

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.179 of 2003

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1. Most. Rameshwari Devi, W/o Late Dharmdeo Mahto.
 2. Vijay Kumar Mahto
 3. Jaiprakash Mahto
 4. Surendra Prasad Mahto

All sons of Dharmdeo Mahto, residents of village – Semapur Aminabad,
P.S. – Barari, District – Katihar.

.... Appellant/s

Versus

State of Bihar & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Narayan Singh, Sr. Adv
Mr. Jayram Sharma, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 25-01-2018

By way of the present appeal, appellants seek to challenge the judgment of conviction dated 05.03.2003 and order of sentence dated 07.03.2003, passed by Shri Yogendra Prasad, 1st Additional Sessions Judge – Cum – Special Judge, SC/ST (Prevention of Atrocities) Act, in short “SC/ST (POA) Act”, Katihar, in T.R. No. 04/2003, by which the appellants, above named, stood convicted under Sections 448, 427 and under Section 323 of the Indian Penal Code (in short the “IPC”) and under Section 3(1)(v) and 3(1)(xv) of SC/ST (POA) Act, and were sentenced to undergo R.I. for six months under Section 448 of the IPC, R.I. for one year under Section 427 of the IPC, R.I. for six months under Section 323 of the IPC, R.I. for two years under Section 3(1)(v) of SC/ ST (POA) Act, and R.I. for two years under Section



3(1)(xv) of SC/ST POA, Act. Appellant Bijay Kumar Mahto was further convicted under Section 380 of the IPC and was sentenced to undergo R.I. for three years. All the sentenced were directed to run concurrently.

2. Prosecution case as per the complaint petition of the complainant (P.W. 4). in short is that on the alleged date of occurrence, accused persons came to her land and on being exhorted by appellant – Most. Rameshwari Devi, demolished the roof and wall of the house and on protest being made by the complainant, accused persons assaulted and abused her. It has further been alleged that appellant – Bijay Mahto committed theft of a box from her house, which contained some garments and cash of Rs. 189/- and motive disclosed behind the occurrence is that appellants wanted to dispossess the complainant from the land, which was granted to her through *basgit parcha*.

3. After enquiry summons were issued to the appellants and after recording their statements. Charges were framed against the accused persons. In this case, initially charges were framed under Section 448, 323, 427 and 380 of the IPC, however, later on charges were also framed under Section 3(1)(v) and 3(1)(xv) of SC/ST POA, Act, thereafter, the case was traveled to the file of Shri Yogendra Prasad, 1st Additional Sessios Judge – Cum – Special Judge, SC/ST (Prevention of Atrocities) Act, in short “SC/ST POA Act”, Katihar for



trial and disposal.

4. To prove its charges, prosecution examined altogether seven witnesses. Out of which P.W. 1 – Girish Yadav, who did not support the prosecution story, P.W. 2 and 3 died and they could not be examined, P.W. 4- Sajania Devi (complainant), P.W. 5 Bideshi Rishi (father in law of the complainant), P.W. 6 – Chandar Rishi has also not supported the prosecution story and P.W. 7 – Fulchand Rishi, a formal witness.

5. Apart from that, following documents have been brought on record and marked as; Ext. 1 – *Purcha*, Ext. 2 – Death certificate of Mahadeo Paswan, Ext. 2/1- Death certificate of Doman Paswan, Ext. 3 – Writing on death certificate of Mahade Paswan, Ext. 3/1 – Writing on death certificate of Doman Paswan.

6. From the defence side also some documents have been brought on record, they are Ext. A – Kewala No. 7226 dt. 12.05.76, Ext. B – Rent receipt and Ext. C – Khatiyan.

7. Defence of the appellants is of complete denial of occurrence and of innocence and further defence is that there was some dispute between the parties with respect to the measurement of certain land and no such occurrence as alleged had taken place and they had falsely been implicated due to enmity as earlier a case was lodged against the father in law of the complainant, in which he was convicted.



8. Learned Trial Court after conclusion of trial convicted the appellants under Sections 448, 427 and 323 of the Indian Penal Code and under Section 3(1)(v) and 3(1)(xv) of SC/ST and further convicted appellant Bijay Mahto under Section 380 of the IPC and sentenced them in the manner as stated above.

9. Contention of learned counsel for the appellants is that there is no applicability of Section 3(1)(v) and 3(i)(xv) of SC/ST Act as no caste certificate has been brought on record by the prosecution side as provided under Section 2(c) of SC/ST POA, Act. In support of this contention, he has relied upon a Judgment of Chattisgarh High Court, in the case of **Kartik Ram & Ors. v. State of M.P.** reported in **2015 Cr.L.J. 2958**. It has been submitted by learned counsel for the appellants that evidence of P.W. 5, itself shows that a case was lodged by one of the appellants against him and his family members, in which they were convicted, and, therefore, false implication of appellants cannot be ruled out specially when there is no independent witness to support the case of prosecution except complainant P.W.4 and her father-in-law P.W. 5 and all other witnesses either did not support the case of prosecution or died during the course of trial. However, learned trial court without considering all these infirmities have convicted the appellants under Sections 448, 427 and 323 of the Indian Penal Code and under Section 3(1)(v) and 3(1)(xv) of SC/ST and further convicted appellant Bijay Mahto under Section 380 of the



IPC, which is not sustainable in the eye of law.

10. On the other hand, learned counsel for the respondent-State defended the finding of guilt recorded by learned Trial Court and submitted that there are consistent evidence of witnesses that on the alleged date of occurrence appellants allegedly trespass the premises of the complainant and demolished the wall and roof of the house and she was also abused and assaulted by the appellants. Evidence of witnesses also show that appellant Bijay Mahto committed theft in the house of complainant and, therefore, there is no infirmity in the impugned judgment and conviction of appellant is just and proper.

