

(2015) 03 CHH CK 0016
In the Chhattisgarh High Court
Case No : CRA No. 1495 of 1999

Kartik Ram and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 437-A
Penal Code, 1860 (IPC) — Section 34, 384
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(xv)

Citation : (2015) 3 CGLJ 183 : (2015) CriLJ 2958

Hon'ble Judges : Chandra Bhushan Bajpai, J

Bench : Single Bench

Advocate : Lakhmi Tonte, for the Appellant; Sangeeta Mishra, Panel Lawyer,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Chandra Bhushan Bajpai, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 14-5-1999 passed by Special Judge under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act"), Raipur in Special Session Case No. 58/97 whereby and whereunder the Special Judge after holding the appellants guilty for forcing or causing a member of Scheduled Tribe to leave his house, village or other place of residence, convicted them under S. 3(1)(xv) of the Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/-, in default of payment of fine, further undergo R.I. for 10 days to each appellants. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned thereby committed illegality.

2. As per the case of the prosecution, on 14-4-1997 complainant Singhraj Singh (PW-7) lodged First Information Report (Ex. P/4) against the appellants and one

another accused person that on 20-10-1996 the complainant and other members of his community i.e. Scheduled Tribes have conducted pooja in honour of kurupat ishta devata and they invited other villagers also to attend the Pooja. On 29-10-1996 Gajpal Singh Noor Pal Singh, Chandrabhan Singh along with the complainant served with a notice and were directed to appear in the meeting of villagers on 30-10-96. When the complainant and other villagers joined in the meeting they were asked as to why they offered pooja to kurupat ishta devata without asking to other villagers. In the meeting they were fined a penalty of Rs. 2000/- and asked them to pay it immediately otherwise they had to pay a fine of Rs. 6000/- and they will be outcasted from the village. When the complainant and other witnesses protested for the same and denied for the payment of alleged fine, the appellants along with other co-accused-Reetu Shankar threatened them for marpeet and extortion of deposit of the fine. On account of fear, the villagers stopped talking to the complainant and his relatives and they were facing inconvenience as the villagers were not making any relation or contact with them. When their grievances were not redressed, the complainant reached to the Police Station Kasdol and lodged First Information Report (Ex-P/4). The police registered crime No. 52/97 and registered the offence under Ss. 384/34 of the I.P.C. against the appellants and one another co-accused against whom a case was separately filed before the Court at Baloda Bazar. Investigating Officer after registering crime started investigation. Asst. Sub-Inspector PR Dewangan (P.W. 11) prepared spot map (Ex-P/1) and also seized notes (Ex-P/3) of the meeting vide Ex-P/2. He also recorded statement of the witnesses under S. 161 of the Code of Criminal Procedure, 1973 (for short "the Code")- First Information Report was recorded by SHO Prithvi Dubey. PK Singh SDO (P) (PW-10) performed the post part of the investigation. He recorded the statement of Laharam Bhijhwar. After completion of investigation, charge-sheet was filed before Special Judge/Additional Sessions Judge, Raipur, under the Act.

3. The learned trial Court framed the charges against the appellants for the offence under S. 3(1)(xv) of the Act. The charge-sheet was filed under Ss. 384/34 of the IPC and under S. 3(1)(xv) of the Act. Against framing of charges only under S. 3(1)(xv) of the Act and by not framing any charge under Ss. 384/34 of the I.P.C, the State has not challenged framing of the charges before the higher forum. With this, framing of charges only under S. 3(1)(xv) of the Act attains finality.

4. The prosecution has examined as many as 11 witnesses to prove the guilt of the appellants before the trial Court. Statements of the appellants were also recorded under Sec. 313 of the Code, wherein they denied the circumstances appearing against them, pleaded innocence and false implication in crime in question. The appellants also examined Sharad Lal Ghada (DW-1), Village Kotwar, and Kachman Paikra (DW-2). As per these defence witnesses, there was no dispute between the appellants and the complainant and the appellants never demanded any fine amount from the complainant and from their family members and there is no outcast for the complainant and his family members in the

village. On account of dispute in two groups, the appellants are falsely implicated.

5. After providing opportunity of hearing to the parties, the learned Special Judge convicted and sentenced the appellants as aforementioned.

6. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

7. Learned counsel for the appellants vehemently submits that as there are no charges framed for offence under Ss. 384/34 of the I.P.C. and this section is not lesser section of S. 3(1)(xv) of the Act, hence, the act of the appellants may be assessed for the offence for which charges have been framed. Because if any charge under S. 384 of the IPC with S. 34 were framed, the appellants would have got the opportunity to defend the same.

