
(2018) 12 JH CK 0103

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 52 Of 2007

Jagarnath Prasad Sahu

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3(v), 3(1)(v)
Indian Penal Code, 1860 — Section 420, 467, 468
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 12 JH CK 0103

Hon'ble Judges : Ananda Sen, J.

Bench : Single Bench

Advocate : P.P.N. Roy, Pragati Prasad, Bhanu Roy, Mukesh Kumar

Final Decision : Allowed

Judgement

Ananda Sen, J.

1. The appellant stood convicted for committing offence punishable under Sections 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (herein after referred to as "the Act"), and has been sentenced to undergo rigorous imprisonment for 3 years and to pay fine of Rs. 500/- and in default of the payment of fine, he was further sentenced to under S.I. for six months. The aforesaid judgment of conviction and order of sentence has been passed by the 1st Additional Sessions Judge-cum-Special Judge, Gumla vide order dated 02.12.2006 and 04.12.2006 respectively, in G.R. No. 882 of 2000.

2. A first information report was registered on the basis of the fardbeyan of the informant Jaymuni Devi (PW-4), stating therein that she is a poor Scheduled Tribe widow. The land of her father-in-law Late Nima Oraon bearing Khata No. 46 Plot No. 534, area 30 decimals at mauza Chetar, has been illegally occupied by Jagarnath Prasad Sahu, S/o Late Net Lal Sahu (appellant herein). She stated that her father-in-law had constructed a house over the said land and the land and

house belongs to her husband. She further stated that appellant Jagarnath Prasad Sahu, who was her tenant, after preparing a forged hukumnama, occupied the said land and house. She further stated that she filed a case in the Court of LRDC, who passed an order in her favour and accordingly, the government issued rent receipt in the name of her father-in-law Nima Oraon from the year 1957 till 1991. She further stated that the appellant illegally got prepared rent receipt for the year 1984-85 in the name of his father Netlal Sahu and thus by playing fraud he illegally grabbed the land of a poor scheduled tribe lady. She further stated that she filed several representation before the Circle Officer and S.D.O., but no order was passed on her representation therefore, she filed this application under the provision of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, against this appellant for taking legal action.

3. On the aforementioned written report, Gumla P.S. Case No. 256 of 2000, was registered against the accused appellant under Sections 420, 467, 468 of the Indian Penal Code and Section 3 (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4. After completion of investigation, charge sheet was filed in the Court and the cognizance was taken against the accused appellant. After complying all the provisions, the case was committed to the Court of Sessions, for trial.

5. Charges were framed against the appellants under Sections 420, 467, 468 of the Indian Penal Code and Section 3 (1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and he was put on trial as he pleaded not guilty.

6. The prosecution, in order to prove its case, examined altogether four witnesses and also exhibited several documents. PW-1 is Shobha Minz. She stated that the occurrence took place in December, 2000. She further stated that the accused Jagarnath Sahu is known to him and he was the tenant in the house built by Nima Oraon over the land in question, but she is unable to say that to whom the rent was being paid by the accused. She further stated that the land was given to Jai Mangal Munshi by Nima for constructing but, later on Jaimangal had given the house to Fagua Oraon, son of Nima Oraon. She could not say as to whether any paper was executed for transfer of house or not.

7. PW-2 is Mange Devi. She stated that the occurrence took place one year back and at that time she was residing in the house of the informant Jaimuni Devi. She further stated that a quarrel had taken place between Jagarnath Sahu and herself. She stated that the appellant ousted her from her house. She also deposed that the appellant administered poison in her food and forced her to eat but she gave that food to the dog, so she was saved. She identified the appellant.

8. PW-3 is Prakash chandra , who is also a tenant of the informant Jaimuni Devi since the year 1988 and used to pay rent @ Rs. 65/- p.m. He stated that Jagarnath Sahu had a grossery shop at Gopal Mandir and later on started living in the house of the informant Jaimuni Devi as tenant and use to pay rent and

also established a grocery shop. He further stated that the appellant Jagarnath Sahu paid rent for 2-3 years and thereafter started saying that the house belongs to him due to which dispute arose between the accused and Jaimuni Devi. He further stated that the informant filed a case which was allowed in her favour and the possession of the house was given to her by the District Administration. He stated that thereafter, the accused left the house and Jaimuni started living in the said house.

