

(1991) 02 MP CK 0016

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 361 of 1986

Phul Singh Bhagunt Singh Lodhi

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 16-02-1991

Acts Referred:

Protection of Civil Rights Act, 1955 — Section 16A, 7(1)

Citation : (1991) 36 MPLJ 956 : (1991) MPLJ 956

Hon'ble Judges : S.K. Chawla, J

Bench : Single Bench

Advocate : S.C. Datta, for the Appellant; P.C. Paliwal, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chawla, J.

This order shall also govern the disposal of Criminal Revision No. 362/86. The applicant is common in both the revisions, who was convicted by the two Courts below of the offence u/s 7(I)(d) of the Protection of Civil Rights Act, 1955 (hereinafter referred to as P.C.R. Act) and sentenced to R.I. for three months and a fine of Rs. 500/-, in default to further imprisonment for one month for each offence committed with respect to different persons.

The facts found by the Courts below may first be seen. Applicant Phulsingh, said to be aged about 60 years when the prosecutions were launched against him, is a Lodhi Thakur residing in village Somaralodhi, P. S. Malthoun, district Sagar. He is said to have threatened to overrun one Balla, a Chamar by caste, by his tractor and to kill him. When Balla went to report the matter to the police and was returning back on 29-6-1982, the applicant is said to have shouted at Balla by saying ^pejk esjs fo:) fjiksVZ D;ksa dh] eSa rqels ekugkfu ds 5]000@& :i;s ywaxkA** It was further the evidence of Balla that applicant Phulsingh swore him by his mother etc. It was also the prosecution story that there was old

enmity between Phulsingh and Balla. Phulsingh being ex-Malgujar had been taking begar from Balla, had got Balla's house demolished and had also abducted Balla's wife and kept her concealed for five days. The case of the prosecution was that by uttering the words reproduced above at Balla, when the latter was returning from the Police Station, applicant Phulsingh had insulted a member of the Scheduled Caste on the ground of untouchability, an offence punishable u/s 7(1)(d) of P.C.R. Act. The prosecution story was accepted and applicant was accordingly convicted and sentenced for the said offence in Criminal Case No. 640/82 by J.M.F.C., Khurai. In appeal carried by the applicant (Criminal Appeal No. 171/83), A.S.J., Khurai maintained the applicant's conviction and sentence.

Appellant Phulsingh was also said to be having land dispute with another Harijan of his village named Parsadi. On 29-6-1982, which is also the date of the first incident described already, the applicant is said to have threatened and abused Parsadi by saying ^{^^}pejk HkksIM+h ds txg NksM+ nsuk ugha rks xksyh ls ekj nwaxkA** The applicant is also said to have wrongfully stopped Parsadi's wife named Halki Bahu on a subsequent occasion, while she was passing along a road in front of the applicant's house and to have told her ^{^^};gk? ls pefj;k fudyh rks ykr ekjsaxs] rsjs cki dk jkLrk ugha gSA** For these two different offences alleged to have been committed at the different times, a single charge under one head was framed. The applicant was convicted and sentenced of the said offence in the manner already indicated in the opening paragraph of this order by J.M.F.C., Khurai in Criminal Case No. 639/82 and Criminal Appeal (Cri. Appeal No. 170/83) was dismissed by learned Additional Sessions Judge, Khurai. Aggrieved by the judgments rendered in the two cases, the applicant has filed these two revisions.

In Datt, learned counsel for the applicant, sought to make only two points. In the first place, it was urged that there was nothing to show that the alleged insults committed by the applicant were "on the ground of untouchability". Hence no offence within the meaning of clause (d) of Sub-section (1) of Section 7 of P.C.R. Act was made out. In the second place, it was urged that the applicant is an old man and in case his first submission was not accepted, the applicant may be given benefit of probation.

It is proper to dispose of summarily the second submission first. A minimum sentence of imprisonment for one month and fine of Rs. 100/- is prescribed by Section 7(1) of P.C.R. Act. Shri Datt argued that Section 4 of the Probation of Offenders Act, 1958 had overriding effect over other laws which was clear from the words "notwithstanding anything contained in any other law for the time being in force" used in Section 4 and hence provisions of the Probation of Offenders Act should be applied even to P.C.R. Act prescribing minimum sentence. Reliance was placed by Shri Datt on the case of State by Public Prosecutor Vs. Rathinavelu, It was conceded by Shri Datt that the principle laid in the said ruling would not apply where the Special Act prescribing minimum

sentence expressly excluded the use of probation. Shri Datt drew attention of this Court to Section 20AA of the Prevention of Food Adulteration Act, 1954, expressly excluding the use of probation to a person convicted of an offence under that Act unless that person was below 18 years of age. Shri Datt was perhaps ignorant of similar provision contained in P.C.R. Act. That provision is Section 16A of the Act which says that the provisions of Probation of Offenders Act, 1958 shall not apply to any person above the age of 14 years who is found guilty of having committed any offence punishable under P.C.R. Act. In view of the said provision, the provisions of Probation of Offenders Act are inapplicable, for the simple reason that the applicant was much more old than 14 years, in fact an old man of more than 60 years. Hence, the submission that the applicant may be given benefit of probation has only to be stated to be summarily rejected.

Coming to the first submission made by Shri Datt, a perusal of Section 7(I)(d) of P.C.R. Act would show that it punishes insult or attempt at insult of a member of Scheduled Caste "on the ground of untouchability". Section 12 speaks of presumption, laying down that where any act constituting an offence under the Act is committed in relation to a member of a Scheduled Caste, the Court shall presume, unless the contrary is proved, that such act was committed on the ground of "untouchability". That presumption is a rebuttable presumption. It deals only with special rule of evidence and provides for burden of proof. Keeping aside that provision for a moment, it is clear that insult simpliciter of a member of Scheduled Caste is not within the mischief of clause, (d) of Sub-section (1) of Section 7. It is further necessary that the insult must have been committed "on the ground of untouchability". The question is what is the test to determine whether the insult was or was not "on the ground of untouchability"? It is possible in my view to conceive of a test. The test is to ask the question, whether insult would have taken place irrespective of the fact whether the victim was or was not a member of the Scheduled Caste. If yes, the insult was insult simpliciter outside the ambit of clause (d). On the other hand, if insult had taken place only because the victim was a member of Scheduled Caste and it would not have taken place if he had been of higher caste, then insult was insult on the ground of untouchability. Another rough and ready test, though not very infallible, would be to ask the question whether insult was part of personal quarrel which took place between a person of higher caste and a member of Scheduled Caste; or was the insult offered in a cool and studied manner in the absence of any quarrel. In the first situation, the insult would most likely to insult simpliciter while in the second situation it would be insult on the ground of untouchability. That is not to say that a person insulting on the ground of untouchability would be allowed to get away by merely picking up a quarrel. An instance may be given to make the propositions clear. A, a member of Scheduled Caste, is using a public bathing ghat. B, an obscurantist higher caste Hindu insults A and evicts him from that ghat saying that the ghat is reserved for higher caste people. This will be a case of insult on the ground of untouchability. In the same case, B's clothes lying on the ghat get trampled and soiled by the feet of A. B getting

annoyed because of spoiling of his clothes insults A even calling him a Chamar. No doubt, calling Chamar a Chamar would be insulting a member of Scheduled Caste but that would be a case of insult simpliciter of a member of Scheduled Caste but not of insult on the ground of untouchability.

In both the cases under consideration, there existed past" inimical relations between the applicant and the alleged victims belonging to Scheduled Caste. In Criminal Case No. 640/82 in the context of bad blood between the parties, Balla, a member of the Scheduled Caste, had gone to the police station to lodge a report against the applicant. When the applicant saw Balla returning, he in a fit of anger insulted Balla by uttering the words already described. He also called Balla a Chamar. Now calling a Chamar a Chamar may be insulting him but it would not be an insult on the ground of untouchability. The insult which the applicant offered to Balla was insult in a personal quarrel and would have been offered by the applicant no matter to what caste Balla belonged. Incidentally Balla belonged to a member of the Scheduled Caste. But that would not make the insult an insult on the ground of untouchability. In Criminal Case No. 639/82 applying the above test; the insults offered by the applicant to Parsadi and his wife were insults simpliciter and not insults on the ground of "untouchability". When full facts of a case are known, the presumption u/s 12 would not turn the decision of the case.

It is proper to bear in mind that what P.C.R. Act seeks to punish is preaching and practice of untouchability vide the preamble given at the outset of the Act. The Act does not seek to punish acts simply because they were committed in relation to a person belonging to Scheduled Caste.

For the foregoing reasons, it will be proper to hold that the acts of insult alleged in both the cases were insults otherwise than on the "ground of untouchability, although of the, members of Scheduled Caste. They were, therefore, outside the mischief of the Act.

The revisions are allowed. The convictions and sentences of the applicant in both the cases are set aside. He is acquitted of the said offences in both the cases. Fines paid by him shall be refunded.