

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2449 of 1998

Judgment reserved on : 01.02. 2017

Judgment delivered on : 22.02.2017

Chhedilal Gupta S/o. Shri Raghunandan Prasad, Aged about 48 years, R/o. Mangala, Tahsil and District Bilaspur (M.P.) (now Chhattisgarh)

---- Appellant

Versus

State of Madhya Pradesh (now Chhattisgarh), Through Station House Officer, Harijan Kalyan Cell, Bilaspur, Teh and District Bilaspur

---- Respondent

For Appellant : Shri Sourabh Sharma, Advocate
For Respondent/ State : Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Anil Kumar Shukla

C. A. V. Judgement

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 14.10.1998 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act'), Bilaspur in Special Criminal Case No. 71/96, whereby the learned Special Judge convicted the appellant for the offence punishable under Section 3(1)(ii) of the Act and sentenced him to undergo rigorous

imprisonment for two years and to pay fine of Rs. 1000/-, in default of payment of fine, to further undergo rigorous imprisonment for three months.

2. As per the case of the prosecution, Appellant Chhedilal Gupta was residing in the house of the complainant. There was a hand-pump installed over the land of the complainant in the house. The waste water of the said hand-pump was flowing in the back courtyard (*Badi*) of the house of the complainant. When the complainant asked the appellant to vacate her house, a dispute arose between them. Thereafter, the appellant started flowing the waste water of the said hand-pump in the courtyard and inside the house of the complainant. On this, the complainant made a written complaint (Ex.P-1) before the Superintendent of Police, Bilaspur, on the basis of which First Information Report (Ex.P-5) was registered against the appellant in Harijan Kalyan Police Station, Bilaspur.

3. During investigation, spot map (Ex.P-4) was prepared. After completion of the investigation, the appellant was charge-sheeted for the offence punishable under Sections 3(1)(ii) and 3(1)(v) of the Act. The appellant denied the guilt and pleaded innocence. Trial was conducted. The prosecution examined as many as 5 witnesses. The appellant was examined under Section 313 Cr.P.C. The appellant, in his defence examined Arun Kumar Tiwari (DW-1). The trial Court, after affording opportunity of hearing and leading evidence to the parties and appreciation of the evidence available on record, passed the impugned

judgment convicting and sentencing the appellant as mentioned above. Hence, this appeal.

4. Shri Sourabh Sharma, learned counsel appearing for the appellant argued that the judgment of conviction passed by the Trial Court is contrary to the facts and the material available on record. Learned counsel further argued that the prosecution has failed to prove the ingredients of Section 3(1)(ii) of the Act. He further argued that the learned Special Judge committed error in not considering the fact that the dispute between the parties was of a civil nature and in respect thereof a suit was already pending before the jurisdictional civil Court. He further argued that the complainant has stated in her statement that the alleged dispute arose only after her purchase of the suit house, where the present parties were residing for the last 35 years. He further argued that the appellant has been falsely implicated in the case only to harass him by the complainant. He further argued that the prosecution has failed to prove the offence beyond reasonable doubt and the benefit of doubt should be given to the appellant and accordingly he may be acquitted of the charge.

5. On the contrary, Shri Suryakant Mishra, learned Panel Lawyer for the State/respondent, opposed the above arguments, supported the impugned judgment passed by the learned Special Judge and claimed that the impugned judgment is impeccable and does not warrant any interference by this Court.

6. I have heard learned counsel appearing for the parties at length and have also perused the record with utmost circumspection.

7. The appeal is filed by the appellant against the conviction for the offence under Section 3(1) (ii) of the Act. The elements which are essential to prove the charge under section 3(1)(ii) of the Act are as under-

(a) that the accused must belong to the 'rest of Indian population', and not being a member of Scheduled Caste or a Scheduled Tribe;

(b) acts mentioned must be with "intent", hence *mens rea* is an essential ingredient;

(c) the intention must be with the object, " to cause injury, insult or annoyance to member of a Scheduled Caste or a Scheduled Tribe";

(d) the acts covered and restricted as "dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood."

