
(2012) 09 MP CK 0234

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 280 of 1997

Jagadamba Prasad and 2 Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 34

Citation : (2012) 09 MP CK 0234

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Som Mishra, for the Appellant; G.S. Thakur, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Justice Shri N.K. Gupta

1. The appellants have preferred this appeal against the judgment dated 6.1.1997 passed by the Special Judge under the SC/ST (Prevention of Atrocities) Act in ST. No. 69/1994 whereby the appellants were convicted for offence punishable u/s 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989 (hereinafter it will be mentioned as the "Special Act") and sentenced for six months rigorous imprisonment with fine of Rs. 500/-. In default of payment of fine one month's rigorous imprisonment was also directed. The prosecution's story in short is that, on 18.8.1994 at about 7-7.30 p.m in the evening, the victim Khadiya (PW2) was going from his field to his house at Village Thigri (Police Station Simaria, District Panna). In front of the house of Jagadamba Khare, the appellants abused the victim Khadiya with obscene words and words based upon his caste. They have told to the victim Khadiya that why he was not living like a Chamar. Thereafter, victim Khadiya was taken in the house of Jagadamba Khare and the appellants had assaulted him. Hakka (PW1), brother of the victim Khadiya, went to the Outpost Mohendra of P.S. Simaria, and gave a written report Ex. P/1 with the statement that Khadiya is still in the house of Jagadamba. At Outpost Mohendra

a case was registered and thereafter, it was transferred to the Police Station Simaria. The victim Khadiya was sent to the hospital for his medico legal examination. Dr. P.K. Jain (PW9) examined Khadiya and gave a report Ex. P/14. He found six injuries to the victim Khadiya situated on left scapula, left forearm, left ear, right hand, right feet and right hip. He was referred for the X-Ray examination. Dr. Singh (PW5) took the X-Ray of the victim Khadiya and gave a report Ex. P/2. He found a fracture of the right tibia bone to the victim Khadiya. After due investigation a charge sheet was filed before the Special Judge, Panna.

2. The appellants abjured their guilt. They have stated that they were falsely implicated due to the enmity. They never assaulted the victim on the basis of the caste or otherwise. To prove the enmity one Bhatti (DW1) was examined.

3. After considering the evidence adduced by both the parties the learned Special Judge acquitted the appellants from the charges of offence punishable u/s 3(1) (xiv) of the Special Act and convicted them for offence punishable u/s 3(1)(x) of the Special Act and sentenced as mentioned above.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the appellants has submitted that according to the prosecution's story no offence was committed at the public place. It was not told by the witness Khadiya that the appellants told him to live like a Chamar. On the contrary he has accepted that there was enmity with the appellants since last five years and therefore, the victim Khadiya was not ready to do the work of the appellants and therefore, no offence punishable u/s 3(1)(x) of the Special Act is made out against the appellants.

6. In reply to the contention of the learned Panel Lawyer, it is further submitted that, there was no charge of offence punishable under Sections 325 or 323 of I.P.C was framed by the trial Court and therefore, at present where the incident is 18 years old it would be injustice to remand the case for trial for offence punishable u/s 325 read with section 34 of I.P.C.

7. On the other hand the learned Panel Lawyer has submitted that the conviction and sentence directed by the trial Court appears to be correct whereas the trial Court has not framed the charges u/s 325 read with Section 34 of the I.P.C. Khadiya sustained a grievous hurt due to the assault caused by the appellants and therefore, the appellants are culprits for the offence punishable u/s 325 read with Section 34 of I.P.C.

8. After considering the submissions made by learned counsel for the parties it is to be considered whether the appellants could be convicted for offence punishable u/s 3(1)(x) of the Special Act ? Whether the case may be remanded for trial of the appellants for the charge of offence u/s 325 read with Section 34 of the I.P.C ? And in alternate whether the sentence directed against the appellant can be reduced?

