. Hence, by their oral evidence, it cannot be presumed that the complainant was a member of scheduled tribe and therefore, the appellants cannot be convicted of offence under Section 3(1)(xv) of the Special Act.

8. Similarly, an objection was raised by the learned senior counsel for the appellants that according to the Rule 7 of the SC/ST (Prevention of Atrocities) Rules, 1995, the investigation should have been done by the police officer not below the rank of DSP. Those rules were enforced prior to the present incident. However, in the present case, the entire investigation was done by the Head Constable Gokulrao Patil (PW-8) and inspector V.R. Mahajan (PW-7). Both of them were not the police officers of above or equivalent rank of DSP and therefore, it is apparent that Rule 7 of the aforesaid Rules was not followed in the present case. In this connection, learned senior counsel for the appellants has placed his reliance upon the judgment passed by the Single Bench of this Court in the case of "Bhartisingh and another Vs. State of M.P." [2007(1) M.P.H.T. 451], in which it is held that if, Rule 7 is not followed then, accused shall not be convicted of offence of Special Act. However, Inspector and Head Constable were competent to investigate the other Indian Penal Code offences and such provision shall not create any adverse effect to the remaining offences. Hence, the appellants cannot be convicted of offence under Section 3(1)(xv) of the Special Act.

9. Om Prakash and Vandana have stated that the appellants destroyed their house and in the alleged incident, Vandana sustained some injuries. Her injuries were abrasions proved by Dr. C.K. Sharma in his medical report Ex.P/2-A. Shaligram (PW-5) and Ishram (PW-6) have also corroborated the statement of the complainant. If on the said pretext, the appellants would have assaulted the victims then, Om Prakash would have sustained so many injuries. It was not possible for the appellants to leave Om Prakash and to assault his wife Vandana.

According to Dr. C.K. Sharma, Om Prakash did not sustain any visible injury though, he was complaining about the pain. Vandana had sustained one abrasion each on her wrist. Such injury could be caused by breaking of bangles by herself and therefore, the injuries caused to the victim Vandana does not create any adverse effect to the appellants that they assaulted her.

10. Satish Chandra Patidar (DW-1) and Mehrab (PW-2) the neighbour of the complainant Om Prakash have been examined for defence. They have stated that the disputed land was an open place, where the complainant was keeping his cattle. There was no hutment of the complainant. When the complainant started digging the plinth, he made a wall of bricks approximately 1-2 ft. high. A complaint was made by Mehrab (DW-2) to the Sarpanch Anula Patidar and therefore, Satish Chandra Patidar (DW-1) husband of Sarpanch Anula Patidar went to the spot and prohibited the victim Om Prakash to do so, but he abused Satish Chandra Patidar and went to Khandwa. In cross- examination, it was suggested to the witness Satish Chandra Patidar that for Muslim votes, he gave such evidence. Also in the cross-examination of Mehrab, it was suggested that being caste fellow of the appellants, he was supporting the appellants. Under these circumstances, it is to be considered that whose evidence is acceptable.

11. In the prosecution's evidence, there are so many drawbacks. Firstly that, the incident had taken place in the jurisdiction of Police Station, Piplod, whereas the complainant Om Prakash went to the S.P. office, Khandwa because her ailing mother Prabha Bai (PW-4) was residing at Khandwa in those days. Secondly, he had lodged a typed report before the S.P. Khandwa. Typed report Ex.P/3 appears to be prepared by some law knowing person and hence, FIR was lodged with the delay and thereafter, it was transferred to the Police Station, Piplod. The witnesses Shaligram and Isram were the witnesses, who were the caste fellows of the complainant and therefore, they could state in favour of the complainant. However, Mehrab, who is neighbour of Om Prakash was telling against him. Om Prakash and Prabha Bai have accepted that originally land was encroached by Kesharbai grandmother of Om Prakash and thereafter, possession of hutment was received by Prabha Bai from her mother Keshar Bai and ultimately, by the complainant Om Prakash. Om Prakash and Prabha Bai have accepted that in front of the disputed

land, there was a house which was of Keshar Bai in which Jagdish brother of Om Prakash was residing. Hence, it was for the complainant and the prosecution to show that there was a hutment of the complainant, which was broken by the appellants. No revenue record has been filed to show that the encroachment of the complainant was recorded on that land.

