

(2014) 04 MP CK 0035
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 200/2001

Smt. Renka Bai and three Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 323
Probation of Offenders Act, 1958 — Section 3
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2014) 04 MP CK 0035

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

Bench : Single Bench

Advocate : Ajay Tamrakar, Advocate for the Appellant; G.S. Thakur, Panel Lawyer, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Gupta, J.—The appellants have challenged the judgment dated 18.1.2001 passed by the Special Judge, SC/ST (Prevention of Atrocities) Act, Mandla in Special Case No. 31/2000 whereby, each of the appellant was convicted for offence punishable u/s 323 of I.P.C. and sentenced with three months rigorous imprisonment whereas, the appellants no. 1, 2 and 3 were convicted for offence punishable u/s 3(1)(x) of SC/ST (Prevention of Atrocities) Act (hereinafter referred to as the "Special Act") and sentenced with six months rigorous imprisonment with fine of Rs. 200/-, in default of payment of fine amount one month's simple imprisonment was directed.

2. The prosecution's case in short is that on 18.10.1998 the complainant Noharilal (PW1) went to the house of Ataru Dheemar (PW2) at Village Jagnathar, Police outpost Anjanika, Tahsil Mandla to take the ailing son of Ataru to the hospital. Thereafter, when they went towards the bus stop, in front of the house of Sampatiyabai, the appellants and the other accused persons surrounded the victim Noharilal. They assaulted him by kicks and fists and they also abused him

with obscene words and the words relating to his caste. Thereafter, the complainant became unconscious. He was taken to the hospital. He had submitted a written report Ex. P/1 to S.P. Mandla on 20.10.1998. A case was registered and after due investigation charge sheet was filed.

3. The appellants abjured their guilt but, they did not take any specific plea in their statements, but looking to the cross examination of the various eye witnesses taken by the defence a plea was taken that there was a dispute of property between the parties and an FIR Ex. D/3 was lodged by the accused Sampatiyabai that Atarlal Nanda, Noharilal, Lakhanlal and Shashikant entered in her house and dragged her in the courtyard and thereafter, assaulted her. She had lodged an FIR at Police outpost Anjanika and she was examined by the doctors, but nothing was done by the Police and therefore, the report was directed to the S.P. Mandla. However, no defence evidence was adduced.

4. The learned Special Judge after considering the evidence adduced by the parties acquitted other accused persons whereas, convicted the appellants for offence punishable u/s 323 of I.P.C. and Section 3(1)(x) of the Special Act and sentenced as mentioned above.

5. Since no Advocate was appearing for the appellants therefore, Shri Ajay Tamrakar, Advocate was appointed to argue the matter on behalf of the appellants from the side of the Legal Services Authority and thereafter, I have heard the learned counsel for the parties.

6. In the present case the victim Noharilal (PW1) has not filed his caste certificate. However, the appellants admitted in their accused statement that the victim was of scheduled caste and the appellants were not of that caste and therefore, it is admitted that the victim was of scheduled caste.

7. Noharilal (PW1), Ataru (PW2), Shashikant (PW3) and Bablibai (PW4) were examined as eye witnesses. Out of them Ataru turned partly hostile whereas, Smt. Bablibai did not say much about the insult of the victim on the basis of the caste. Looking to the case diary statement of Shashikant (PW3), it would be apparent that he was son of the victim Noharilal who, was not present on the spot at the time of incident but, he went to the spot after receiving the information that his father was lying unconscious at the spot. Under such circumstances, the testimony of the witness Shashikant cannot be accepted as an eye witness. Ataru and Smt. Bablibai could not say against a particular person who, insulted the victim on the basis of the caste. Smt. Bablibai (PW4) has accepted in her cross-examination para 3 that she could not say that out of 10 accused persons who, told the victim to be "mehera" whereas, Ataru has accepted in para 2 that the various persons were telling to the appellants to assault that "low caste mehera". Such persons were telling from their house to their wives. Under such circumstances, it is not told by Ataru that such type of abuses were told by the appellants. On the contrary, it appears that provocation was given by other persons who, were present in their houses but, the appellants

did not say any abuse to the victim about his caste. Noharilal (PW1) has stated that 10 accused persons started assaulting him with abuses that assault "neech mehera" and thereafter, he was assaulted. Such type of abuses cannot be given by 10 accused persons simultaneously. Noharilal could not locate any of the appellants who, abused him on the basis of the caste and therefore, looking to the statements of Noharilal, Ataru and Bablibai, it is not proved beyond doubt that any one of the appellants abused the victim on the basis of his caste.

