
(2009) 08 CHH CK 0055
In the Chhattisgarh High Court

Bhagirathi Sahu

APPELLANT

Vs

State of Madhya Pradesh (now Chhattisgarh)

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2009) 3 CGLJ 270 : (2009) 4 MPHT 56

Hon'ble Judges : Ranganath Chandrakar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ranganath Chandrakar, J.—The appellant has preferred this appeal against the judgment of conviction and order of sentence dated 4-2-2000 passed by the learned Special Court, Raigarh, in Special Case No. 48 of 1998, whereby the accused/appellant has been convicted u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") and u/s 506(2) of the IPC and sentenced to undergo RI for six months on each count. Both the sentences are directed to run concurrently.

2. The case of the prosecution, in brief, is that on 20-2-1998 when the complainant was teaching the students in primary school at Village Laat, at about 11.45 a.m., the accused/appellant forcibly entered into the class room and abused the complainant by caste. On this, the complainant asked the accused/appellant to go away from the school, but he did not heed his words and sat there on a chair. The accused/appellant also threatened the complainant stating that he would be killed on the way to his house. The reason behind the incident was stated to be the interchange of plates (Thali) brought for mid-day meals between the students due to which the teaching work was affected. The complainant lodged a written complaint (Exh. P-1) relating to the incident at Police Station, Chhal, on the basis of which the FIR (Exh. P-2) was registered,

the matter was investigated and the accused/appellant was arrested on 28-9-1998.

3. After completion of investigation, charge-sheet was filed in the Special Court. The Special Judge framed charges punishable under Sections 294 and 506(2) of IPC and u/s 3(1)(x) of the Act. The accused abjured the guilt and pleaded his innocence and false implication. The learned Special Judge after due trial convicted and sentenced the accused/appellant as mentioned in Para 1 of the judgment.

4. Learned Counsel appearing for the appellant submits that the learned Trial Court has erred in appreciating the evidence in its proper legal perspective. The conviction recorded and sentence awarded by the learned Special Judge are contrary to the facts available on record. The prosecution has miserably failed to prove the ingredients of the offence u/s 3(1)(x) of the Act and Section 506(2) of the IPC. Thus, the appellant is entitled for the benefit of doubt. There is no material on record to establish that the appellant did the act with a view to humiliate the complainant. There is no iota of evidence in the record. Learned Counsel further submits that the statements of Sahebram (P.W. 2) and Ramkumar (P.W. 3) and Tejram Rathia (P.W. 4) are not reliable and inspire no confidence. Laxminarayan (P.W. 6), who is eye-witness to the incident has not supported the prosecution story and has been declared hostile which makes the prosecution case suspicious. Learned Counsel further submits that the conclusions arrived at by the Trial Court are based on presumptions and surmises and on the grounds mentioned above, amongst others, the impugned conviction and sentence passed against the appellant is bad in law and the same deserve to be set aside and the appellant be acquitted of the charges.

6. Per contra, learned Counsel appearing for the respondent/State argued the case in support of the impugned order of the Lower Court.

7. Having heard learned Counsel for the parties, I have perused the records of the Special Court and also the impugned judgment.

8. The prosecution in order to prove the guilt against the accused/ appellant, examined as many as six witnesses.

9. Saheblal (P.W. 2), the complainant has stated in his deposition that during mid-day meals there was interchange of plates between the students by mistake, due to which the students were quarrelling each other. The matter was intervened by Saheblal saying that the plates would be searched after the meal. Thereafter, the son of the accused/appellant went to his house and after some time he came along with the daughter-in-law of the accused. She started murmuring that how the plate of her child was misplaced. She also threatened the witness to see and took away three plates saying that she would not return the plates till the plate of her child was given. He tried to convince her to settle the matter. He assured her to search out the plate of her child and simply pushed the plate kept in the verandah. On this, she became furious and went away. Thereafter, the witness

went to his class room. When he was teaching the students in Class Vth, the accused/appellant came there and forcibly entered into the class room, abused him and said that how did he dare to abuse his daughter-in-law. On this, he replied that he had not said anything to his daughter-in-law and asked the accused/appellant to sit for half an hour and he would make him understand the whole story. The other teachers also forbade the accused/appellant to enter into the school. The accused/appellant did not go away from the school, despite the request of the teachers and abused Saheblal by caste saying "Tum mujhe nikalnewale "Chamar" kahin ke hote kaun ho". The accused also threatened him to kill, if he passes in front of the house of the accused/appellant. The incident also interrupted the teaching work of the school. The matter was also reported to the Sub Divisional Magistrate, who asked him to lodge the report in Police Station Chhal on the basis of which FIR (Exh. P-2) was registered. During investigation, he produced his caste certificate. The statement of this witness has also been corroborated by Ramkumar (P.W. 3), Tejram Rathia (P.W. 4) who are the eye-witness to the incident.

