

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 5-11-2019

Delivered on 6-12-2019

CRA No. 60 of 2003

1. Murari Ram Sahu s/o. Kalanjan Sahu, aged 35 years, r/o. Village Jhalmala, P.S. Balod Dist. Durg (CG).
2. Kripa Ram Sahu s/o. Bishal Sahu, aged 22 years, r/o. Village Padkhibhat, P.S. Balod, District. Durg (CG).

---- Appellants

Versus

- State of Chhattisgarh through Police Station Dondi Lohara, Dist. Durg (CG).

---- Respondent

For Appellants : Mr. M.P.S.Bhatia, Advocate

For State : Mr. Aman Kesharwani, Penal Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred against the judgment dated 12-12-2002 passed by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989) Durg, CG in Special Case No. 52 of 2002 wherein the said Court has convicted the appellants for the commission of offence under Section 420 read

with Section 34 of IPC 1860 and sentenced them to undergo RI for two years and to pay fine of Rs.1000/- each with default stipulations.

2. In the present case, name of the complainant is Tikam Singh who is resident of village Ahibaran Nawagaon, Police Station Dondi Lohara. It is alleged on 30-12-2001 appellant No.2 Kripa Ram came to him and enquired about pair of calves and told him that he knows prospective purchaser of the calves. Complainant Tikam Singh gave him calves on the condition that sale amount shall be paid to him but no amount was paid by the appellant No.2 that is why report was lodged. Calves were seized from the possession of the appellant No.1 Murari Ram Sahu. The matter was investigated. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

3. Learned counsel for the appellants would submit as under:

- i) The transaction is of civil nature and the complainant ought to have filed civil suit for recovery of amount of calves, therefore, criminal action is not permissible.
- ii There is no role of appellant No.1 Murari Ram Sahu in getting the calves from the complainant and he did not act dishonestly in any way, therefore, finding against appellant No.1 is not liable to be sustained and same is liable to be set aside.

4 On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. PW/1 complainant Tikam Singh deposed before the trial court that the appellant No.2 Kripa Ram took calves on the pretext that he will show them to prospective purchaser and will pay the amount of sale to this witness, but neither he returned the calves nor paid the money to him. Version of this witness is unrebutted during cross examination. Calves were seized from village Jhalmala from appellant No.1 Murari Ram Sahu as per version of PW/8 G.S. Parte, Sub Inspector.

7. From the entire evidence, it is established that appellant No.2 Kripa Ram deceived the complainant on the presumption that he will show the calves to prospective purchaser but neither he returned the calves nor paid the sale amount of calves to him which shows that after deceiving the complainant he has gained calves without having legal right and the complainant suffered loss of said calves which shows fraudulent and dishonest intention on the part of the appellant No.2 Kripa Ram Sahu. In view of the above, argument advanced on

behalf of appellant No.2 Kriparam Sahu is not sustainable and the act committed by him falls within mischief of Section 420 of IPC for which the trial court convicted and sentenced him and same is hereby affirmed.

8. The next question for consideration of this court is whether appellant No.1 Murari Ram Sahu did any criminal act. From the evidence of complainant it is clear that appellant No.1 was not present at the time of transaction between the complainant and appellant No.2 Kripa Ram. There is nothing on record to show that he had knowledge about transaction between these two persons and had knowledge about calves what were brought from the possession of the appellant Kripa Ram, therefore, it cannot be held that appellant No.1 Murarai Ram Sahu deceived any person or committed any fraudulent or dishonest act. Mere recovery of calves is not connecting piece of evidence regarding crime in question, therefore, charge under Section 420 read with Section 34 of IPC is not established against this appellant. Accordingly the appeal preferred by appellant No.1 Murari Ram Sahu is allowed and he is acquitted of the said charge. Conviction and sentence awarded by the trial court is hereby set aside.

9. Heard on the point of sentence of appellant No.2 Kripa Ram Sahu.

From the record it appears that appellant No.2 Kripa Ram Sahu suffered jail term from 2-2-2002 to 12-2-2002 i.e., 42 days. In view of this court no useful purpose would be served if he is again sent to jail. Corporal punishment awarded to this appellant is reduced to the period already undergone him. However, fine amount imposed by the trial court shall remain intact. The appellants are reported to be on bail. their bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

10. With the aforesaid modification the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju