
(2012) 09 MP CK 0149

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1509 of 1997

State of Madhya Pradesh

APPELLANT

Vs

Badri alias Dadua and Others

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 323, 452
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(vi)

Citation : (2012) 09 MP CK 0149

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

Bench : Single Bench

Advocate : G.S. Thakur, for the Appellant; Umakant Sharma with Shri R.K. Patel, for the Respondent

Final Decision : Dismissed

Judgement

Hon. Shri Justice N.K. Gupta

1. The State has preferred this appeal against the judgment dated 27.11.1996 passed in Special Case No. 149/1996 by the Special Judge, Shahdol by which the respondents were acquitted from the charges of offence punishable under Sections 147, 452, 323 of IPC and Section 3(1)(vi) of SC/ST (Prevention of Atrocities) Act, 1989 (for brevity "Special Act"). The prosecution case, in short, is that on 6.3.1996 at about 3:00 PM complainant Gangi Bai (PW-4) was present in her house situated at Village Raipur (Police Station Manpur District Shahdol). The respondents went inside the house, armed with sticks. They assaulted the victim Gangi Bai by sticks causing her several injuries on her nose and other parts of the body. On her shouting, her brother-in-law Chhote (PW-5) came to the spot, then the respondents also assaulted him. The respondents told to the complainant that since the complainant was of caste of "Chamar" and they were not doing the work of "Narachhavari", and therefore they gave a lesson to the complainant. The complainant gave a written report Ex. P-3 to the DSP AJK

Shahdol and thereafter an FIR was lodged at Police Station Manpur on 7.3.1996. The injured persons were sent to the hospital for their medico legal examination. Dr. R.P. Patel examined the injured Gangi Bai and Chhote and gave his report Ex. P-1 and Ex. P-2. Dr. Patel found a scratched wound on the left scapula of the victim Chhote. He also found bruises on his both elbows. Similarly, he found two injuries to the victim Gangi Bai. One blunt injury was near her right eye and nose, whereas second injury was a contusion below the right eye. The victim Gangi Bai was referred for X-ray examination, but no any fracture found to her. After due investigation, a charge sheet was filed before the Special Judge, Shahdol.

2. The respondents abjured their guilt. They did not take any specific plea, but they have stated that they were falsely implicated in the matter. No defence evidence was adduced by the respondents.

3. The learned Special Judge, Shahdol after considering the prosecution evidence acquitted the respondents from all the charges appended to them.

4. I have heard the Learned Counsel for the parties.

5. The Learned Counsel for the State has submitted that the injuries caused to the victims Gangi Bai and Chhote were duly confirmed by the medical evidence, but the trial Court did not convict the respondents for the offence u/s 323 of IPC. Similarly, it is proved that the respondents visited the house of Gangi Bai, and therefore offence u/s 452 of IPC is constituted. Similarly, the complainant and her brother-in-law were forced to do the work as bonded labour, therefore offence u/s 3(1)(vi) of the Special Act is made out against the respondents. Under such circumstances, it is prayed that the respondents be convicted and sentenced accordingly.

6. On the other hand, learned senior counsel for the respondents has submitted that no offence is made out against the respondents. The testimony of the complainant and her brother-in-law was not at all acceptable, and therefore the trial Court has rightly acquitted the respondents from all the charges.

7. After considering the submissions made by Learned Counsel for the parties, it is to be considered that whether the appeal filed by the State can be accepted? If yes, then what would be the sentence against the respondents.

8. The trial Court has observed that the victim Gangi Bai (PW-4) sustained only two injuries, whereas the victim Chhote sustained only three injuries, but both the witnesses are implicating 8-10 accused persons. If 8-10 accused persons had assaulted these victims, then certainly they should have sustained 8-10 injuries. Under such circumstances, it is possible that 2-3 persons out of these ten respondents, had assaulted the victims, but neither the victim Gangi Bai nor victim Chhote had isolated those three respondents, who assaulted them. They have stated in omnibus manner that the respondents had assaulted them. Under such circumstances, when the actual culprits are not located, then out of the ten

respondents, none of them can be convicted for the offence of assault, because it is nowhere established by the witnesses that each of the respondents assaulted the victims. The trial Court has rightly given the benefit of doubt to all the respondents and it was not proved that the respondents assaulted the victims Gangi Bai and Chhote.

9. Similarly, it is observed by the trial Court that offence was committed by 2-3 persons and the complainant and her brother-in-law had implicated ten persons in the crime. Under such circumstances, it is not proved beyond a reasonable doubt that minimum five persons had participated in the crime, and therefore it is not proved beyond doubt that an unlawful assembly was constituted. Under such circumstances, the trial Court has rightly acquitted the respondents for the offence punishable u/s 147 of IPC.

10. On the similar arguments, it cannot be said that out of these ten respondents, who entered into the house of the complainant, and therefore none of the respondents can be convicted either for the offence u/s 452 of IPC or for any inferior offence of the similar nature.

11. In the peculiar case, a written FIR was lodged by the complainant. She could not give the reason as to why she was assaulted by the respondents. However, Gangi Bai has admitted in her cross examination that Bihari son of witness Jagandas (PW-6) had assaulted the respondent Rampal, and therefore the respondents came to the house of the complainant to assault the victim Chhote and initially it is alleged that they started assaulting the victim Chhote first and thereafter when Gangi Bai was trying to save the victim Chhote, then she was also assaulted. Under such circumstances, the reason of assault was the injuries caused to the respondent Rampal. But by delayed FIR, it appears that a story was prepared by the complainant and her relatives that they were being assaulted due to the reason because they refused to do the work of "Narachhavari". The complainant Gangi Bai has accepted that initially she was working as a "Dai" and helping the various women of the village in their delivery and she was the person who was removing the "Naal" of new born child from placenta. Thereafter she left that work and she was not doing the same. For the sake of arguments, it is accepted that victim Gangi Bai and her brother-in-law Chhote were assaulted because of that reason, then still it is not alleged by Gangi Bai that the respondents were making a force to do such a work without any payment. If Gangi Bai was assisting to various women in their delivery, then certainly she was taking fees for that job. It is nowhere alleged that the respondents wanted that she should do that job without any remuneration. Under such circumstances, if such assault was caused due to the reason shown by Gangi Bai, then still the overt-acts of the respondents does not fall within the purview of Section 3(1)(vi) of the Special Act, because the respondents never directed the complainant to do any work without any payment.

12. On the basis of the above discussion, it is apparent that the prosecution has totally failed to prove any of the charge against the respondents. Therefore, the

trial Court has rightly acquitted the respondents from all the charges levelled against them. Hence, the appeal filed by the State deserves to be dismissed. Consequently, the appeal filed by the State is hereby dismissed.

13. The respondents are on bail, and their presence is no more required. Hence, it is directed that their bail bonds shall stand discharged. A copy of this judgment be sent to the trial Court with its record for information.