
(2006) 05 JH CK 0072

In the Jharkhand High Court

Case No : Criminal Appeal No. 162 of 1997 (P)

Manoj Kumar Jha and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 03-05-2006

Acts Referred:

Probation of Offenders Act, 1958 — Section 3
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1), 3(10), 3(11), 3(12)

Citation : (2006) 4 JCR 60

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : J.P. Jha and S.S. Choudhary, for the Appellant; T.N. Verma, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—The appellants have preferred this appeal against the judgment dated 28.6.1997 passed by the 1st Additional Sessions Judge, Godda in Special Case No. 2 of 1995, whereby and whereunder, the learned 1st Additional Sessions Judge has convicted the appellants under Sections 3(1)(II) and 3(1)(X) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and has sentenced them to undergo Rigorous Imprisonment for a period of five years each except the appellant No. 6 namely Sarita Kumari who has been released one due admonition u/s 3 of the Probation of Offender Act.

2. The prosecution case in short is that Vishawnath Ravldas recorded his fard began on 3.10.1991 at village Dubrajpur wherein, he alleged that on 29.8.1991 Sanjay Kumar Jha (appellant No. 3) spate on the back of his son Devendra Das near Pepal Tree while he was going on the road on the pretext that his flower had become dirty as he was a Chamar.

The further case of the prosecution is that on 27.9.1991, Manoj Kumar Jha

(appellant No. 1), Amol Kumar Jha (appellant No. 2), Sanjay Kumar Jha (appellant No. 3), Sarita Kumari (appellant No. 6), wife of Basudeo Jha (appellant No. 5) and Basudeo Jha (appellant No. 4) came in the Gali of the informant and abused him and his family members.

Again on 30.9.1991, Manoj Kumar Jha gave a push to Dropadi Devi, wife of Vishawnath Ravidas in the lane. Manoj Kumar and Sanjay Kumar also dashed the son of the informant i.e. to Keshri Das on 16.8.1991 causing injuries on his right leg.

3. The defence case is of false implications due to enimity.

4. In order to establish the charges, altogether nine prosecution witnesses were examined and on the basis of the evidence on record, the learned trial Court convicted and sentenced the appellant, as stated in earlier paragraphs.

5. From the facts stated hereinabove, it appears that the allegations against the appellants are for commission of the alleged offences on three different dates. The first occurrence is of 16.8.1991 on which date, it is alleged that Manoj Kumar Jha (appellant No. 1) and Sanjay Kumar Jha (appellant No. 3) dashed Keshri Das, the son of the informant by a bicycle in which, he got injuries in the right leg.

The second occurrence is of 29.8.1991 on which date, Sanjay Kumar Jha (appellant No. 3) spate on the back of the son of the informant namely on Devendra Das and also abused him.

The third, occurrence is of 27.9.1991 on which date, it is alleged that Manoj Kumar Jha (appellant No. 1), Amol Kumar Jha (appellant No. 2), Sanjay Kumar Jha (appellant No. 3), Sarita Kumari (appellant No. 6) and wife of Basudeo Jha i.e. appellant No. 5 and Basudeo Jha (appellant No. 4) came in the gali of the informant and abused him and his family. When the informant asked as to why he and his family members were being abused, it is said that Manoj Kumar Jha gave a slap on his face.

6. The trial Court framed the charges against Sanjay Kumar Jha u/s 3(I)(II) for throwing spate on Devendra Das with intent to cause insult, annoyance or injury to member of the Scheduled Caste and thereby committed an offence.

Manoj Kumar Jha and Sanjay Kumar Jha were also charged on the allegation that they dashed intentionally, insulted and intimidated Keshri Das with intent to humiliate a member of Schedule Caste in any place within public view and thereby committed an offence punishable u/s 3(1)(X) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Manoj Kumar Jha was also charged on the allegation that on 30th day of September, 1991, at village-Dubrajpur, that he assaulted and used force to a woman named Dropadi Devi belonging to Scheduled Caste with intent to dishonour or outrage her modesty and thereby, committed an offence u/s 3(1)

(X) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

All the appellants were also charged for the allegation that they all abused Bishwanath Ravidas by going to this gali with intent to cause insult, annoyance which is punishable u/s 3(1)(X) for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellants denied the charge and claimed to face trial.