9. PW-4 Smt. Jaimuni Devi is the informant of this case. She stated that she is a scheduled tribe lady of Oraon caste and she filed a case against the accused Jagarnath Sahu for grabbing her land after making forged paper. She stated that the aforesaid land belongs to her father-in-law Nima Oraon, who was residing in the said land after constructing a house and after his death, she started living in the said house with her family. She further stated that her husband died 10 years back due to illness and her mother-in-law is also dead. She further stated that the accused Jagarnath Sahu was her tenant and after the death of her husband, father-in-law and mother-in-law, taking advantage of her position, the accused started quarrelling with her and told that he purchased the said house and land from her father-in-law. She further stated that after inquiry, the accused was driven out of the house by the Administration and the house was restored in her favour. In her cross-examination, she stated that the dispute over the land was going on with the accused since the year 1993 in which the accused told her that the Hukumnama of the land was given to him by the Jamindar. She further stated that she filed a case before the LRDC, which was decided in her favour. Thereafter, the accused filed an appeal before the A.C., which is pending.

10. After closure of the evidence of the prosecution, statement of the accused-appellant was recorded under Section 313 of the Code of Criminal Procedure.

11. The defence has also examined two defence witnesses, i.e. DW-1 Braj Kishore Singh and DW-2 Rajendra Jha an Advocate Clerk. DW-1, in his evidence, has stated that a sada hukumnama was written by Late Baraik Anant Raijee in favour of Late Netlal Sahu and Khat No. 46, Plot No. 534, area 30 decimals was settled in his favour. Thereafter, Netlal Sahu constructed a house over the said land.

DW-2 is an Advocate Clerk of Gumla Civil Court, who has proved the rent receipts, Jamindari receipts, true copy of surrender deed, certified copy of the judgment passed in SAR Case No. 762 of 1995 etc.

12. The defence also exhibited the following documents:-

- (i) Hukumnama signed by anant Rai Jee as Ext-A;
- (ii) Jamindari receipts, Ext.-B & Ext. C;
- (iii) Rent receipts, Ext.-B/2, B/2 & B/3
- (iv) Two municipal receipts, Ext-D & D/1;

(v) True copy of the surrender deed, Ext.-E;

(vi) Certified copy of the order dated 12.01.2001-02 passed in SAR Case No. 3/1995; Ext.-G & H respectively as public documents.

13. After analyzing the evidence and after hearing the arguments, the trial court vide its judgment dated 02.12.2006 convicted the appellants/accused only for the offence punishable under Section 3 (1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and vide order dated 04.12.2006 sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 500/- and in default of payment of the said amount, he was further sentenced to undergo S.I. for six months.

14. Being aggrieved by the said judgment of conviction and order of sentence awarded to the appellants, the appellant has preferred the instant appeal.

15. We have heard learned counsel appearing for the appellants and learned Addl. Public Prosecutor appearing for the State.

16. Learned senior counsel appearing for the appellant submits that the appellant is absolutely innocent and there is no material to convict him for the said offences. He further submits that there was a genuine land dispute between the appellant and the informant and when there is a genuine land dispute, this case cannot come within the purview of Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It is further submitted that from the evidence it is clear that the dispute is pending before the Additional Collector, thus no conclusion could have been arrived at by the criminal Court. He further submits that there is nothing on record to suggest that the appellant had dispossessed the informant from the land/house. It is further argued that when charges under the Indian Penal Code has failed, the Court below could not have convicted the appellant under Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, when it is the case of the prosecution that by preparing a forged and fabricated document the informant was dispossessed. He further submits that when the case of forgery has failed, the conviction under section 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is absolutely bad. He lastly submits that the witnesses are interested and on their testimony the appellant could not have been convicted.

17. On the other hand, learned APP appearing on behalf of the State supports the judgment and submits that admittedly the informant is a lady belonging to Scheduled Caste and this appellant, by preparing a forged documents, has dispossessed the lady from her dwelling house for which an offence under Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is made out and thus the conviction is justified. He further submits that the informant and the other witnesses have categorically supported the prosecution case and the factum of ousting the informant from her land in question has been established, thus the Court below had no other option but to

convict the appellant.

18. After hearing the parties, I find that this is a case where the informant being a member of Scheduled Tribe was allegedly forcibly dispossessed from her land/ premises. The Court below has convicted the appellant for the offence under Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The relevant portion of the Act (as it then was) reads as follows:-

"3(1) whoever, not being a member of Scheduled Caste or a Scheduled Tribe, (v) Wrongfully dispossesses a member of Scheduled Caste or Scheduled Tribe from his land or premises or interfere with the enjoyment of his rights over any land, premises or water; shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

19. Thus, from the aforesaid Section it is quite clear that some necessary ingredients are to be proved to convict the accused under the aforesaid provision of law. Wrongful dispossession of a member of Scheduled Caste has to be proved. The said dispossession should be by a member of non-Scheduled Caste or Scheduled Tribe person. It has further to be proved that the member of Scheduled Caste is the owner of the land or had any rights over the land in question and the dispossession is wrongful. Keeping in view the aforesaid provision of law, this case has to be decided.

20. The victim/informant stated that she is a member of Scheduled Tribe. This fact has not been disputed by the defence nor he has challenged the same, nor the defence had taken the plea that he is a member of Scheduled Tribe. Thus, it is proved that the appellant is not a member of Schedule Caste or Scheduled Tribes, whereas the informant belongs to Scheduled Tribe. Now, it is to be seen whether the informant was wrongfully dispossessed from her land or premises or the appellant had interfered with the enjoyment of the right of the informant, and whether the right of the informant over the land or possession was prima facie established by the prosecution.

21. In the evidence, which has been adduced by the prosecution, PW-4, who is the informant, stated that the land belongs to her father-in-law in Khata No. 46 Plot No. 534, area 30 decimals at mauza Chetar and after the death of her father-in-law and husband, the same devolved upon her. She stated that her father-in-law had constructed a house where he was residing and this appellant was a tenant there. She stated that after the death of her father-in-law and husband, taking advantage of this situation, this appellant prepared some forged documents and gave out that he is the owner of the land in question. She also stated that she filed a case and the District Administration had evicted the appellant from the house and the possession was restored in her favour. PW-2 stated that the appellant had grabbed the land of the informant. PW-3, who is also a tenant of the informant, stated that dispute arose between the appellant and the informant as the appellant gave out that the land belongs to him. He also stated that the possession of the house was restored by the District

Administration in favour of the informant.

22. From this evidence, I find that the informant claims the land to be her, which was recorded in the name of her father-in-law. She has given the plot number of the land. On the other hand, the defence has examined two witnesses and the defence also claims that the land to be his. The defence produced several documents. As per the defence the case is pending before the Additional Collector in respect of the land in question at the behest of the appellant. The defence exhibited several documents also in his favour. Thus, I find that the defence has tried to establish that there is a bonafide land dispute amongst the parties. The prosecution, in this case, has only led oral evidence in support of ownership of the land in question. Not a single document has been filed by the prosecution to suggest that the land belongs to the informant or her father-in-law. There is no document to prima facie suggest that the informant had any right over the land and the said rights were infringed by the appellant. The prosecution witness has stated that the District Administration had restored the land in favour of the informant but the prosecution has not produced any document to show that there was restoration of possession had actually taken place. Further, even if, at all there was a restoration pursuant to the order of the LRDC, but the documents, which were also filed by the appellant suggest that there was a bonafide land dispute. Further, it is the case of the prosecution that this appellant was inducted as a tenant by her father-in-law, but no such document has been produced. It is also the admitted case that the dispute is pending before the Additional Collector.

23. So far as witnesses are concerned, I find that PW-2 and PW-3 are interested witnesses. From the evidence of PW-2, I find that she is in inimical term with the appellant as he categorically stated that there was dispute between her and the appellant. Further, PW-3 claimed to be a tenant of the informant. Thus, from the overall assessment of the evidence, I find that there is element of doubt in the prosecution case as there is bonafide land dispute between the parties and nothing has been brought on record to suggest that the informant is the owner of the said land and was enjoying the property. Further, I find that the case as set forth by the prosecution is that the appellant has forged several documents and claimed ownership of the land was not believed by the Court below as there is no conviction under Sections 420, 467, 468 of the Indian Penal Code.

24. Thus, on the aforesaid position, it was not proper for the trial court to convict the appellant for the offence under Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Thus, I find merit in this appeal. Accordingly, this appeal is allowed. The judgment of conviction and order of sentence dated 02.12.2006 and 4. 12.2006 respectively, passed by the 1st Additional Sessions Judge-cum-Special Judge, Gumla in G.R. No. 882 of 2000, against this appellant is hereby set aside. The appellant, who is on bail, is discharged from the liabilities of his bail bonds.