
(1999) 07 MP CK 0061

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1405/98

Janggu @ Shobhit and Others

APPELLANT

Vs

The State of M.P.

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 447
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(5)

Citation : (2000) 1 MPHT 281

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : Sunil Sinha, for the Appellant; Deepak Okhade, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—The appellants who stand convicted for commission of the offences punishable u/s 3(1)(5) of Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 read with Sections 447 and 447/34 IPC have been sentenced to undergo R.I. for six months and pay fine of Rs. 500/-under each count; in default of payment of fine to undergo simple imprisonment for 1 - month for each default, have filed this appeal against the judgment dated 27-1-98 passed in Criminal Case No. 165/97 by the Special Judge (Atrocities), Ambikapur.

2. The prosecution case in brief is that the land Sy. Nos. 53 and 54 originally belonged to one Sohansai from whom somewhere in the year 1993 the property was purchased by the complainant Pawansai in the name of his son's wife namely Bhanudevi. After some time he came in possession of the property and carried out the agricultural operation. On 18-11-94 under Ex. P/14 the First Information Report, he reported to the police that said Sy. Nos. 53 and 54 were purchased by him in the name of his daughter-in-law somewhere in the year 1993, but the applicants who were already in possession were not ready and

willing to deliver the possession to the complainant. He also informed to police that he had sown the paddy in the field, but accused persons had also sown paddy in the said field and harvested the crop. He submitted to the police that action be taken against the accused persons. After recording statements, preparing the Panchnamas and collecting the documents from the Revenue Deptt., the prosecution agency filed the challan. The trial Court after hearing the parties convicted the accused persons who being aggrieved by the same have filed this appeal.

3. Learned counsel for appellants submits that present is a case where the complainant himself did not say that the property which was already in possession of the accused persons was ever delivered to the complainant party. He submits that unless the complainant party shows and proves that the possession was delivered to the complainant party and thereafter they were dispossessed by the accused, the accused could not be convicted for commission of offence punishable u/s 3(1)(5). He submits that the complainants or the prosecution did not choose to file the original or certified copy of the sale deed, therefore, the Court would always be at a loss to appreciate the recitals recorded in the said sale deed. According to him, the appellant were already in possession and were entitled to maintain their possession.

4. Shri Deepak Okhade, learned Panel Lawyer for State submits that the moment property was sold to the complainant, the said complainant was entitled to possession and as he entered in possession and was enjoying his rights over the land and as the accused persons did not permit him to harvest the paddy crop, the Court below was absolutely justified in convicting the accused. I have heard the parties at length, and perused the records.

5. Undisputedly the prosecution and/or the complainant have not filed a copy of the sale deed alleged to be executed by the erstwhile owner in favour of the complainant's daughter-in-law. In absence of the said document, this Court certainly is at a loss to appreciate that what were the contents of the said document.

6. From Ex. P/6, it appears that the property in dispute was earlier in possession of Sindhu Sai which later on came in possession of Suhansai. Ex. P/6 shows that name of complainant was mutated in the official records somewhere in April, 93. Ex. P/6 is copy of Form-B maintained as records of rights. Ex. P/7 is the Khasra entries for the years 1992-93, 93-94 and 94-95. The said Khasra entry shows that land was recorded in name of Sindhu s/o Maniram Gond in the year 1992-93. There is no entry in column No. 12 to show possession of any particular person. In the year 1993-94 the land came to be recorded in the name of Suhansai s/o Sindhu Sai. The land thereafter came to be recorded in the name of Bhanudevi, daughter-in-law of the complainant. The order directing mutation of the name is not available on the record. This Court is again at a loss to understand and appreciate as to whether all the legal formalities for mutation of the name were complied with or not.

7. P.W. 1 Pawansai has stated that before he started agricultural operations on the land, accused Janggu was cultivating the lands. According to him, he had sown the crop, but the accused harvested the same. The report is said to have been lodged on 18-11 -94. In his statements, he has nowhere said that how and when he came in possession of the property which was already in possession of the accused persons. He had simply said that after he purchased the lands, he started agricultural operations on the land. In the opinion of this Court, unless it is proved by the prosecution that the complainant was in de-facto possession of the property, the accused cannot be convicted for breach of provisions of Section 3(1)(5) of the Act. De-jure possession would again have to be proved by the prosecution. In the present case, the prosecution does not say that the complainant would be deemed to be in possession of the property as the accused persons were in possession of the land on behalf of the complainant. In fact the records show that the complainant had a right to obtain the possession. On the strength of statement of P.W. 1 and the other witnesses; viz. P.W. 2 Sadhuram and P.W. 3 Budhram, I am unable to hold that the complainant was in actual physical possession of the property. The defence has examined DW-1 Shobhuram to show that original owner Sindhu had taken a sum of Rs. 4,000/- from the Bank and as he was unable to pay the money, he took the loan from the father of the accused and handed over the possession of the land to the father of the accused. According to DW-1, when the property was in possession of the accused persons, the same was sold by Suhansai to the complainant party.

