

State of Rajasthan Vs. Dipti Ram

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SooperKanoon Citation : sooperkanoon.com/771824

Court : Rajasthan

Decided On : Jul-17-2001

Reported in : 2001CriLJ3910

Judge : Sunil Kumar Garg, J.

Acts : Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 447; [Indian Penal Code \(IPC\), 1860](#) - Sections 3(1), 441 and 447; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 577 of 1996

Appellant : State of Rajasthan

Respondent : Dipti Ram

Advocate for Def. : M.L. Garg, Adv.

Advocate for Pet/Ap. : A.R. Nikub, Public Prosecutor

Disposition : Appeal allowed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been filed by the State of Rajasthan against the judgment and order dated 3-7-1996 passed by the learned Special Judge, SC/ST Cases,

Bikaner in Case No. 2/95 by which he acquitted the accused respondent of the charges for the offence under Section 447, IPC and under Sections 3(1)(x) and 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SC/ST Act')

2. The necessary facts giving rise to this appeal, in short, are as follows :--

PW 4 Taruram sent a written report Ex. P/5 dated 10-7-1994 addressed to Superintendent of Police, Bikaner, in which he has stated that he is by Caste Meghwal and member of Scheduled Caste and he was allotted 9 bighas agriculture land in Chak 2 RM Murabba No. 92/37 and 92/45 and khatedari rights over the said land were also given to him on 2-4-1993, but he has been in possession of that land since 1981. He has further stated in the report that accused respondent, who is also resident, of 2 RM, Police Station Chhatargarh, has taken possession of the land belonging to him illegally and the accused respondent has started constructing shops there. He has further stated in the report that he asked many times to accused respondent how he is possessing the land belonging to him and upon this, accused respondent told him that to maintain the land is not the business of persons like him belonging to scheduled caste and accused respondent also abused him by saying the words 'Chudda Dhed' and at the time when these words were spoken by accused respondent, many people were there. Thus, accused respondent insulted him and has also deprived him of his land.

On this report Ex. P/5, S.P., Bikaner vide order dated 11 - 7-1994 directed the S.H.O., Police Station, Chattargarh to register the case and thereafter, PW 2 Iqbal Singh S.H.O., Police Station, Chattargarh registered the case and chalked out regular FIR Ex/P/6 for the offence under Sections 447 and 3(v)(x) of the SC/ST Act and started investigation and during investigation, relevant record was also collected by PW 2 Iqbal Singh and PW2 Iqbal Singh arrested the accused respondent through arrest memo Ex/P7 and, thereafter, the investigation was handed over to PW3 Shambhu Singh.

After usual investigation police submitted challan against the accused respondent in the Court of Magistrate, from where the case was committed to the Court of

Special Judge, SC/ST Cases, Bikaner.

On 28-2-1995, the learned Special Judge, SC/ST Cases, Bikaner framed charges for the offence under Section 447, IPC and under Sections 3(1)(x) and 3(1)(v) of the SC/ST Act against the accused respondent. The charges were read over and explained to the accused respondent. The accused respondent denied the charges and claimed trial.

During the course of trial, the prosecution in support of its case examined four witnesses and got exhibited some documents. Thereafter, the statement of the accused respondent under Section 313, Cr. P.C. was recorded. The accused respondent has himself come in the witness box as DW 1.