12. The most important document in the case is a memo of damage. Head Constable Gokulrao Patil (PW-8) had prepared a damage memo Ex.D/5, in which the list of damage articles is shown. He found 500 bricks, a frame of wooden door, timber of the house, five pieces of PVC pipe having length of 20 ft, 25 old tins and some agricultural instruments like tifen, bukhkhar etc.. It would be apparent that if the complainant was residing in the house then, certainly, his bedding, cloths, utensils and material relating to cooking etc. would have been found at the spot, but no such article has been found by the investigation officer, which indicates that at the time of incident, no one was residing in the house and claim of the complainant is incorrect that he was residing in the house. If the complainant was making the plinth with the help of bricks then, certainly he would have removed his shed prepared for cattle and therefore, tins and ballis (removed wooden logs) would have been removed by the complainant himself to dig the plinth.

13. Since it is proved that in list of articles seized by the police, no article of daily domestic use was found, hence the complainant was not residing in that alleged hut. Secondly, he himself has admitted that on that day, he was making a wall by bricks. Then, the testimony of the defence witnesses Satish Chandra and Mehrab appears to be correct that the complainant was trying to erect walls on the field and he was prohibited to do so. The complainant could not file any revenue record to show that he had ownership or possession of permanent nature on that land. If he was keeping his cattle on that land and on the date of incident he was constructing brick walls then the appellants had a right to prohibit him.

14. Hence, if the appellants had removed the bricks of plinth, than it can not be said that they had tried to force the complainant to leave his house or village. When the complainant was not residing in the alleged hutment and he himself removed tins and ballis of that shade to construct walls and he was residing with

his mother in another house in the same locality, then the appellants could not be convicted of offence punishable under Section 3(1)(xv) of the Special Act. The Special Judge has committed an error in convicting the appellants for aforesaid offence.

15. The offence under Sections 435 or 427 of IPC are not of similar nature to offence under Section 3(1)(xv) of the Special Act and hence, in absence of charges of offence under Sections 435 or 427 of IPC is not required to discuss that such offences were committed or not. However, if it is considered than it would be apparent that the appellants removed the bricks of plinth, constructed by the complainant. But such an act falls with the right of private defence to the property of Imambada, so that the complainant could not have encroached it. Hence, it is not an act which caused with intention to cause damage to the complainant. Hence the appellants cannot be convicted of any offence of mischief under Section 435 or 427 of IPC.

16. So far as, the offence under Section 147 of IPC is concerned, for constitution of offence, it is to be proved that the member of unlawful assembly should have used a criminal force against someone or would have done some violence. In the preset case as discussed above, the appellants did not use any criminal force upon the complainant Om Prakash, otherwise he would have sustained several injuries. Hence, no offence under Section 147 of IPC was made out against the appellants. The trial Court has committed an error in convicting the appellants for offence under Section 147 of IPC.

17. At this stage the learned penal lawyer for the State has submitted that the appellants can be convicted of inferior offences of Section 143 of the IPC, of same nature, as of offence under Section 147 of IPC. However, such contention can not be accepted. The appellants did nothing but prohibited the complaint to construct the house and upto that extent no unlawful assembly was constituted. By mere presence of a person it cannot be said that he was a member of unlawful assembly. Some of the appellant would have broken the fresh construction of plinth or wall but it was done, when the complainant had already left for Khandwa. Hence it was for witnesses Shaligram (PW-5) and Ishram (PW-6) to State that

amongst the appellants who removed that newly constructed brick wall of height 1-2 feet. In absence of any specific allegation, it can not be said against any of the appellants that he was the member of unlawful assembly. Hence, none of the appellants can be convicted of offence under Section 143 of IPC even.

18. On the basis of aforesaid discussion, appeal filed by the appellants appears to be acceptable and consequently it is here by accepted. The conviction and sentences imposed by the trial Court upon the appellants for offence under Section 147 of IPC and Section 3(1)(xv) of the SC/ST (Prevention of Atrocities) Act are hereby set aside. They are acquitted from all the charges appended against them. They would be entitled to get fine amount back if it was deposited before the trial Court.

19. The appellants are on bail. Their bail bonds shall stand discharged and therefore, it is directed that their presence is no more required before the Court.

20. Copy of the judgment be sent to the trial Court alongwith its record for information.

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