8. Noharilal has accepted that a document Ex. D/1 was filed before the revenue Court though he could not say that who, appended the signature on that document. The document Ex. D/1 was filed by the sons of Noharilal namely Shashikant, Bhagatlal and Ramakat which indicates that there was a dispute of land between the complainant and the appellants. Under such circumstances, the assault done by the appellants could be due to other activity of the complainant or to take revenge from the complainant on the basis of civil dispute and therefore, if he was assaulted then it cannot be said that the assault was caused on the basis of his caste. Under such circumstances, the prosecution failed to prove that the appellants insulted the victim on the basis of the caste and therefore, the learned Special Judge has committed an error in convicting the appellants for offence punishable u/s 3(1)(x) of the Special Act.

9. So far as the assault is concerned, Noharilal (PW1) has stated that the appellants assaulted by kicks and fists. Ataru (PW2) and Smt. Bablibai (PW4) have also supported the testimony of the victim Noharilal on this count. It is true that if more than four persons had assaulted the victim by kicks and fists and he became unconscious after the assault then he must have sustained some injuries and certainly he must have been sent to the hospital for treatment. No medical report was filed. No doctor was examined before the trial Court to prove any medical report. Under such circumstances, it appears that the victim was assaulted in such a manner so that no visible injury caused to him. However, looking to corroboration of the witnesses, the statement of Noharilal can be accepted that the appellants assaulted him by kicks and fists though no external injury was found to be proved to the victim Noharilal but due to assault caused by kicks and fists, he must have suffered bodily pain and therefore, the overt act of the appellants falls within the purview of Section 323 of I.P.C. There is no suggestion given by Noharilal that he gave sudden or grave provocation. The appellants could not prove the FIR Ex. D/3 that the victim entered in the house of Sampatiyabai and assaulted her along with other co-accused but, that report was sent to the S.P., Mandla on 2.11.1998 and therefore, it could be a created document in favour of the appellants after two weeks of the incident.

10. In the document Ex. D/3, it was mentioned that the victim Sampatiyabai was sent to the Police outpost Anjanika and her medical examination was also done but, no such report was filed by the appellants. Under such circumstances, the appellants could not prove that they had any right of private defence against the victims. If four persons entered in the house of Sampatiyabai and any right of

defence was created then the other accused of that incident for example Shashikant, Lakhanlal and Attarlal would also have been assaulted by the appellants but, there is no such allegation that at the time of entering in the house of Sampatiyabai the various appellants assaulted them inside the house. Under such circumstances, no right of private defence was accrued to the appellants and therefore, it is proved that they assaulted the victim Noharilal voluntarily.

11. So far as the sentence is concerned, it is true that the appellants assaulted the victim Noharilal but, looking to the assault where no visible injury was proved, it is not a case in which jail sentence could be directed against the appellants. They have faced the trial and appeal since last 14 years. They were the first offenders. Under such circumstances, if totality of their overt act is considered, it is a good case in which the appellants could be released on probation u/s 3 of the Probation of Offenders Act.

12. On the basis of the aforesaid discussion the appeal filed by the appellants is hereby partly allowed. Their conviction for offence punishable u/s 3(1)(x) of SC/ST (Prevention of Atrocities) Act is hereby set aside. The appellants are acquitted from that charge. The conviction for offence u/s 323 of I.P.C. is maintained but their jail sentence is removed. They are released on probation u/s 3 of the Probation of Offenders Act after giving due admonition.

13. At present the appellants are on bail, their presence is no more required and therefore, it is directed that their bail bonds shall stand discharged.

14. Before concluding the judgment, it is my duty to extend thanks to Shri Ajay Tamrakar, Advocate to prepare the matter in a very small period of time and argue it very well, and nicely assisted the Court.

15. Copy of the judgment be sent to the trial Court along with its record for information and compliance.