8. In paragraph 6, it was suggested to the complainant that Sindhu had taken loan from the Bank and to discharge the said liability, he had taken loan from the accused persons. The suggestion was not denied, but the complainant pleaded ignorance. From the statement of P.W. 1, it appears that to obtain possession he entered in the fields and sowed the paddy crop, but the accused persons who were not ready and willing to give up the possession had also sown the paddy crop and thereafter harvested the same. In paragraph 12 P.W. 1 Pawansai had admitted that before his purchase, the land was under cultivation of the accused persons. From this evidence it would appear that on the date of execution of the sale deed the seller was not in possession of the property and was unable to deliver the possession of the said property to the complainant who had purchased the lands in name of his daughter-in-law.

9. Section 3(1)(5) provides that whoever, not being a Member of a Schedule Caste or Scheduled Tribe wrongfully dispossesses a member of a Schedule Caste or a Scheduled Tribe from his land or premises or interferes 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.

10. For securing a conviction u/s 3(1)(5), the prosecution, for the first clause is required to show that the accused had wrongfully dispossessed a member of S.C. or S.T. from his land or premises. A wrongful dispossession, in the opinion of this

Court, pre-supposes positive and de-facto possession. Unless a man is shown to be in actual physical possession of the property, he cannot be dispossessed. I have already found that the complainant was not in de-facto possession. If a person is not in possession of the property, then he cannot be dispossessed. The second clause of Section 3(1)(5) provides that if somebody interferes which the enjoyment of complainant's rights over any land, premises or water, then he shall be punished. On a fair reading, the words "enjoyment of his rights" must be read in juxtaposition with the words "any land, premises and water", the first clause refers to the personal lands while the second clause relates to any land, premises or water. In fact the second clause applies to a case where the right to enjoy any land, premises or water has been interfered with. For securing conviction under the second clause, the prosecution is required to prove that the complainant had some rights and he was enjoying the said rights over any land, premises or water. The second clause would cover a contingency relating to right of easements, right of way and fetching of the water etc.. Unless it is proved by the prosecution that the complainant had a right and was enjoying the same, the prosecution would not be entitled to say that because accused did not permit the complainant to take possession of the property which he was allegedly entitled he be convicted.

11. P. W. 1 is conspicuously silent regarding delivery of possession or his entry in the property. He simply states that he came in possession of the property two years prior to his statements in the Court. The person who had sold the property to the complainant has not been examined to say that he delivered the possession of the property to the complainant, copy of the sale deed is not filed in the Court, the order on strength of which the name of complainant's daughter-in-law was mutated has not been filed in the Court, then reliance upon statements of P.W. 1 Pawansai, in the opinion of this Court, would not be safe.

12. In the present case, the prosecution has failed to establish that the complainant was in possession of the property.

13. The statement of D.W.-1 Shobhram cannot be lightly ignored. The approach of a Court to very lightly brush aside the defence witnesses cannot be approved. Afterall they are also the witnesses who appear in the Court to prove the defence and make the statements on oath. The statement of DW-1 Shobhram that the accused persons were in possession of the property in the year when the report was lodged to the police would certainly give a dent to the prosecution case. The burden to prove the defence is not as heavy on the defence as it is on the prosecution. The prosecution is required to establish its case beyond every shadow of doubt, but the accused is only required to show to the Court that the defence raised by him may not be foolproof, but is probable and plausible. If the Court is of the opinion that the defence appears to be reasonable and probable, then the Court is not entitled to reject the statements of the witness.

14. I am unable to hold that the complainant party was in possession of the land in dispute or, immediately after execution of the sale deed or passing of the

order of mutation, the possession was delivered to the complainant. As the complainant was not in possession of the property, there would be no question of his wrongful dis-possession.

15. The Court below was not justified in convicting the appellants. The appeal filed by the appellants deserves to be allowed. It is accordingly allowed and the accused persons are acquitted of all the charges. They do not appear to be on bail, in view of the report submitted by C.J.M., Ambikapur. They be immediately released.