

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.619 of 2002

(Against the judgment of conviction, dated 23.09.2002 and order of sentence, dated, 24.09.2002 passed by Shri Awadhesh Kumar Ojha, 1st Additional Sessions Judge-cum-Special Judge, Gopalganj in Uchkagaw P.S. Case No. 132 of 1993)

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1. Raj Kishun Sah, son of Shiv Gobind Sah
 2. Ram Dayal Sah, son of Shiv Gobind Sah
 3. Dinanath Sah, son of Raj Kishun Sah
 4. Ram Bilash Sah, son of Raj Kishun Sah
 5. Moti Lal Sah, son of Ram Chandra Sah, all residents of village-Lakshan Tola, P.S.-Uchkagaon(Shreepur), District-Gopalganj.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rashmi Bharti, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 11-11-2017

The instant appeal arises out of judgment of conviction dated 23.09.2002 and order of sentence dated 24.09.2002 passed in Uchkagaw P.S. Case No. 132 of 1993 whereby the learned 1st Additional Sessions Judge-cum-Special Judge, Gopalganj convicted the appellants for the offence under sections 3(iv)(v) of the SC/ST Prevention of Atrocities Act, 1989.

2. The prosecution case, as stated, in the fard-beyan is that on 22.7.1999 Swami Nath Ram (the informant) went to his plot no.6 to cultivate the same with **gy** and **cSy**. It is alleged that the accused persons obstructed him in cultivating the land. On 23.7.93



Swami Nath Ram went to plot no. 51 to cultivate the same but the accused persons did not allow him to cultivate the land and they took away Hal, Kudal and paddy seed worth of Rs. 500/- and they attempted to assault him. It is further stated in the Fardbeyan that Swami Nath Ram possessed plot nos. 6,7 and 51 area 6 decimals, 20 decimals and 12 decimals respectively. The plot no.7 was his homestead land which he had got from Bhudan Yagya Committee. He got plot nos. 6 and 51 from Hathwa Raj and was paying rent to State of Bihar for those land. It is further alleged that Raj Kishun Sah and Ram Dayal Sah have also taken land in plot nos. 6 and 61 but they want to capture the entire area of those plots and caused obstruction in cultivation by Swami Nath Ram who had lodged complaint in this connection to the police station where from Anchal Amin was deputed and demarked his land. The accused persons even thereafter did not allow Swami Nath Ram to cultivate his land because they were powerful persons and they wanted to dispossess him from the land.

3. The police after investigation submitted charge-sheet against the appellants under section 3 (iv)(v) of the SC/ST (Prevention of Atrocities) Act and Section 379 of the Indian Penal Code.

4. The trial court after scrutiny the evidence convicted the appellants under section 3 (iv)(v) of the SC/ST (Prevention of



Atrocities) Act and sentenced R.I. for one year.

5. Learned counsel appearing on behalf of the appellant as Amicus Curiae has submitted that the trial court has committed gross error in convicting the appellants for allegedly obstructing the informant side in cultivating the land.

6. Learned counsel for the appellants submits that in fact in connection with the same land earlier the wife of the informant filed a case of theft and assault against the appellant and they were acquitted in that case. In fact, the land in question is the land of the appellant and as a pressure tactics to grab that land, the false case was registered against the appellants.

7. Counsel for the appellants submits that appellants have been falsely implicated in this case and the trial court has committed error in convicting the appellants in the present land dispute which was in continuation of the earlier case filed by the wife of the informant and these appellants were acquitted in the previous case. He submitted that no case under section 3(iv) and (v) is made out against the appellants in this case.

8. The trial court in its judgment has also noted that fact that in this case there is no independent witness and the trial court has also found that the appellants have claimed the land in their favor on the basis of settlement from Hatwa Raj and they filed a copy of the



judgment of Case No. 326 of 1989. The copy of register-2 and the order of Sub-divisional Magistrate in Case No. 814 and rent receipt to demonstrate that the appellants have right, title and possession over the land and as such the allegation of dispossession of the informant from the land is patently wrong and the trial court committed error in convicting the appellants for alleged dispossession of the informant from the land. Counsel for the appellants submitted that the trial court has also noted the fact that the witnesses have no interest in the case if they got back possession of the land, thus, in the totality of facts situation the conviction of the appellants in the instant case is contrary to the settled principle of law.

9. Counsel appearing on behalf of the State submitted that the trial court has committed no error in convicting the appellants who dispossessed the informant side who belongs to the Scheduled Caste category and as such there is no infirmity in the judgment of the trial court.

10. I have examined the materials on record and I have heard submission of the parties and considering the materials on record. In the instant case charges have been levelled against the appellants are for the offence under section 3(iv) and (v) of the SC/ST (Prevention of Atrocities) Act.

11. For ready reference the provisions of Section 3 (iv)



and (v) of the SC/ST (Prevention of Atrocities) Act is quoted hereinbelow:-

“(iv) Wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) Wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water.”

12. In the instant case, the allegation of the informant is the accused persons have dispossessed him from the land in question. The allegation of dispossession and obstructing the informant is serious disputed question of fact in view of the fact that trial court itself noted the claim of the accused persons over the land in question on the basis of settlement in their favour by Hatwa Raj. The documents placed before the court below as exhibits A, B and C are sufficient to demonstrate that appellants have lawfully claimed right, title and possession over the land in question and as such the allegation of dispossession of the informant from that land and obstructing them for cultivating over the land in question does not justify the appellants conviction in the absence of proof of title in their favour. It goes without saying that if the appellants have right,



title and possession over the land in question as per exhibits A, B and C then the allegation of dispossession and obstructing from cultivating that land does not merit consideration and cannot be a ground to convict the appellants.

13. Accordingly, I am of the view that the trial court has committed error in convicting the appellants for the offence under section 3(iv) and (v) of the SC/ST (Prevention of Atrocities) Act and as such I set aside the judgment of conviction and order of sentence dated 23.09.2002 and dated 24.09.2002 passed by the trial court in Uchkagaw P.S. Case No. 132 of 1993.

15. The appeal is allowed.

16. Since the appellants are on bail, they are discharged from the liability of the bail bond.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
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