

Devisingh and ors. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-01-2002

Reported in : 2003CriLJ147; 2003(1)MPHT24

Judge : Deepak Verma, J.

Acts : Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(1)

Appeal No. : Criminal Appeal No. 402/93

Appellant : Devisingh and ors.

Respondent : State of M.P.

Advocate for Def. : Chandel, Dy. Govt. Adv.

Advocate for Pet/Ap. : Amit Agrawal, Adv.

Disposition : Appeal allowed

Judgement :

Deepak Verma, J.

1. This appeal has been preferred by the convicted appellants, who have been found guilty for commission of offence under Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter

referred to as 'the Act') by the Court of Addl. Sessions Judge, Garoth in Special Cr. Case No. 73/91, decided on 6-8-1993 and have been awarded sentence of 2 years' RI with fine of Rs. 2,000/- each,

2. In all five accused persons were charged and prosecuted for commission of alleged offence under Section 3(1)(v) or in the alternative under Section 3(1)(x) of the Act. However, one of the accused Mana has been acquitted of the said charge but the remaining four have been found guilty only under Section 3(1)(v) of the Act and have been awarded punishment as mentioned above.

3. As per the prosecution story on 12-9-1991 the appellant had gone to the field of complainant Bhoniram and started scolding him. It is said that he was also beaten with fists and legs. They had done so with an intention to grab the land of complainant Bhoniram illegally and unauthorisedly. Bhoniram had lodged a written complaint with the Superintendent of Police, Mandsaur, who had then forwarded it to the concerned police station for investigation. After usual investigation conducted by police, charge-sheet was filed before the Special Court. Thereafter, charge was framed against the appellants, and the matter was tried by the Special Judge. The appellants appeared before the learned Sessions Judge and abjured their guilt.

4. On appreciation of evidence available on record, out of the five accused charged and prosecuted, the present four appellants have been found guilty for commission of the said offence, the fifth one has been acquitted, as mentioned above. It is against this judgment and conviction these four appellants have preferred this appeal.

5. I have accordingly heard the learned Counsel for the parties at length and perused the record. After going through the evidence on record, I find the following glaring infirmities staring on the face of record, which are mentioned hereinbelow:--

(i) the First Information Report (Ex. P-1) lodged by the complainant Bhoniram (P.W. 1), does not disclose or show presence of Sayatabai (P.W. 4) at the place of occurrence;

(ii) Bhoniram (P.W. 1) and Sayatabai (P.W. 4) have deposed that Jaisingh (P.W. 2), said to be another eye-witness had reached the spot, after the present appellants had already fled away from there;

(iii) Jaisingh (P.W. 2) has stated in the Court that he had reached the spot when the appellants were threatening the complainant and in fact according to him he had heated discussions with one of the accused Devisingh;

(iv) the FIR also testifies and is in consonance with the statement of Bhoniram (P.W. 1) and Sayatabai (P.W. 4) to show that Jaisingh (P.W. 2) had reached the spot after the incident had already taken place;

(v) there was no actual dispossession of the complainant from the field in question nor there was any interference with the possession of the complainant with regard to agricultural land or his right of enjoyment of the said land was caused by the present appellants;

(vi) in this view of the matter, the provisions of Section 3(1)(v) of the Act, were not made out by the prosecution;

(vii) even if the prosecution story is to be believed, in toto then at best the only conclusion that can be drawn is that the appellants were interested to purchase the land of the complainant at a lesser price than what was being expected by the complainant. This is amply proved from the evidence of Bhoniram (P.W. 1) and Sayatabai (P.W. 4);

(viii) it is also a matter of record, which stands corroborated by evidence that ultimately the said property was sold by the complainant but to some other persons;

(ix) the appellants were said to have been armed with weapons like gun and lathis. If their intention was to oust the complainant, then they could have done so when they had gone to the spot and could have taken forcible possession thereof. Not having done so, fully establishes that there was no mens rea on the part of the appellants;

(x) Jaisingh (P.W. 2) has been on enmical terms with the appellants on account of the fact that two criminal cases at the instance of present appellants are pending against him and his brother.

6. In view of the aforesaid salient features noted from the record, it has been contended that absolutely false and fabricated case was registered against the appellants and the prosecution has failed to prove the charge against them beyond shadow of doubt, therefore, they deserve to be acquitted of the said charges.

7. To appreciate the arguments, it is necessary to find out if the appellants were really guilty of commission of the said offence. Section 3(1)(v) of the Act, under which they were charged and prosecuted, reads asunder:--

'wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water.'

8. Reading of the said section shows that there has to be actual dispossession from land or premises, belonging to the members of the category of Scheduled Castes or Scheduled Tribes or interference with the enjoyment. Unless this part of the section is met out, there can not be any prosecution for commission of the said offence much less conviction. Thus, the pre-requisite condition is either dispossession or interference with enjoyment of his rights over any land, premises or water. If the prosecution fails to fulfil this, then the necessary consequence would be acquittal of the charged persons.

9. After going through the evidence critically, it has not been proved by the prosecution that the appellants had either tried to dispossess or had actually interfered with the enjoyment of the right over any land or premises of the complainant. As has been mentioned above, they had only offered a lesser price for the land, which the complainant was interested to dispose of. Ultimately, he did execute the sale-deed for the said land to someone else. Thus, in the considered opinion of this Court, the prosecution had failed to prove the requirement of the aforesaid section against the present appellants. They have also failed to prove

that the appellants had committed the aforesaid offence. There existed several material contradictions in the statements of Bhoniram (P.W. 1), Jaisingh (P.W. 2) and Sayatabai (P.W. 4). Their evidence is not consistent with the evidence of each other. It is difficult to rely on such evidence, which has not only been shaky but was also inconsistent. In view of the aforesaid discussion, the benefit of doubt has to be given to the present appellants.

10. On consideration of the matter in totality, I am of the considered view that the prosecution has failed to bring home the charge against the present appellants beyond shadow of doubt. Thus, they deserve to be acquitted of the said charge. I accordingly do so. The appeal is allowed, the appellants are hereby acquitted of the charge under Section 3(1)(v) of the Act. The appellants are on bail, their bail bonds stand discharged.

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