

(2017) 01 CHH CK 0038
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1524 of 1998

Baldau Anandaram Sahu,	Vs	APPELLANT
State of Madhya Pradesh		RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 7(1)

Citation : (2017) CriLJ 1231

Hon'ble Judges : Shri Anil Kumar Shukla, J.

Bench : Single Bench

Advocate : P K C Tiwari, Kripesh G Kela, Sanjeev Pandey

Final Decision : Allowed

Judgement

Shri Anil Kumar Shukla, J.(CAV) - Challenge in this appeal is to the judgement of conviction and order of sentence dated 29-06-1998 passed by the Special Judge, Rajnandgaon in Special Case No. 134/1997, whereby and where under the learned Special Judge has convicted and sentenced the appellants as under:

Conviction

Sentence

Under Section 147 of IPC

SI for 6 months and to pay fine of Rs.200/- each

Under Section 294 of IPC

To pay fine of Rs.300/- each

Under Section 506 Part -II of IPC

SI for 6 months and to pay fine Rs.200/- each

Under Section 323 read with Section 149 of IPC

SI for 6 months and fine of Rs.300/- each

Under Section 3 (1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act")

SI for 6 months and to pay fine of Rs.300/- each

In default of payment of fine, to further undergo SI for 15 days on each count.

2. The impugned judgement is challenged on the ground that without there being cogent evidence against the appellants, the trial Court has convicted and sentenced them in the aforesaid manner and has committed illegality.

3. Since appellant No.7 Lekhuram, appellant No. 9 Tahalram and appellant No.10 Mohan have died during pendency of this appeal, therefore, the appeal, so far as it relates to them, is abated.

4. Appellant No.2 ? Atmaram S/o Fandulal Sahu, appellant No.3 - Neelkamal S/o Bisahuram Lodhi, appellant No.4 ? Bisahuram S/o Durjanram Lodhi, appellant No.5 ? Bharatlal S/o Bisahuram Lodhi have compromised with the complainant Surajkumar vide order dated 25-06-2014 and remaining appellant No.1 ? Baldau S/o Anandaram Sahu, appellant No.6 - Kallu @ Kalaram S/o Bharosaram Sinha, appellant No.8 ? Teejuram S/o Thanuram Lodhi have compromised with complainant Surajkumar on 16-11-2016. In view of the above, the above named appellants have been acquitted of the charges under Sections 147, 294, 506 Part-II and 323 read with Section 149 of the IPC. Therefore, the instant appeal is heard only in respect of the conviction and sentence awarded to the appellants under Section 3(1)(x) of the Act.

5. Case of the prosecution, in brief, is that on 27-04-1996 at about 9-30 p.m., in village Rengakathera, Police Station Lalbagh, Surajkumar (PW-11) had gone to watch Television in the house of Ganesh Maharaj (PW-4), where the wife of Ganesh Maharaj i.e. Sitabai (PW-1) told Surajkumar to bring medicine on account of illness of her child, on which he went to bring the medicine. On return, he saw that there was no light in the house of Ganesh (PW-4), he got repaired the same. He was told by Sitabai to stay at night in her home as her child was not well and Ganesh (PW-4) was also not there. Thereafter, Mohan ? appellant No.10 in a drunken state came to the house of Sitabai and asked from her whereabouts of Surajkumar. She replied that Surajkumar was sleeping on the floor. On which accused/ appellant Mohan, by using filthy language, abused Surajkumar by caste. Surajkumar opened the door and saw that the accused Baldau, Atmaram, Teejuram and Tahalram were standing out side. They also abused Surajkumar and took him towards Bazar Chowk, where it was told to Surajkumar that appellant No.10 Mohan was having illicit relation with Sitabai and threatened him not to disclose regarding Mohan's illicit relation with Siabai to any body. They also took a confession in writing (Ex. P-9) from Surajkumar that he was having illicit relationship with Sitabai and he was caught having

committed illicit sexual intercourse with Sitabai in the night of the incident and, therefore, they took his under wear in their possession. On 28-04-1996 at 9.00 P.M., in a meeting accused/appellant No.2 Atmaram assaulted Surajkumar with Chappal and other accused persons namely, Neelkamal, Bisahuram, Bharatlal and Kallu @ Kalluram assaulted him with hands and fists. The complainant Surajkumar reported the matter in writing in the police station Lalbagh, regarding the incident vide Ex. P-4.

6. After completion of the investigation, charge-sheet was filed against the appellants in the Court of Special Judge, Rajnandgaon who conducted the trial.

7. In order to prove guilt of the appellants, the prosecution has examined as many as 13 witnesses. Statements of the appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded innocence and false implication in the crime in question.

