

(2009) 07 MP CK 0102
In the Madhya Pradesh High Court
Case No : Cri. Appeal No. 910 of 2006

Nirbhay Singh Rajput

APPELLANT

Vs

State of M. P.

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Citation : (2009) 07 MP CK 0102

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

Bench : Single Bench

Judgement

N. K. Mody, J.

Being aggrieved by the judgment dated 11-8-2006 passed by Special Judge (SC/ST) Prevention of Atrocities Act. Ujjain in Special Case No. 82/2005, whereby the appellant was convicted for an offence punishable under section 3(1)(x) of SC/ST Act with imprisonment of six months with fine of Rs. 500/- and under section 352 of Indian Penal Code with fine of Rs. 500 - the present appeal has been filed.

In short the case of prosecution was that on 27-9-2005 appellant abused the complainant by using the filthy language with an intention that complainant belonged to SC category. Upon the complaint of the complainant case was registered against the appellant. After framing of charge and recording of evidence, appellant was convicted as stated above, against which the present appeal has been filed.

Learned counsel for appellant argued at length and submits that appellant was convicted illegally while appellant has not committed any offence. Learned counsel submits that the learned Court below committed error in not properly appreciating the evidence which resulted incorrect judgment and is liable to be set aside in this appeal. It is submitted that the learned Court below committed error in not considering material omissions and contradictions appearing in the testimony of the prosecution witnesses. It is submitted that in view of the aforesaid facts the appeal filed by the appellant deserves to be allowed and the

judgment of conviction deserves to be set aside.

In alternative learned counsel submits that appellant was in jail w.e.f. 11-8-2006 to 21-8-2006. Bail was granted by this Court vide order dated 21-8-2006 and thereafter appellant was released on bail. Looking to the nature of offence and the fact that appellant has already served substantive part of jail sentence, the same may be reduced to the period already undergone and the amount of fine may reasonably be enhanced.

Learned counsel for respondent-State submits that after due appreciation of evidence, learned Court below has found the offence proved against the appellant, which requires no interference. It is submitted that the appeal filed by the appellant be dismissed.

From perusal of the record it appears that to prove the case prosecution has filed the documents Ex. P/1 to P/5. Apart from this prosecution has examined PW/1 Ramchander, PW/2 Lalkunwarbai, PW/3 Sivnarayan, PW/4 Jagdish. PW/5 S. R. Dadotiya and PW/6 Prafulla Kshotriya.

In the matter of Amir vs. State of M. P., reported in 2004(3) MPLJ 141 wherein a Division Bench of this Court has held that making out a case under the provisions of SC/ST Act the offence must be committed against the complainant on the ground that such person is a member of Scheduled Caste or Tribe. In the matter of Anil Kumar Pandey Vs. Daulat Prasad, wherein this Court has held that mere utterance of word "Chamar" without there being any intention to insult or humiliate a member of Scheduled Caste would not make out the offence under section 3(1)(x). In the matter of Jasrath Singh and Another Vs. State of Madhya Pradesh, wherein this Court has held that to constitute an offence it is necessary that whoever, not being a member of a Scheduled Caste intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view and merely calling a person from the caste name without proof of any intention of insulting or humiliating do not constitute the offence under section 3(1)(x). In the matter of Dabloo vs. State of M.P., reported in 2007(1) MPLJ250 wherein it has been observed by this Court that section 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act is an aggravated offence under section 354, Indian Penal Code. It was held that there was no evidence to criminal force against prosecutrix to degenerated her modesty only because she belonged to a particular caste or community, whereby there was no such circumstances to suggest that her modesty was intended or tried to degenerated simply because she belonged to a particular community. Thus, the ingredients under section 3(1)(xi) of the Act were not proved by the prosecution. But, from the evidence of prosecutrix and other witnesses it is clear that ample evidence was produced against the appellant to hold him guilty under section 354, Indian Penal Code, although on the date of incident the appellant caught hold of the prosecutrix and molested her with the knowledge that he will by doing such act is the intention or to outrage the modesty of the prosecutrix. Therefore, the conviction and sentence as awarded by the trial Court under

section 354, Indian Penal Code is maintained but conviction under section 3(1)(xi) of the Act is set aside.

In the present case there is nothing in the statement of Motilal, who is the complainant that the alleged offence was committed by the appellant with an intention that the complainant who is cobbler by caste be insulted or humiliated being a member of SC/ST category. After perusal of the record, it appears that learned Court below committed error in convicting the appellant for an offence punishable under section 3(1)(x) of SC/ST Act. However there is enough evidence to show that the appellant has committed an offence which is punishable under section 324 of Indian Penal Code. In the facts and circumstances of the case, appeal filed by the appellant is allowed in part and appellant is acquitted from the offence punishable under section 3(1)(x) of SC/ST Act however sentence awarded under section 324 of Indian Penal Code is maintained.

So far as the period of sentence is concerned, looking to the limited prayer made by the counsel for the appellant and the nature of offence and the fact that appellant has already served substantive period of jail sentence the purpose would be served in case the jail sentence awarded to the appellant is reduced to the period already undergone, subject to depositing further sum of Rs. 2,000/- within a period of two months, which shall be payable to the complainant Ramchander, failing which the appellant shall suffer jail sentence awarded by the learned Court below.

In the result the appeal is partly allowed. The finding of conviction is hereby maintained with the modification to the extent that the jail sentence awarded to the appellant is reduced to the period already undergone subject to depositing further compensation of Rs. 2,000/- within a period of two months which shall be payable to complainant Ramchander, failing which the appellant shall suffer jail sentence awarded by the learned Court below. Appellant is on bail. His bail bonds stands discharged. It is also made clear that in case of arrest when appellant fails to deposit the amount he shall be further liable to pay fine @ Rs. 50/- per day and shall be released forthwith upon depositing the amount with fine.

With the aforesaid modification, the appeal stands disposed of.