

Jagannath Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-20-2007

Reported in : 2008(2)MPHT168

Judge : K.S. Chauhan, J.

Appellant : Jagannath

Respondent : State of Madhya Pradesh

Judgement :

K.S. Chauhan, J.

1. This criminal appeal has been preferred under Section 374(2) of Cr.P.C. being aggrieved by the judgment, finding and sentence dated 22-09-1993 passed by Special (Sessions) Judge (SC/ST), Narsinghpur, in Special Criminal Case No. 18/93 whereby the appellant has been convicted under Section 427 of I.P.C. and Section 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 and sentenced thereunder for 1 year and 4 years R.I. with fine of Rs. 200/-, in default, further R.I. for 2 months respectively with the direction to run sentences concurrently.

2. The prosecution case, in brief, is that Ravi alias Ravishankar, a member of Scheduled Caste, resident of village Nayagoan, submitted a report to Harijan Cell, Narsinghpur, wherein it was mentioned that he had sown Jwar and Arhar crops in

his field. The accused persons caused the cattle to enter upon his field and damaged his crops. When he prevented them, they used filthy language and ran towards him to assault him by weapons like Farsa, Gadasia and axe and intimidated him. He submitted the written report. Enquiry was made, map was prepared and statements of witnesses were recorded. The report was sent to P.S. Them where in Crime No. 193/92 under Section 294, 427, 506-B/34 of I.P.C. and Section 3(1)(v) of SC & ST Act was registered. After completing investigation, charge sheet was filed in the Court of C.J.M., Narsinghpur wherein Criminal Case No. 165/93 was registered which was committed to the Court of Sessions on 1102-1993.

3. The accused persons were charged under Section 427, 294, 506B(II) of I.P.C., Section 3(1)(v) and 3(1)(x) of SC & ST Act, alleging that on 30-09-92 at village Murachh, they caused to enter the cattle in the field of complainant Ravi alias Ravishankar, a member of Scheduled Caste and caused damage to his crops amounting to Rs. 50/- or upwards, interfered with the enjoyment of his rights over his land, used filthy language, extended threats and intentionally insulted or intimidated with intent to humiliate him in a place within public view.

4. The accused persons abjured the guilt and claimed to be tried contending that they have been falsely implicated.

5. The prosecution examined as many as 5 witnesses and the defence examined only 3 witnesses. After considering the evidence, the trial court found that the prosecution failed to establish the guilt against Balram, Nijamsingh and Gammadsingh and acquitted them from all the charges levelled against them. The present appellant Jagannath was also acquitted from the charge under Section 294, 506-Part-II of I.P.C. and Section 3(1)(x) of SC & ST Act, but convicted under Section 427 I.P.C. and Section 3(1)(v) of SC & ST Act and sentenced thereunder as mentioned in para No. 1 of this judgment. Being aggrieved by the judgment finding and sentence of the trial court, this appeal has been preferred by Jagannath on the grounds mentioned in the memo of appeal.

6. The learned Counsel for the appellant submitted that the trial court has not appreciated the evidence in the proper perspective. PW-3 Ravishankar and PW-5

Hariram are interested witnesses. The trial court has committed illegality in disbelieving the defence evidence. The fact that Tahsildar, Revenue Inspector and Patwari visited the spot and ordered to remove the encroachment, was sufficient to throw away the prosecution case. It was also submitted that the charges were not proved that the appellant grazed the field of complainant by cattle. The prosecution failed to prove the guilt beyond reasonable doubt against the appellant. Therefore finding of guilt is erroneous which deserves to be set aside and the appellant is entitled for acquittal.

7. On the other hand, Shri S.K. Kashyap, Dy. Govt. Advocate, appearing on behalf of the State/respondent submitted that it has been proved beyond reasonable doubt that the appellant grazed the field of Ravishankar, a member of Scheduled Caste damaging his crops. The trial court has rightly convicted and sentenced the appellant, hence it does not call for any interference.

8. The main point for consideration in this appeal is whether the trial court has committed an illegality in convicting the appellant under Section 427 of I.P.C. and Section 3(1)(v) of the SC & ST Act.

9. I have perused entire case and the evidence adduced thereunder.

10. Ravishankar (PW-3) has deposed that appellant caused the cattle entered into his field and grazed his crops. When he refused, he used filthy language and ran towards him to assault. At his cries, his sons Balram, Nijamsingh and Gammatsingh reached there armed with Ballam, Farsa and axe. They also used filthy language and ran towards him to assault but he escaped from there.

11. Hariram (PW-5) the uncle of complainant Ravishankar has also corroborated his statement by deposing that appellant grazed crops by cattle and he prevented him to do so and when Ravishankar was carrying the cattle out of the field, appellant tried to assault him. Sons of appellant Jagannath were also armed with weapons and they also ran towards complainant to assault him. As a result thereof, Ravishankar fled away on account of fear.

12. Ravishankar (PW-3) has also deposed that the appellant caused damage of Jwar and Arhar crops sown in the area of 2 - 2. 1/2 acres of land. Hariram (PW-5) has also supported this fact by deposing that the appellant caused damage amounting to 5 - 6 bags of crops.

