
(2012) 05 MP CK 0044

Madhya Pradesh High Court

Case No: Criminal Appeal No. 2302 of 1998

Minna Singh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: May 9, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 374(2)
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(x)

Hon'ble Judges: A.K. Shrivastava, J

Bench: Single Bench

Advocate: Pranay Gupta, for the Appellant; Ashok Chourasiya, Public Prosecutor, for the Respondent

Judgement

Hon"ble Shri Justice A.K. Shrivastava

1. Feeling aggrieved by the judgment of conviction and order of sentence dated 17.9.1998 passed by learned Special Sessions Judge, Betul in Special Sessions Trial No. 01/1998 convicting the appellant u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "the Act") and thereby sentencing him to suffer R.I. for 1 year and fine of Rs. 1000/-; in default of payment of fine further S.I. for one month, this appeal has been preferred by the appellant u/s 374(2) of the Code of Criminal Procedure, 1973. In brief, the case of the prosecution is that complainant Kasturi Bai is a member of the Scheduled Tribe community and is a labour and the accused/appellant is by caste Rajpoot meaning thereby he is not a member of the Scheduled Tribe community. On the holy day of Dipawali festival on 31.10.1997 between 5 to 6 in the evening the son of the appellant was cracking the firecrackers. At that juncture, complainant requested him to crack the firecrackers by taking all precautions because on account of bursting the firecrackers her house may catch the fire. At that juncture, appellant came there and hurled the abuse of mother to her and also showered other filthy abuses by

denoting her caste since she belongs to Scheduled Tribe community. The appellant also pelted stone on her back. A report was lodged on 5.11.1997 by the complainant and because she was complaining the pains nearby her ribs she was sent for medical examination.

2. After the investigation was over, a charge-sheet was submitted in the Court of learned Special Judge, who framed the charge punishable u/s 3(1)(x) of the Act, which the appellant denied and requested for the trial.

3. The prosecution thereafter examined its witnesses and also proved the documents. The defence of appellant is of false implication and same defence he set forth in his statement recorded u/s 313 Cr.P.C. However, he did not choose to examine any witness in support of his defence.

4. Learned Special Judge on the basis of the evidence placed on record arrived at a finding that the charge has been proved eventually convicted the appellant and passed the sentence which I have mentioned hereinabove.

5. In this manner this appeal has been filed by the appellant assailing his judgment of conviction and order of sentence.

6. The contention of learned counsel for the appellant is that the incident had occurred on 31.10.1997 in between 5 to 6 p.m. but belated FIR was lodged after five days on 5.11.1997 and no reasonable explanation has been given for lodging the FIR belatedly. Learned counsel further submits that it has been proven from the statement of the complainant Kasturi Bai (PW-1) that the reports were lodged on the second and third day also but those reports have been suppressed by the prosecution and therefore, if after five days some report has been lodged on the basis of which present case has been registered and the appellant has been charged and tried, it has no sanctity in the eye of law because the said report and the case is based upon concoction. Hence, it has been prayed by learned counsel that by allowing this appeal the appellant be acquitted.

7. On the other hand, learned Public Prosecutor argued in support of the impugned judgment and submitted that the appeal be dismissed.

8. Having heard learned counsel for the parties I am of the view that this appeal deserves to be allowed.

9. As per the prosecution's own case the incident took place in between 5 to 6 p.m. on 31.10.1997. No prompt report was lodged on that date. The report was not lodged even for another four days and ultimately it was lodged on 5.11.1997. The only explanation which has been given is that the complainant side belongs to Scheduled Tribe community. According to me, this can hardly be a ground to believe such feeble explanation. Even if for the sake of argument, this important aspect (which goes to the root of the matter) is ignored, it appears from the cross-examination paras 12 and 13 of the statement of the complainant that on the

next day in the morning she sent her son to lodge the report and on third day also she lodged the report but if these two reports were lodged by the complainant why they were suppressed by the prosecution. Thus, it appears that the prosecution is concealing the reality and after five days if the FIR has been lodged in order to attract the provisions of the Act, it raises a heavy doubt about the commission of the offence.

10. The Supreme Court *Sevi and another vs. State of Tamil Nadu and another*, AIR 1981 SC 1230 has laid down that if the earlier report has been suppressed by the police officer and it has been substituted by another, the case of the prosecution becomes highly suspicious. Hence, on account of lodging the FIR after five days the case of the prosecution becomes quite weak and becomes highly suspicious. It is well settled in law that the suspicion however strong it may be, cannot take place of strict proof. Thus, by extending the benefit of doubt to the appellant he is acquitted from the charge. The appeal is accordingly allowed. The judgment of conviction and order of sentence passed by learned Special Court convicting the appellant u/s 3(1)(x) of the Act is hereby set aside and he is acquitted from the said charge. Appellant is on bail, his bail bonds shall stand discharged.