

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 591 of 2002

1. Chamra Ram, S/o. Chandan Singh Dansena, Aged about 46 years,

2. Radheshyam, S/o. Chamra Ram Dansena, Aged about 22 years,

Both resident of village Amapali, Bahirkela, Police Station Gharghoda, District Raigarh (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through the District Magistrate, Raigarh (C.G.)

---- Respondent

For Appellants : Ms. Indira Tripathi, Advocate

For Respondent : Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

13.04.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 09.05.2002 passed by the Special Sessions Judge, Raigarh, Session Division Raigarh (C.G.) in Special Case No. 10/2001, wherein the said Court convicted the both the appellants under Section 3 (1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 (for short 'Act 1989') for wrongful dispossession of land to one Chandan Singh who is Kanwar by caste and is member of

Scheduled Tribe from land bearing survey No. 824 area 0.352 hectare, situated at village Bahirkela or interfered with enjoyment on his right over the land.

2. In the present case, land bearing survey No. 824 area 0.352 hectare belonging to complainant Chandansingh, while land bearing survey No. 827 area 1.20 dismal, adjoining to complainant's land belonging to the appellants.

3. Chandan Singh (PW-1) deposed that both the appellants made boundary in his land. Bedkunwar (PW-2) who is wife of Chandan Singh (PW-2), Dular Singh (PW-5), Rajesh Kumar (PW-11) deposed on the same line.

4. The point is whether the appellants have dispossessed Chandan Singh (PW-1) from land bearing survey No. 824. From, the records, it appears that there is a dispute regarding demarcation of boundary between the parties and as per the statement of Chamraram (DW-1), Andit Ram (DW-2) and documents Ex.D-1 to Ex.D-5, the parties went for legal recourse in the Court of Tahsildar where the land bearing survey No. 827 was demarcated and as per evidence of Hemsagar Choudhary (PW-3) and Revenue Inspector H. R. Rathia (PW-9) he has not demarcated the disputed land. As per evidence of H.R. Rathia (PW-9), he visited the spot for demarcation on 08-03-1999, but the demarcation could not take place for absence of Appellant Chamra Ram. Hemsagar Choudhary (PW-3) who is Patwari, who deposed on the same line at para-5 that due to absence of appellant No. 1 Chamra Ram, demarcation could not take place.

5. From the record, it appears to be a case of boundary dispute and as per section 129 of C.G. Land Revenue Code, 1959, The Tahsildar or any other Revenue Officer empowered to act may on the application of a party interested, demarcate the boundaries of a survey number or of a sub-division or of a plot number and construct boundary marks thereon. In the present case, the Revenue Officer visited the spot for demarcation but the same is not operated on the spot and there is no demarcation report before the trial Court that the area in which boundary is made by bushes belonging to Chandan Singh.

6. It is settled principle of criminal jurisprudence that prosecution has to establish its case beyond shadow of doubt, the case is not based on any caste but it happened because of land of both the parties are adjoining, for adjoining land only course open is demarcation but the same is not done. In absence of any demarcation report, it is difficult to hold on the basis of oral evidence adduced by both the parties that the appellants have dispossessed Chandan Singh from any part of land bearing survey No. 824 or interfered with the enjoyment of his right.

7. Taking into consideration the facts the findings arrived at by the trial Court is not sustainable under the law, the judgment of conviction and order of sentence passed by the trial Court is set aside.

8. Accordingly, the appeal is allowed. The appellants are acquitted of the charge under Section 3 (1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989. The

appellant are reported to be on bail. Their bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Santosh