13. Both these witnesses have stated that the appellant caused damage of crops of Jwar and Arhar of complainant by grazing by the cattle.

14. Ravishankar (PW-3) though admitted his signature on document Ex. D/1 but denied its contents. He has stated that this document was written by an advocate and his signatures were obtained by him.

15. On perusal of this document, it is manifestly clear that this document is in the form of an affidavit but it has not been sworn in before any competent authority. Its contents have not been proved.

16. Both these witnesses have denied regarding sowing of crops on the way resulting into obstruction on the way which was opened by the Revenue Authorities by grazing its crops by the cattle. However, the appellant adduced the defence evidence in this regard by examining Netram (DW-1), Matilal (DW-2) and Anil Kumar (DW-3).

17. Netram (DW-1) who was Patwari of village Dhamna has stated that on 28-09-92 that Tahsildar removed the crops sown in the encroached area. Likewise Anil Kumar Soni (PW-3) who was also the Patwari of village Nayagaon has also stated that on 26-09-92, the crops which were sown on the way were removed by Tahsildar. Matilal (DW-2) has also given evidence that Ravishankar had sown the crops on the way, complaint was made to the Collector, in consequence thereof, the way was opened by grazing such crops by cattle by Tahsildar.

18. If the entire evidence, as adduced by the defence is accepted, then it can be said that the Revenue Authorities removed the crops from the encroached area, but the prosecution case is that the crops which were sown in the field of complainant was grazed and damaged. Therefore the defence is of no consequence.

19. Pansarilal (PW-4), though declared hostile by the prosecution, has also stated that complainant Ravishankar was crying that appellant has grazed his crops by cattle. He rushed there, but in the meantime the appellant Jagannath and others ran away. D.R. Asatkar (PW-1) has prepared the map (Ex. P/3) which shows the area grazed by cattle.

20. Thus, from the evidence adduced in this case, it is clearly established that the appellant caused the cattle to enter upon the field belonging to the complainant Ravishankar with intent to cause the damage of his crops. The complainant Ravishankar has sustained the loss of 5 - 6 gunny bags of his crops. Hence the trial court has not committed any illegality in finding him guilty under Section 427 I.P.C. Such finding being based on record is hereby affirmed.

21. Now, the point for consideration is whether his conviction under Section 3(1)(v) of SC & ST Act is legally justified or not.

22. Section 3(1)(v) of the Act is reproduced as under:

Whoever, not being a member of a Scheduled Caste or Scheduled Tribe, 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, shall be punishable with imprisonment for a term which shall not be less than 6 months, but which may extended to 5 years and with fine.

The provisions of this section were considered by this Court in the case of Jangu alias Shobit and Ors. v. State of M.P. reported in 2000 Cri.L.J. 711 wherein it has been held:

For securing a conviction under Section 3(1)(v), the prosecution, for the first cause is required to show that the accused has wrongfully dispossessed a member of S.C. or S.T. from his land or premises. Wrongful dispossession, in the opinion of this Court, presupposes positive and de facto possession. Unless a man is shown to be in actual physical possession of the property, he cannot be dispossessed. I have already found that the complainant was not in de facto possession. If a person is not in possession of the property, then he cannot be dispossessed. The

second clause of Section 3(1)(v) provides that if somebody interferes with the enjoyment of complainant's rights over any land, premises or water, then he shall be punished. On a fair reading, the words 'enjoyment of his rights' must be read in juxta position with the words 'any land, premises and water', the first clause refers to the personal lands while the second clause relates to any land, premises or water. In fact the second clause applies to a case where the right to enjoy any land, premises or water has been interfered. For securing conviction under the second clause, the prosecution is required to prove that the complainant had some rights and he was enjoying the said rights over any land, premises or water. The second clause would cover a contingency relating the rights of easements, right of way and fetching of the water etc. Unless it is proved by the prosecution that the complainant had a right and was enjoying the same, prosecution would not be entitled to say that because accused did not permit the complainant to take possession of the property which he was allegedly entitled he be convicted.

23. The present case is neither of dispossession nor interference in his rights but simpliciter a case of mischief caused by grazing cattle by the appellant. The damage was not caused on account of his being a member of Scheduled Caste. Thus all the ingredients required to prove the offence under Section 3(1)(v) of SC & ST Act have not been established by the prosecution. Therefore the trial court has committed an illegality in convicting the appellant under Section 3(1)(v) of SC & ST Act. Hence such finding cannot be affirmed.

24. The conviction under Section 427 I.P.C. is well merited and the sentence passed thereunder is also not excessive hence does not call for interference.

25. Consequently, the appeal is partly allowed. Conviction and sentence passed under Section 3(1)(v) of SC & ST Act is hereby set aside whereas the conviction and sentence passed under Section 427 of I.P.C. is hereby maintained.

26. The appellant is on bail. His bail bonds are cancelled. He be directed to appear before C.J.M., Narsinghpur on 14.12.2007 to serve out the remaining part of sentence.

