

CRA No. 2639 of 1999

- Ramlal, S/o Mukutram Verma, aged about 33 years R/o Village Lohari, Police Station Suhela, District Raipur, C.G.

---- Appellant

Versus

- State of Madhya Pradesh (Now Chhattisgarh), through Police Station Suhela, District Raipur, C.G.

---- Respondent

For Appellant Shri P.P Sahu, Advocate

For Respondent/State Shri R.K Mishra, Dy. Advocate General and
Shri Shashank Thakur Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Judgment On Board

04/09/2017

1. This appeal would assail the judgment of conviction passed by the Special Court (Atrocities Act) convicting the appellant for committing the offence under Section 3 (1) (xv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,

1989 (for short 'the Act, 1989') and sentencing him to undergo RI for six months and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo RI for 20 days.

2. The appellant along with six other accused persons, all belonging to village Lohari, Police Station Suhela, District Raipur, were charge sheeted for committing offence under Sections 109 & 384/34 of the Indian Penal Code (for short 'the IPC') read with Section 3(1)(x) of the Act, 1989, however, the Special Court framed charge against the accused persons for offence under Section 3(1)(xv) of the Act, 1989 only.
3. The First Information Report (FIR) (Ex.P/1) was lodged by Sonchand on 8-11-1996, *inter alia*, alleging that he is a labourer at village Lohari where 64.45 acres of land was to be allotted to the Scheduled Caste members of the village, therefore, several Scheduled Caste Members moved application for allotment of the land before the State Government. As soon as the appellant became aware about the application moved by the Scheduled Caste members, he became annoyed and directed that other villagers should not provide basic necessary conveniences e.g. blacksmith, barber, hutmen, access to grocery shop, etc. to Narayan, Murli, Shahdev, Mangtu, Babulal, Budhram, Ramesher,

Santan & Shukh Lal, all by caste Satnami. When these persons asked the service providers as to why they are denying services to them, they informed that the appellant, who happens to be the Sarpanch of the village, has instructed them. On death of one Sonu Satnami, the villagers namely; Ramu, Kanhaiya, Dawva, Bokai, Dhoplu & Jagtu Ram had gone to visit Sonu Satnami's residence for which the appellant imposed fine and recovered the amount from the above stated persons. The first informant stated in the FIR that by doing the above act the Sarpanch is harassing them for which they are perturbed. Their statements under Section 161 of the Cr.PC also reported similar allegations with addition that the Sarpanch tried to segregate them from other villagers.

4. Based on the materials available in the charge sheet, the Special Judge passed an order on 02-09-1997 that the only charge which appears to be making out against the accused persons is one under Section 3(1)(xv) of the Act, 1989. All the accused persons were, therefore, tried for this offence only and not under Sections 109 & 384/34 of the IPC and under Section 3(1)(x) of the Act, 1989 for which the charge sheet was initially filed.
5. The prosecution examined 16 witnesses to bring home the charges. Majority of the witnesses belong to Scheduled Caste

Satnami Community. Sonchand (PW-1), Ramu (PW-10) & Mangtu Satnami (PW-11) have been referred in Para 20 of the trial Court's Judgment as important witnesses for the prosecution. Out of these three witnesses, Ramu (PW-10) has turned hostile whereas Sonchand (PW-1) would state that there is groupism in the village and he belongs to one group whereas the appellant belongs to the other group and there is dispute concerning allotment of land admeasuring 64.45 acres, which is the bone of contention between the parties and the present FIR has been lodged as a result of the said dispute. Sonchand (PW-1) also confirms that the dispute is continuing since 1980-81 with further statement by Mangtu Satnami (PW-11) that the dispute has not commenced only in the regime of the present Sarpanch, but it is continuing since from the tenure of the previous Sarpanchs.

6. The Act of denying several services has been referred by the prosecution witnesses as denial of '*Pauni-Pasari*'. The term is used to describe the services rendered by the village hutmen, milkmen, blacksmith, barber, etc. to the fellow villagers on payment of monthly remuneration. There is evidence on record that the appellant has instructed the fellow villagers to stop offering services i.e. '*Pauni-Pasari*' to the first informant and other

witnesses who belong to Scheduled Caste Community, however, neither in the FIR nor in the statement of witnesses there is any allegation that the appellant has ever forced or caused a member of a Scheduled Caste community of the village to leave their house, village or other place of residence. It was never the allegation in the statement of any of the prosecution witnesses that denial of '*Pauni-Pasari*' at the instance of the present appellant was with a view or design to force them to leave the village. This statement was necessary in view of the language employed in Section 3(1)(xv) of the Act, 1989.

7. Mere fact that according to Sonchand (PW-1) the dispute concerning allotment of land admeasuring 64.45 acres is continuing since 1980-81 and other evidence on the record that the stoppage of '*Pauni-Pasari*' is continuing for about four years, it clearly appears that this *Pauni-Pasari* issue is not with a view to force the complainant or the witnesses belonging to the Scheduled Caste Community to leave their house, village or other place of residence, but it may be with an intent to segregate and seclude them in the village for coercing them to withdraw their application for allotment of land, however in the absence of any allegation the denial of '*Pauni-Pasari*' was with a view to force them to leave

their house, village or other place of residence, the appellant's conviction under Section 3(1)(xv) is wholly illegal because the basic ingredients of offence has never been alleged in the FIR or in the statement of witnesses.

8. As a sequel, the appeal is allowed. Conviction and sentence imposed on the appellant under Section 3(1)(xv) of the Act, 1989 is hereby set aside and he is acquitted of the said charge. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

Judge

Prashant Kumar Mishra

Gowri