

Manharan. Vs. the State of M P.

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Court : Chhattisgarh

Decided On : Jun-28-2010

Judge : Mr T P Sharma, J.

Acts : Scheduled Castes and Scheduled Castes (Prevention of Atrocity) Act, 1989
- Section 3; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 161, 313

Appeal No. : Criminal Appeal 263 of 1993

Appellant : Manharan.

Respondent : The State of M P.

Advocate for Def. : MrSushil Dubey, Adv.

Advocate for Pet/Ap. : Miss Ranjana Jaiswal, Adv.

Judgement :

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 27.2.1993 passed by the Special Judge, Raipur, in Special Criminal Case No.279/91, whereby & whereunder learned Special Judge after holding appellant guilty for the offence punishable under Section 3 (1) (x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short `the Act') sentenced him to undergo rigorous imprisonment for six months and to pay fine of Rs.100/-, in default of payment of fine to undergo simple imprisonment for one month.

2. Conviction is impugned on the ground that without any evidence relating to commission of the offence on the ground of caste, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.

3. Brief facts necessary for disposal of this appeal are that Devraj Diwan (PW-1), the then Patwari and member of Scheduled Tribe was coming to Nevra on 19.7.91 at about 6.15 p.m., the appellant stopped him and demanded map of revenue record, the complainant told him he would not in a position to supply such map, then appellant used filthy language and assaulted. Other co-accused also came and they also assaulted the complainant. Kotwar Nandkumar and Devnarayan Verma intervened, then the appellant used the words "Gond Gavar". Devraj Diwan (PW-1) lodged the F.I.R. vide Ex.P/1. Spot map was prepared vide Ex.P/3. The complainant was sent for medical examination vide Ex.P/4A and he was examined vide Ex.P/4.

4. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code') and after completion of investigation, charge-sheet was filed before the Special Judge, Raipur.

5. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 7 witnesses. The accused/appellant was examined under Section 313 of the Code where he denied the circumstances appearing against him and claimed innocence and false implication in the crime in question. The appellant has also examined defence witness Bishouha Ram (DW-1) and Fanni Ram (DW-2), who have deposed that complainant public servant was corrupt officer and was habit in demanding bribe which the appellant has opposed, therefore, he was having grudge against the appellant and on account of animosity, the complainant has falsely implicated the appellant in the crime in question.

6. After providing opportunity of hearing to the parties, learned Special Judge, Raipur has convicted & sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

8. Learned counsel for the appellant vehemently argued that in order to prove the offence punishable under Section 3 (1) (x) of the Act, the prosecution is required to prove that the complainant was the member of Scheduled Tribe by adducing cogent evidence to the caste and the appellant has assaulted him on account of his caste, but in the present case, the prosecution has utterly failed to prove the caste of the complainant and essential ingredients of the offence that he has been insulted in the public way on account of his caste. In the absence of such essential ingredients of the offence, conviction of the appellant under Section 3 (1) (x) of the Act is not sustainable under the law.

9. Learned counsel placed reliance in the matter of Ravi Bhadoriya v. State of M.P.¹ in which the High Court of Madhya Pradesh has held that in the absence of knowledge of the caste of the complainant, no charge for the offence punishable under Section 3 (1) (x) of the Act can be framed. Learned counsel further placed reliance in the matter of Hari Singh v. State of M.P.² in which the High Court of Madhya Pradesh has held that beating not because of victim belonging to scheduled caste or tribe but because of previous enmity, provisions of Section 3 (1) (x) of the Act is not attracted. Learned counsel also placed reliance in the matter of Shankarlal v. State of M.P.³ in which the High Court of Madhya Pradesh has held that in order to prove the offence of Section 3 (1) (x) of the Act, the prosecution is required to prove the fact that the appellant has used criminal force to outrage the modesty of the woman only because she belonged to a particular community i.e. member of Scheduled Caste or Tribe.

10. On the other hand, learned State counsel supported the judgment impugned and argued that the appellant was having knowledge that the complainant is the member of Scheduled Tribe and only with a view to insult him on the ground of his caste the present appellant has assaulted. After appreciating the evidence available on record, learned Special Judge convicted & sentenced the appellant as aforementioned. The trial Court has rightly convicted & sentenced the appellant.

11. In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence available on record. In the present case as per the evidence of complainant Devraj Diwan (PW-1), he is by caste Kunwar and

member of Scheduled Tribe. On the date of incident the appellant demanded a copy of revenue record which he was not in a position to supply without permission of the Court, therefore, the appellant insulated him along with other co-accused persons, then he went to the police station and lodged the F.I.R. His version is corroborated by Nand Kumar (PW-2) and Devnarayan (PW-3). He was examined by Dr.K.K.Tiwari (PW-6) vide Ex.P/4 and three injuries were noticed. In detail examination of complainant Devraj Diwan (PW-1), he has not stated anything to show that he was assaulted or insulted by the appellant on the ground of his caste, but he has deposed in his evidence that he was assaulted by the appellant on account of demand of a copy of revenue record, even he has not stated in his evidence that what words the appellant has used. He has stated in para 5 of his evidence that the appellant abused him in the name of mother, although in F.I.R. Ex.P/1 he has stated that the appellant used the words "Gond Gawar", but as per his evidence, he is not the member of Gond caste, but he is the member of Kunwar.

12. If the entire evidence adduced on behalf of the prosecution is admitted in its face value, then it would not be possible that the appellant has insulted or assaulted the complainant on the ground of his caste.

13. As held by the High Court of Madhya Pradesh in the matters of Ravi Bhadoriya, Hari Singh & Shankarlal (supra), in order to attract the provisions of the Atrocities Act, the prosecution is required to prove that the offence has been committed upon the member of Scheduled Caste or Scheduled Tribe on the ground of the member of such caste, but in the present case, the prosecution has not adduced any evidence to prove the aforesaid ingredients of the offence.

14. While convicting the appellant under Section 3 (1) (x) of the Act, learned Special Judge, Raipur has not considered the most material aspect of the case and essential ingredients of the offence and thereby committed illegality.

15. For the foregoing reasons, conviction & sentence of the appellant under Section 3 (1) (x) of the Act is not sustainable under the law. The appeal is allowed. Conviction & sentence of the appellant under Section 3 (1) (x) of the Act are hereby set aside. He is set at liberty at once. Fine, if paid by the appellant shall be

refunded to him.

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