9. In the case Hakka (PW1) and Khadiya (PW2) were examined as eye witnesses

whereas witness Ramroop (PW3) turned hostile and Shokhilal (PW7) has stated that it was Ramasare who, informed about the incident. Bhatti (DW1) has shown his ignorance about the incident. It is admitted by the witness Hakka (PW1) that when he reached to the spot the appellants confined his brother Khadiya in the house of Jagadamba Khare and therefore, if the appellants abused Khadiya then such incident of abuse took place prior to the arrival of the witness Hakka and therefore, statement given by the witness Hakka cannot be considered as an eye witness because he did not hear the words by which the appellants abused the victim Khadiya. FIR Ex. P/1 was lodged without any delay but, it is nowhere clear as to when Khadiya was released from the custody of the appellants or whether he was sent to the hospital directly from the house of Jagadamba Khare.

10. Khadiya (PW2) has stated that he is a Chamar by caste and the appellants held him and assaulted him and thereafter, he was dragged in the house of Jagadamba Khare. His hands and feet were tied and the appellants were abusing with filthy abuses and giving him a threat that he would be killed. In the entire statement before the Court, Khadiya (PW2) did not say that the appellants abused him on the basis of the caste or they assaulted him due to his caste. Khadiya has accepted in para 4 of his statement that there was enmity with the appellants since last five years and therefore, he was not doing any work for the appellants since last five years. It was the reason for assault done by the appellants upon Khadiya. Under such circumstances, looking to the evidence given by the victim Khadiya it is apparent that neither the appellants abused him on the basis of the caste nor he was assaulted because of his caste and therefore, due to assault it cannot be said that the appellants insulted the victim Khadiya on the basis of his caste. The complainant Hakka (PW1) has quoted some abuses on the basis of the caste but, it appears that he mentioned those abuses by his own suspicion. He went to the spot after much time where Khadiya was taken in the house of Jagadamba Khare and therefore, neither the witness Hakka saw the assault done upon the victim Khadiya nor he heard any abuses given by the appellants. Under such circumstances, the evidence given by the witness Hakka (PW1) and FIR Ex. P/1 lodged by him cannot be relied upon.

11. Under such circumstances, by the statement of the victim Khadiya (PW2) it is not established that the appellants ever insulted him on the basis of the caste and therefore, the learned Special Judge has erred in convicting the appellants for the offence punishable u/s 3(1)(x) of the Special Act.

12. Learned Panel Lawyer has submitted that Khadiya sustained grievous hurt in the incident and therefore, a trial for offence punishable u/s 325 read with Section 34 of I.P.C. is required. It is apparent from the record that Khadiya was being assaulted by the appellants causing him a fracture and therefore, offence u/s 325 read with Section 34 of I.P.C., could be framed against the appellants but, it is unfortunate that the Special Judge framed a consolidated charge of offence punishable u/s 3(1)(x) and (xiv) of the Special Act in which it was mentioned that the appellants assaulted the victim Khadiya and caused him grave injury

but, neither any separate charge for offence punishable u/s 325 of I.P.C is framed nor the Special Judge directed the conviction for that offence. On the contrary the appellants were acquitted from the charge of offence punishable u/s 3(1)(xiv) of the Special Act. Under such circumstances, without the charges of offence punishable u/s 325 read with Section 34 of I.P.C and without any State Appeal the appellants cannot be convicted at present for the offence punishable u/s 325 read with Section 34 of the I.P.C.

13. Incident took place in the year 1994 and the appellants have faced the trial and appeal for last 18 years. Under such circumstances, it would be a hardship to the appellants if the case is remanded to the trial Court for a trial of the appellants for offence punishable u/s 325 read with Section 34 of I.P.C. Under such circumstances, it is not possible for this Court to remand the case for retrial at this later stage.

14. On the basis of the aforesaid discussion it is apparent that the appellants cannot be convicted for offence punishable u/s 3(1)(x) of the SC/ST (Prevention of Atrocities) act and therefore, the trial Court has erred in convicting them for such an offence. Consequently, the appeal filed by the appellants is hereby allowed. Conviction as well as the sentence directed against the appellants for offence punishable u/s 3(1)(x) of the SC/ST (Prevention of Atrocities) Act is hereby set aside. The appellants are acquitted from the charges of offence punishable u/s 3(1)(x) of the SC/ST (Prevention of Atrocities) Act. They would be entitled to get the fine amount back, if they have deposited the same.

15. Presence of the appellants is no more required before this Court and therefore, it is directed that their bail bonds shall stand discharged. Copy of the judgment be sent to the trial Court for its record, information and compliance.