8. Learned counsel for the appellants further submits that framing of charges was not challenged by the State before Higher Forum, hence, whatever charges framed against the appellants attain finality. Now the Court has to examine whether the offence under S. 3(1)(xv) of the Act is proved or not. Learned counsel for the appellants further submits that the prosecution has utterly failed to prove the guilt against the appellants that they ever forced or caused a member of the Scheduled Tribe community to leave his house or village or other place of residence. As there is no evidence, the appellants may not be convicted for the said offence. As per the evidence appeared before the trial Court that complainant was fined and they were told that if they would not deposit the entire fine amount then they have to pay Rs. 6000/- and the appellants prohibited social communication with other villagers. All these facts do not constitute the essential ingredients of S. 3(1)(xv) of the Act. On behalf of the appellants it was further submitted that as per the evidence that came before the trial Court the appellants never forced or caused the complainant to leave their house, village or any other place of residence. Learned counsel for the appellants submits that caste certificate of the complainant was not collected or recovered from the complainant. It was required by the IO to prove the caste of the complainant as defined under S. 2C of the Act, because Binjhar caste falls under the category of Scheduled Tribe or not is not proved. Merely saying that the complainant belongs to Binjhar caste, essential ingredients are not proved automatically. Learned counsel for the appellants submits that as the prosecution failed to prove its case, the appeal may be allowed.

9. On the other hand, learned counsel for the State opposed the arguments advanced on behalf of the appellants and submitted that the judgment of conviction and sentence passed by the trial Court is well founded. The appellants had formed situation where it caused the complainant to leave their house or place of residence. They were fined without authority and further threatened that if they would not pay the amount, they would be boycotted from the village. There is no force in the appeal and hence, the same may be dismissed.

10. In order to appreciate the arguments advanced on behalf of the parties, I

have perused the evidence adduced by the parties.

11. As provided under the Act, the offence committed under the Act shall be investigated by the police officer not below the rank of Dy. Superintendent of Police duly appointed. In the present case, Prithvi Dubey, Station House Officer recorded the FIR, PR Dewangan Asstt. Sub-Inspector (PW-11) prepared spot map and seized notice of the meeting. He also recorded statement of eleven witnesses under S. 161 of the Code. Thereby almost entire investigation was conducted by PR Dewangan (PW-11) who is not an officer of the rank of Dy. Superintendent of Police. PK Singh (PW-10), SDO(P), only recorded the statement of Laharam Bhinihwar. The witness was not adduced by the prosecution and rather given up during the trial. By merely recording the statement of one witness, it cannot be said that investigation was conducted by PK. Singh (PW-10) SDO(P). As the entire investigation was done by PR Dewangan (PW-11) Asstt. Sub-Inspector, this whole exercise is against the mandate of Rule 7 of the Act. By not following the mandatory provisions of law, investigation itself is vitiated for the offence under S. 3(1)(xv) of the Act. In view of this, trial under S. 3(1)(xv) is vitiated as there is non-compliance of Rule 7 by not investigating the matter through Dy. Superintendent of Police which affects the fate of the case seriously.

12. No caste certificate is collected during investigation or produced before the trial Court. As per the requirement of S. 2C of the Act, the prosecution has to prove that victim belongs to reserved category for which it is required to obtain caste certificate from the authorised signatory. In absence of such caste certificate and in absence of material evidence that the complainant and his family members belong to Scheduled Tribe community, simply by narrating that they belong to Binjhwar caste it would not automatically prove that the complainant and their family members fall under the Scheduled Tribe category. For this also in view of this Court it affects the case of the prosecution adversely.

13. No charges were framed under S. 384 of the I.P.C. Against framing of charges, the State has not preferred any revision before the higher forum. By not challenging the said charges, framing of charges become final as the appellants are expected to defend themselves for the offence under S. 3(1)(xv) of the Act, it is needless to mention that S. 384 of the I.P.C. can no way lesser offence than that of the S. 3(1)(xv) of the Act as one belongs to Special Act and one belongs to general act.

14. While considering the entire evidence adduced by the prosecution, the appellants and other villagers objected the offering of pooja to Kurupat ishta Devata thereafter they were fined for Rs. 2000/-, and they were threatened that they have to deposit the enhanced amount of Rs. 6,000/- by the next day. In the cross-examination, the witnesses admitted that there is no problem or prohibition in the village. People are living together, there is no enmity they were all in talking terms and that no witnesses ever deposed and that they threatened them to leave their village or place of their residence which is essential

requirement of S. 3(1)(xv) of the Act. By making the fine of certain rule or awarding for enhancement of fine amount if not paid and by giving them threat may not itself constitute the offence under S. 3(1)(xv) of the Act. The witnesses in their cross-examination supported the appellants saying that the fine was imposed upon them by advise of all the panchas present in the meeting and not by the order of appellants only.

15. By appreciating the entire evidence, including the statement of Singhraj Singh, it appears that all the witnesses have said nothing regarding use of force or causing them to leave their house, village or other place of their residence.

16. On minute scrutiny of entire evidence, and also after considering all the statement of the defence witnesses, there is no prohibition, outcaste or other social boycott. In the considered view of this Court, while convicting and sentencing the appellants under S. 3(1)(xv) of the Act, the trial Court has committed illegality and the same requires interference. Consequently, as the prosecution has utterly failed to prove guilt against the appellants, judgment of the trial Court requires interference. Consequently, the appeal is allowed. The appellants are hereby acquitted of the charges framed under S. 3(1)(xv) of the Act. Fine if paid shall be refunded. It is informed that the appellants are on bail. Their bail bonds shall continue for further period of six months as per requirement of S. 437-A of the Code.