10. This witness was cross examined at length, but nothing appeared in his cross-examination due to which the testimony of this witness can be held unreliable. Though some contradictions and omissions appeared in the statement of this witness made before the Court and before the Police in view of the written report (Exh. P-1), his statement remained unrebutted on material points.

11. B.P. Singsaria (P.W. 1), Sub Inspector has supported the testimony of the complainant (P.W. 2) and admitted that on the basis of written report (Exh. P-1) of the complainant, he registered the FIR (Exh. P-2).

12. A. Sai Manohar (P.W. 5), the SDO (P) deposed that he received the case diary of Crime No. 33 of 98 for investigation. He recorded the statement of witnesses Saheblal (P.W. 2), Ramkumar (P.W. 3), Tejram (P.W. 4) and Laxmi Narayan (P.W. 6) and other witnesses, thereafter, arrested the accused. He admitted his signatures on the statements of the witnesses and arrest memo (Exh. P-4). He also admitted that during investigation, caste certificate (Exh. P-6) of the complainant (P.W. 2) was obtained. Thereafter, the charge-sheet was filed by him in the Competent Court. In cross-examination of this witness, nothing appeared to disbelieve the prosecution story.

13. Although Laxmi Narayan (P.W. 6) declared hostile and did not support the prosecution story, he admitted the fact that on the date of incident some altercation took place between the daughter-in-law of the accused and the complainant (P.W. 2), thereafter, the accused/appellant also came there. On bare perusal of the testimony of this witness, it is crystal clear that on the date of incident the accused came to the school and forcibly entered into the class room where the complainant was teaching the students and from this the prosecution story finds corroborated.

14. Hon"ble Supreme Court in the matter of Swaran Singh and Others Vs. State through Standing Counsel and Another, has observed as under:

24. In our opinion, calling a member of the Scheduled Caste "chamar" with intent to insult or humiliate him in a place within public view is certainly an offence u/s 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word "chamar" will of course depend on the context in which it was used.

30. In this connection, it may be mentioned that in America to use the word "nigger" today for an African-American is regarded as highly offensive and is totally unacceptable, even if it was acceptable 50 years ago. In our opinion, even if the word "chamar" was not regarded offensive at one time in our country, today it is certainly a highly offensive word when used in a derogatory sense to insult and humiliate a person. Hence, it should never be used with that intent. The use of the Word "chamar" will certainly attract Section 3(1)(x) of the Act, if from the context it appears that it was used in a derogatory sense to insult or humiliate a member of SC/ST.

15. So far as this case is concerned, there is consistent evidence on record regarding intentional, insult or intimidation with intent to humiliate a member of Scheduled Caste. Calling a person by the caste-name "Chamar" (as mentioned in Paragraph 9 of the judgment) with intention of insulting or intimidating or humiliating will also constitute the offence rendered under the section. More so, these witnesses have also corroborated the statement of the complainant (P.W. 1) and they have been remained unrebutted on material point. Ramkumar (P.W. 3) and Tejram Rathia (P.W. 4), the teachers of the school have clearly stated that the complainant was abused by caste name "Chamar" and threatened to kill by the accused/appellant in the school which is a public place. Thus, after appreciating the evidence on record, it is clear that the case is well made out against the accused/appellant. There is consistent evidence against him about the intentional insult or intimidation with intent to humiliate a member of Scheduled Caste in a public place.

16. Having considered all the facts and circumstances of the case and in the light of principles of law laid down in Swaran Singh (supra), I am of the considered opinion that the Special Court has rightly convicted and sentenced the accused/appellant u/s 506(2) and Section 3(1)(x) of the Act and no interference is called for by this Court in the impugned judgment of the Special Court.

17. For the foregoing, the appeal deserves to be and is accordingly dismissed.