8. After hearing learned counsel for the parties, learned Special Judge convicted and sentenced the appellants as aforementioned. Hence this appeal.

9. I have heard learned counsel for the parties, perused the judgement impugned and record of the Court below.

10. Learned counsel appearing for the appellants advanced his arguments against the conviction and sentence awarded to the appellants under Section 3(1)(x) of the Act. He argued that the investigation has been made by Head Constable Y.K. Janghel (PW-8) and Head Constable Ashok Sharma (PW-12), but they had no authority to investigate the matter as per Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for short "the Rules"). The investigation can be made by an officer of not below the rank of Deputy Superintendent of Police. Therefore, the conviction and sentence imposed upon the appellants under Section 3 (1)(x) of the Act is not sustainable and they deserve to be acquitted of the charge framed thereunder.

11. On the contrary, learned Counsel for the State/respondent opposed the arguments advanced by learned counsel for the appellants, but he accepted that the investigation has been made by Head Constables Y.K. Janghel (PW-8) and Ashok Sharma (PW-12).

12. From perusal of the record, it is clear that the incident is of 27-04-1996, whereas the notification regarding Rule 7 of Rules was issued on 31-03-1995. It is also clear from the record that FIR (Ex. P-5) was recorded by Y.K. Janghel (PW-8), Sanha (Ex. P-11) was recorded by Ashok Sharma (PW-12) and Inspector B.I.R. Naidu (PW-13) prepared spot map (Ex. P-1) on 24-05-1996. On the same date, statements of witnesses Surajkumar, Sitabai, Kamlabai, Sukhram, Rajkumar, Kishunram, Ganeshram, Doman, Sanjaykumar and Manthir were recorded under Section 161 of the Cr.P.C. Statements of witnesses namely, Mahesh, Shatruhan and Dhanush were recorded on 12-06- 1996. Accused persons namely, Baldau, Mohandas, Atmaram, Neelkamal, Bisahuram, Bharatlal,

Kallu @ Kalaram, Lekhuram, Teejuram and Tahalram were arrested on 03-06-1996. Thus, the complete investigation has been made by the Head Constables and Inspector level officers.

13. After perusal of the record of the Court below, the question which arises for consideration is as to whether according to Rule 7 of the Rules, the investigation has been made by a competent Police Officer?

14. Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, framed under the Act, reads as under :

"7. Investigating Officer - (1) An offence committed under the Act shall be investigated by a police officer not below the rank of Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer-in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer."

15. A bare perusal of the Rule would reveal that the State Government/the Director General of Police/Superintendent of Police shall appoint a Deputy Superintendent as Investigating Officer in cases under the above Act. Sub-rule (3) of Rule 7 of the Rules, 1995 further provides that the Home Secretary and the Social Welfare Secretary to the Government and other officers-in-charge shall review the working of the Deputy Superintendent of Police and the investigation done by him at the end of every quarter. It is therefore apparent that the authority to investigate has to be conferred on a specified officer not below the rank of Deputy Superintendent of Police after taking into account his experience, sense of ability and justice to perceive the implication of the case and investigate it along with right lines within the shortest possible time.

16. I am therefore, of the opinion that in view of the clear mandate of the Rules, it was only a specified Deputy Superintendent of Police who could investigate an offence under the Act. An investigation done by any officer below that rank and not specified as per Rule 7 of Rules 1995 would not be entitled to investigate any such offence. In the present case the investigation has been made by an officer of the rank of Sub-Inspector Police. This was not permissible.

17. In the matters of Dhanraj Singh and etc v. State of Madhya Pradesh, 2005 CRLJ 3782, Chandra Sekhar Pani and others v. State of Orissa, 2004 CRLJ 2626

and in the matter of State of Andhra Pradesh v. Viswanadula Chetti Babu, 2010 15 SCC 103, it has been clarified that violation/ contravention of Rule 7 of Rules, 1995 will entail an investigation illegal which shall vitiate trial. Therefore, cognizance taken on the basis of charge sheet submitted by an officer not competent to investigate a case under the Act, has to be quashed.

18. Thus, in view of the clear mandate of Rule 7 of Rules, 1995 and the decisions of the Supreme Court and various High Courts as referred to above, it is only the Deputy Superintendent of Police, that is competent to investigate the offence under this special Act. Undisputedly, in the case in hand, the entire investigation has been carried out by the Sub-Inspector of Police, which is violative of the legal provision and renders the entire trial as vitiated.

19. Consequently, the appeal is allowed. The impugned judgement is set aside. The accused/appellants are acquitted of the charge framed against them. They are on bail. Their bail bonds are not discharged at this stage and the same shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.