After conclusion of trial, the learned Special Judge, SC/ST Cases, Bikaner through his judgment and order dated 3-7-1996 acquitted the accused respondent of all the charges framed against him holding inter alia :--

1. That so far as the khatedari rights of the complainant PW 4 Taruram are concerned, from the evidence on record, it appears that he has khatedari rights over the land Murabba No. 92/45, Killa No. 20 and 21.
2. That from the evidence on record, it does not appear that from Samvat 2047 to 2050, the complainant PW 4 Taruram has cultivated the land in question.
3. That from the evidence on record, it has not been proved by the prosecution that after the allotment of disputed land Murabba No. 92/45, Killa Nos. 20 and 21 in 1981, when complainant PW 4 Taruram got the possession.
4. That it is also not clear from the evidence as well as from the report Ex. P/5 when accused respondent made encroachment over the disputed land.
5. That it is wrong to say that accused respondent made encroachment in the year 1994 as alleged by the complainant PW 4 Taruram in his report Ex. P/5, but since he has admitted in his statement recorded in Court on 12-2-1996 that accused respondent has been in possession for the last 5-7 years, therefore, prior to 1994, accused respondent was in possession of the land in dispute and he has made

construction of shops there and thus, the learned Special Judge came to the conclusion that no case for the offence under Section 447, IPC is made out against the accused respondent.

6. That similarly on the same reasoning and findings, the learned Special Judge came to the conclusion that no case for the offence under Section 3(1)(v) of the SC/ST Act is made out against the accused respondent holding especially that merely because the name of the complainant PW 4 Taruram finds place in Khatedari rights, possession over the disputed land cannot be found proved, as from the report Ex.P/5, it appears that khatedari rights were given to him on 2-4-1993, but possession of the accused respondent over the disputed land was found earlier to that.

7. That so far as the offence under Section 3(1)(x) of the SC/ST Act is concerned, the learned Special Judge has observed that in cross-examination, the complainant PW 4 Taruram has admitted that when the alleged words were uttered to him by accused respondent, nobody was with him, therefore, the case for the offence under Section 3(1)(x) of the SC/ST Act cannot be said to have been proved by the prosecution against the accused respondent.

Aggrieved from the said judgment and order of acquittal dated 3-7-1996 passed by the learned Special Judge, SC/ST Cases, Bikaner, this appeal has been preferred by the State of Rajasthan.

3. In this appeal, it has been argued by the learned Public Prosecutor for the State that from the evidence on record, it is well proved that accused respondent was guilty of the charges framed against him and thus, the judgment and order of acquittal passed by the learned Special Judge, SC/ST Cases, Bikaner are erroneous one and they be set aside and the accused respondent be convicted and sentenced for the offence under Section 447, IPC and Section 3(1)(v) and 3(1)(x) of the SC/ST Act.

4. On the other hand, the learned counsel appearing for the accused respondent submitted that the findings of the learned Special Judge acquitting the accused respondent of all the charges framed against him are based on correct

appreciation of evidence and thus, they do not call for interference and this appeal filed by the State of Rajasthan be dismissed.

5. I have heard the learned Public Prosecutor and the learned counsel for the accused respondent and perused the record of the case.

6. In my considered opinion, the learned Special Judge, SC/ST Cases, Bikaner has elaborately discussed each and every point and after examining the evidence of the prosecution in an analytical manner, he acquitted the accused respondent of the charges framed against him. The reasons given by the learned Special Judge in acquitting the accused respondent of all the charges framed against him, are cogent one and based on correct appreciation of evidence available on record. Thus, this Court does not want to interfere with the impugned judgment and order of acquittal passed by the learned Special Judge, especially keeping in mind the powers of the High Court while dealing with the appeal against acquittal.

7. It may be stated here that although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, it should always give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt; and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. Where two reasonable conclusions can be drawn on the evidence on record the High Court should as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the Court below. In other words, if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal.

8. Apart from this, PW 1 Ramkumar, who is Patwari, has clearly admitted in his cross-examination that he cannot say actually on the spot there was possession of the complainant PW 4 Taruram or not and he has further admitted that accused

respondent has constructed pacci shops over the disputed land.

9. PW 3 Shamboo Singh, C.O., who investigated the case has admitted in cross-examination that over the disputed land, there were 4-5 shops and these shops belonged to accused respondent and these shops were constructed earlier to the alleged incident.