7. The prosecution produced altogether nine-witnesses namely Dropadi Devi (PW 1), Davendra Kumar Das (PW 2), Bishwanath Ravidas the informant (PW 3), Keshri Prasad Das (PW 4), Dr. S.P. Pande (PW 5), Kailash Modi (PW 6), Anant Ravidas (PW 7) Madan Mohan Sharma (PW 8) and Raj Mangal Sharma (PW 9) in order to establish the charges against the appellants and on the basis of the evidence of the aforesaid witnesses, the trial Court convicted and sentenced the appellants as already stated.

8. The appellants have been convicted for the offence u/s 3(1)(II) and Section 3(1)(X) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. For ready reference, Section 3(1)(II) and Section 3(1)(X) of the Act is quoted hereinbelow:

3. Punishments for offences of atrocities.?(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe.?

(i)....

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) ...

(iv) ...

(v) ...

(vi) ...

(vii) ...

(viii) ...

(ix) ...

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

(xi) ...

(xii) ...

(xiii) ...

(xiv) ...

(xv) ...

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.

9. From a bare perusal of the above quoted penal provisions of the Act, it appears that this Act has been enacted to check and deter crimes to prevent the commission of the offence of atrocities against the members of the Scheduled Castes and Scheduled Tribes. This Act has been enacted to protect the social dignity of the persons belonging to the members of the Scheduled Caste and Scheduled Tribes and also to protect them from the atrocities against them by the persons belonging to the other communities.

10. Keeping in view this very object, this Act provides for severe punishments for the commission of the offence envisaged under the different sub-sections i.e. (i) to (xv) of Section 3 of the Act and for the said purpose, Special Courts have been constituted for the trial of the offence under the aforesaid Act. Since the special procedures have been prescribed by the Act and severe punishment has been provided under the Act and therefore, Section 3 of the Act, which prescribes the punishment for atrocities have to be interpreted strictly.

11. u/s 3(1) of the Act, 15 sub-sections specifying 15 offences are stipulated and for every such offence, under different sub-sections of Section 3(1), the victim must invariable has to be a person belonging to the Scheduled Caste or the Scheduled Tribe. Therefore, in order to invoke the provisions of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 firstly it has to be established by the prosecution that the victim of the alleged offence is a person belonging to the community of Scheduled Castes or of Scheduled Tribes. It is after this fact has been established then and then only, the other allegations have to be examined and scrutinized.

12. Therefore, in order to prove the charge for the offence envisaged u/s 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 the pre-requisite condition for invoking the penal provisions of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is to establish by cogent evidence beyond all reasonable doubts that the victim is a member of the Scheduled Castes or Scheduled Tribes Community. Unless the prosecution proves that fact, no person can be convicted and sentenced under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 because there is no provision in this Act for drawing any presumption in favour of or against any person in this regard.

13. In the case in hand, I have gone through the evidence of all the prosecution witnesses in its minute details and find that not a single witness of the prosecution including the informant himself has even stated that he belonged to or is a member of the Scheduled Caste or Scheduled Tribe. Therefore, in my

view, the pre-requisite condition for invoking the penal provisions as envisaged u/s 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has not been established at all by the prosecution and therefore, in my view, since the prosecution has failed to establish the main ingredients of the offence alleged, for invoking the penal provisions of the Act and as such, the appellants could not have been convicted for the offence u/s 3(1)(II) and Section 3(1)(X) of the Act.

14. In view of the above findings, it is not necessary to go in detail and examine the other allegations against the appellants.

15. Accordingly, I hold that the conviction and sentence passed by the Special Judge against the appellant absolutely illegal and unsustainable and therefore, this appeal is allowed and the conviction and sentence passed against the appellants by the trial Court is hereby set aside and the appellants, who were on bail, are discharge from the liability of their bail bonds.