

(2024) 02 JH CK 0050

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 419 Of 2012

Bajnath Singh And Others

APPELLANT

Vs

State Of Jharkhand & Anr

RESPONDENT

Date of Decision : 15-02-2024

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(x)
Indian Penal Code, 1860 — Section 34, 307, 323, 341, 448, 504
Code Of Criminal Procedure, 1973 — Section 107
Probation Of Offenders Act, 1958 — Section 3, 323

Citation : (2024) 02 JH CK 0050

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Indu Shekhar Gupta, Fahad Allam

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. Heard the parties

2. The judgment of conviction under Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentence of rigorous imprisonment for two years and a fine of Rs.2000/- and in default, simple imprisonment of two months, and rigorous imprisonment for six months under Section 323 of Indian Penal Code, is under challenge in the instant appeal.

3. As per the FIR, on 11.01.2008 when the informant Prakash Das was standing at the door of his house, the appellants came up in a drunken condition and abused him by calling his caste name and also assaulted the informant. The informant in order to save his life entered into the house and then both the accused persons started pelting stones. The genesis of offences is stated to be that the informant had been making excessive charge for pumping set hired for irrigation purpose.

4. Jarmundi PS Case No. 09 of 2008 was registered under Sections 341, 323, 448, 504, 34 of the Indian Penal Code and Section 3 (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against both the appellants.

5. Police on investigation found the case true and submitted charge sheet under Sections 341, 323, 448, 504, 34 of the Indian Penal Code and Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. After cognizance, charge was framed and accused persons were put on trial.

6. Altogether six witnesses were examined on behalf of the prosecution and the relevant documents were adduced into evidence, marked as exhibits. After prosecution evidence, the statements of the appellants have been recorded.

7. The specific defence taken by appellant Baijnath Singh is that he was the victim of assault by the informant and he also managed to send him jail. On behalf of the defence, documentary evidence regarding previous litigations have been adduced into evidence and marked as exhibits.

8. Judgment of conviction and order of sentence has been assailed on the ground that it was the informant who had assaulted the appellants regarding which appellant Baijnath Singh had lodged Jarmundi PS Case No. 10 of 2008 on 11.01.2008 with regard to incidence that took place on the same day under Sections 341, 323, 307, 504 of the Indian Penal Code. In the said incidence, appellant Baijnath Singh was assaulted with iron rod as will be apparent from the FIR (Ext-D). Counter to the said case, instant case has been lodged by invoking special provision of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8. Further, in the present case, no independent witness has been examined and out of four material witnesses, PW5 is the informant and PWs 1 and 3 are his brother and mother. PW2 is also the relative of the informant. The genesis of offence has been stated in the FIR to be the dispute arising out of charges levied for irrigation purpose by the pumping set of the informant. However, the prosecution evidence will falsify the allegation that the appellants had any dispute with regard to irrigation of pumping set with the informant. PW2 Manoj Kumar Das has specifically stated in para 1 that the dispute was not between these appellants and informant, but was between one Diwakant Das and the informant. On being requested by PW2 to intercede and pacify the dispute, both of them went there and assaulted him.

9. The informant himself has admitted in para 3 of the cross-examination that he had no dispute with regard to irrigation of land with the appellants. The dispute was between Diwakant Das who was the cousin of the informant.

10. It is further argued that the assault took place not because of caste of the informant but on account of dispute that he had with one Diwakant Das in which the appellants tried to mediate, but was assaulted by the father of the informant,

regarding which Baijnath Singh had lodged a case against the father of the informant being Jarmundi PS Case No. 10 of 2008. Appellant Baijnath Singh was injured in the said assault which has come in the testimony of PW 2 in para 4.

11. It is further argued that it was the informant party who had been committing breach of peace as they were very much large in number and a proceeding under Section 107 of Cr.P.C. was initiated by the SDM in which the appellants were the first party. Notices issued have been adduced into evidence as marked as Ext. A and A/1. PW3-mother of the informant has accepted in para 5 of her deposition. On this evidence, it is argued that the genesis of offences was not the caste of the informant but was a dispute unrelated to the caste relation of the informant.

12. Learned counsel for the State has defended the judgment of conviction and order of sentence.

13. Having considered the arguments advanced on behalf of both sides and on perusal of the oral and documentary evidence, it is apparent that the incidence took place on 11.01.2008 regarding which case and counter case was lodged. Appellant Baijnath Singh lodged Jarmundi PS Case No. 10 of 2008 against the father of the informant. It has also come in evidence that appellant Baijnath Singh was also injured in the said incidence. The immediate genesis of evidence was not any dispute between the appellants and the informant, rather it was a dispute between the informant and one Diwakant Das. It has also come in evidence that number of families of the caste of the informant Prakash Das was 60 to 70 whereas number of families of the caste of the appellant was 10 to 15.

14. On these materials, this Court is of the view that the altercation took place between both sides in which appellant Baijnath Singh was also injured and the informant was also injured leading to case and counter case. In order to make out a case under Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the victim should have intentionally insulted or intimidates with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in any place within public view. It is necessary that the assault should have been with intent to humiliate and any altercation of dispute will not, ipso facto, attract the criminal provision of the special Act, unless and until the said act was intended to humiliate the member of Scheduled Caste or Scheduled Tribe. Free fight manner which took place cannot by any stretch of imagination be said to have been with intent to humiliate the informant by caste name. It has been held by the Hon'ble Apex Court in Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe.

Under the circumstance, the judgment of conviction and order of sentence under

Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is set aside against the appellant. So far as conviction under Section 323 of Indian Penal Code is concerned, in view of oral evidence, the conviction is affirmed.

On the point of sentence, considering the genesis of offence and the overall facts and circumstance of the case, Appellants are directed to be released on admonition for the offence under Section 323 in view of Section 3 of the Probation of Offenders Act.

The Cr. Appeal is dismissed with modification in finding of sentence.