8. On 28.01.1992, a written complaint (Ex.P-1) was submitted to the Superintendent of Police, Bilaspur by the complainant (PW-1) in which she stated that the complainant is a Harijan lady and she was residing at Mangala with her family and the appellant was forcefully residing with his family in a part of that house. Earlier the waste water of the hand pump installed over the land of the house was flowing towards the back courtyard (*Badi*) of

the house, but after the dispute created by the appellant, the waste water of the hand pump , at the instance of the appellant, is being flown in the courtyard and inside the house which is causing creation of mosquito and dirt and danger to health. The village Panchas tried to persuade the appellant, but he did not understand and stop his wrong act and also threatened her challenging that whatever she wants to do she may do. The complainant further stated that the appellant is a Baniya by caste and the complainant is a Harijan by caste. She further deposed that the appellant had thrown the waste water and other excrement in front of the portion of the house occupied by the complainant. Earlier, the water of hand-pump was being used by both the complainant and the appellant and their family members. After the dispute, the appellant asked the complainant not to take water from the hand pump and the appellant made a drain before the house of the complainant which is causing creation of mosquito and dirt and danger to health. The complainant tried to persuade the appellant, but he did not understand and scolded her in the name of her caste. Therefore, she made the written complaint against the appellant before the Superintendent of Police, Bilaspur.

9. In the written complainant (Ex.P.-1), the complainant stated that the appellant was flowing waste water of the hand pump in the courtyard and inside the house of the complainant and, therefore, a dispute arose between her and the appellant. She did not state anything in her written report about throwing of

excrement by the appellant. The complainant in her cross-examination at para-11 stated that she did not remember about the date and time of the incident. From the evidence of the complainant, it is clear that a civil suit had been filed by her and a decree was passed in her favour. In para-8 of her cross-examination, she stated that the appellant and the complainant were residing in the same premises separately for the past 30-35 years.

10. The complainant in para-14 of her cross-examination admitted that earlier there was no dispute between her and the appellant. The dispute arose between them only after her purchasing the house regarding flowing of the waste water of the hand pump and, therefore, she had made the written complaint (Ex.P-1) against the appellant. From the evidence of the complainant, it is clear that the dispute arose between the complainant and the appellant only after purchasing the house by the complainant and prior to the purchase there was no dispute between them. The complainant made allegation against the appellant in the FIR that the appellant was throwing waste water of the hand-pump in front of her house. In the Court, not only she but her husband also exaggerated their version.

11. Anujram (PW-3) has not deposed anything about throwing of excrement by the appellant. He deposed that he had asked the appellant not to flow waste water. In cross-examination, he deposed that he had not seen the appellant flowing the waste water.

12. Ramnath (PW-4) deposed that he had gone to the house of the complainant and seen that the water of the hand-pump was flowing in the courtyard of the house of the complainant.

13. The matter was investigated by Sub Inspector R.L. Singh (PW-5). Spot map (Ex.P-4) was prepared by him in which he has not properly shown the courtyard of the house of the complainant. In support of the spot map, neither the complainant nor the Investigating Officer has submitted any evidence to show where the house of the complainant and the courtyard of that house are actually situated and how and where the waste water of the hand-pump was flowing. The prosecution has also not submitted any photograph in support of the spot map.

14. From the evidence of the complainant, it reveals that there was a civil dispute between the complainant and the appellant regarding the land over which the house in question was situated. The appellant had forcefully occupied a part of the house. After purchase of the house by the complainant, the dispute arose between her and the appellant and thereafter only the complainant filed the written complaint (Ex.P-1). In the said complaint, it is only stated by the complainant that the appellant objected the complainant against her taking water from the hand-pump and he made a drain in front of the portion of the house occupied by her. She did not state in the written complaint about throwing of excrement in her house by the appellant.

15. From the above evidence, it reveals that the appellant did not intimidate or insult the complainant with intent to humiliate her because of her being a member of Scheduled Caste. In this circumstance, the ingredients of Section 3(1)(ii) of the Act are not attracted to this case.

16. For the foregoing reasons, the appeal is allowed. The impugned judgment of conviction and sentence passed by the Court below is set aside. The appellant is acquitted of the charge framed against him.

17. The appellant is reported to be on bail. His bail bonds are not discharged at this stage and the same shall remain operative for a further period of six months from today in terms of Section 437-A Cr.P.C.

Sd/-
(Anil Kumar Shukla)
Judge