11. Considering the rival contention of the parties. On perusal of the evidence, it appears that except P.W. 4 (complainant) and P.W. 5 (father of the complainant), in this case other witnesses i.e. P.W. 1, who is a named witness in the complaint petition as prosecution witness, though supported prosecution case in his evidence before the charge but in his cross-examination after framing of charge, he has not supported the prosecution case and his evidence also shows that land of complainant and the accused persons are adjacent to each other. So far P.W. 2 and 3 are concerned, it appears that they had been examined before the charge but since they died during pendency of trial, they could not be examined and as such the trial court has rightly not considered their evidences. P.W. 6 has also not supported the prosecution case and even in his cross-examination, there is nothing to



support either prosecution or defence case.

12. It appears that prosecution case stands on evidence of only two witnesses viz. P.W. 4 and P.W. 5. P.W. 4 has stated in her evidence that on the alleged date of occurrence appellants came armed with *kudal, khanti, khurpi* etc. started demolishing his house and also assaulted her and a box contained some garments and some cash was also stolen away by the appellant – Bijay Mahto. This witness in her cross-examination has stated that she received the land in question by *basgit parcha* and land of the appellants was also situated beside her land and there was some dispute with regard to measurement of land. Evidence of this witness shows that she has not made any specific allegation with regard to assault on her by the appellants rather it appears that only general and omnibus allegation with regard to assault, has been made. Further she has also not disclosed as to who was demolishing her house. However, her evidence is only consistent on the point that appellant – Bijay Mahto took away a box containing some garments and some cash.

13. P.W. 5 in his evidence has also stated in general that appellants have demolished the house and taken away all articles from the house. Evidence of this witness further disclosed that appellant Bijay Mahto has earlier lodged a case against him, in which he was convicted.

14. Considering the above evidences of witnesses, it appears that there was some dispute with respect to measurement of land and the



allegation with respect to assault on P.W. 4 and demolition of house, appears to be general in nature. Further P.W. 5 himself has admitted in his evidence that appellant Bijay Mahto had earlier lodged a case against him, in which he was convicted by the lower court. Evidence of P.W. 4 also disclosed that the land of appellants was situated beside her land. It also appears that no chit of paper has been produced on behalf of the prosecution to show that they belonged to SC/ST community as provided under Section 1 (c) of SC/ST (POA) Act, and there is nothing available on record to show that appellants ever tried to disposes the complainant (P.W. 4) from her land, which was granted to her through *basgit parach* rather it appears that occurrence is due to dispute with respect to measurement of land. I have also gone through the judgment relied upon by learned counsel for the appellants in the case of **Kartik Ram & ors. v. State of M.P. (supra)**, in which a Bench of Chhatishgarh High Court, held in para - 13 of the judgment as follows :-

13. No caste certificate is collected during investigation or produced before the trial Court. As per the requirement of Section 2C of the Act, the prosecution has to prove that victim belongs to reserved category for which it is required to obtain caste certificate from the authorised signatory. In absence of such caste certificate and in absence of material evidence that the complainant and his family members belong to Scheduled Tribe community, simply by narrating that they belong to Binjhar caste it would not automatically prove that the complainant and their family members fall under the Scheduled Tribe category. For this also in view of this Court it affects the case of the prosecution adversely.



15. Considering the judgment as relied upon by learned counsel for the appellants in the background that there is no evidence to show that appellants were intended to disposes the complainant from her land, which was given to her by Government through *basgit parcha*, as such this Court finds that prosecution has failed to establish its charge under Section 3(i)(x) and 3(i)(xv) of SC/ST (POA) Act., against the appellants.

16. Appellants have also been convicted under Section 448, 427 and 323 of the Indian Penal Code and appellant Bijay Mahto has also been convicted under Section 380 of the IPC, however, except general and vague allegation with respect to trespass and demolishing the wall and roof, there is nothing against the appellants and so far allegation against Bijay Mahto of committing theft of a box, which contained some garments and some cash is concerned, the same also appears to be ornamental as evidence of P.W. 5, itself shows that he was earlier convicted in a case lodged by appellant – Bijay Mahto. It also appears that the defence has brought some documents to show that the appellants had purchased land adjoining to the land of complainant and evidence of P.W. 4 also disclose that there was some dispute between the parties with respect to the measurement of the land, in such a situation, false implication due to earlier dispute and land dispute, cannot be ruled out.

16. Considering the entire discussions as well as the fact that in this



case no independent witness has been examined to corroborate the allegation made against the appellants and some of the witnesses have also not supported the case of prosecution, as such, the appellants certainly deserve the benefit of doubt as there is no concrete evidence available against the appellants to prove their guilt coupled with the fact that P.W. 5 has admitted in his evidence that he was at logger heads with one of the appellants. However, the trial court did not consider all these infirmities and convicted the appellants under the above mentioned Sections of IPC as well as SC/ST (POA) Act, which in my opinion, does not appear to be proper.

17. Hence, this appeal is allowed. judgment of conviction dated 05.03.2003 and order of sentence dated 07.03.2003, passed by Shri Yogendra Prasad, 1st Additional Sessions Judge – Cum – Special Judge, SC/ST (Prevention of Atrocities) Act, in short “SC/ST POA Act”, Katihar, in T.R. No. 04/2003, is set aside.

As the appellants are on bail, they are discharged from liabilities of bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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