10. PW 4 Taruram complainant has further admitted that apart from the disputed shops, some Government quarters were also got constructed. He has further admitted that when he went to see disputed land before 5-7 years back, then he came to know that accused respondent has encroached his land.

11. The case of the complainant PW 4 Taruram, which is revealed from the report Ex.P/5 is two fold :

(1) That he was given khatedari rights on 2-4-1993; and

(2) That he has been in possssion of land in dispute since 1981.

12. So far as the fact that complainant PW 4 Taruram was given khatedari rights on 2-4-1993 is concerned, there is no dispute on this point, but his case that he has been in possession since 1981 has not been found proved by the learned Special Judge, looking to the evidence on record and these findings of the learned Special Judge, as discussed above, are liable to be confirmed, as they are based on correct appreciation of evidence.

13. The further case of the complainant PW 4 Taruram is that the accused respondent has illegally taken over the possession of the land in dispute, which was in his possession.

14. The above fact has not been found proved, as discussed above, because of the simple reason that accused respondent was in possession of the land in question earlier to 1994 and thus, no case of dispossessing complainant PW 4 Taruram illegally by accused respondent comes into picture, as it has not been proved by evidence on record that complainant PW 4 Taruram has been in possession of the disputed land since

15. Since the land in question was allotted to the complainant PW 4 Taruram on 2-4-1993 and accused respondent has been found in possession earlier to that, therefore, no case of criminal trespass can be held to be proved. In order to satisfy the conditions of Section 441, IPC it must be established that the person entered in possession over the premises with intent to commit an offence. Mere occupation even if illegal cannot amount to criminal trespass, as held by the Hon'ble Supreme Court in Smt. Kanwal Sood v. Nawal Kishore, AIR 1983 SC 159 : 1983 Cri LJ 173.

16. Thus, the findings of the learned Special Judge by which he acquitted the accused respondent for the offence under Section 447, IPC are liable to be confirmed.

The case for the offence under Section 3(1)(v) of SC/ST Act.

17. Clause (v) of Sub-section (1) of Section 3 of the SC/ST Act makes following acts to be an offence, namely.

1. Wrongful dispossession of member of a Scheduled Caste or a Scheduled Tribe from his land or premises.
2. Wrongful interference with the enjoyment of his rights over any land, premises or water.

18. As already stated above, since prosecution has not been able to prove that possession of the complainant PW 4 Taruram has been illegally taken by accused respondent, therefore, first part goes away.

19. Similarly, since the land in question was not found to be in possession of the complainant PW 4 Taruram, therefore, it cannot be said that accused respondent interfered with enjoyment of his right over the land in question.

20. Hence, the findings of the learned Special Judge, by which he acquitted the accused respondent of the charge for the offence under Section 3(1)(v) of the SC/ST Act are liable to be confirmed.

The case for the offence under Section 3(1)(x) of the SC/ST Act.

21. The complainant PW 4 Taruram in cross-examination has admitted that when the accused respondent abused him, nobody was with him.

22. It may be stated here that for mak-ing offence under Section 3(1)(x) of the SC/ST Act, it is necessary that insult or humiliation of a member of Scheduled Caste should take place within public view. Since nobody was with the complainant PW 4 Taruram when the alleged words were uttered to him by accused respondent, therefore, no question arises that he was insulted or humiliated in any manner before the public.

23. Hence, the findings of the learned Special Judge, by which he acquitted the accused respondent of the charge for the offence under Section 3(1)(x) of the SC/ST Act are liable to be confirmed.

24. For the reasons stated above, the findings of the learned Special Judge, SC/ST Cases, Bikaner acquitting the accused respondent of all the charges framed against him are liable to be confirmed, as they are based on correct appreciation of evidence and this appeal is liable to be dismissed.

Accordingly, this appeal filed by the State of Rajasthan is dismissed, after confirming the judgment and order of acquittal dated 3-7-1996 passed by the learned Special Judge, SC/ST Cases, Bikaner.