

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 29/11/2019

Delivered on 10/01/2020

CRA No. 2346 of 1999

1. Jethu Ram, S/o- Amol Das, Aged about- 42 years.
2. Hiramal Lal, S/o- Ubhay Ram Sahu, Aged about-63 years.
3. Goutam Lal, S/o- Pursottam Lal, Aged about- 28 years.
4. Dhaluram, S/o- Ganga Prasad, Aged about- 45 years.
5. Puran Lal, S/o- Ganga Prasad, Aged about- 45 years.
6. Ankalu, S/o- Tulsiram, Aged about- 55 years(Abated).
7. Kuleshwar, S/o- Tokhram Sahu, Aged about- 28 years.
8. Mehataru Ram, S/o- Chherkuram, Aged about- 51 years(Abated).
9. Ram Chand, S/o- Bhaiya Lal, Aged about- 65 years(Abated).
10. Dhanwar Ram, S/o- Ramshar Ram Sahu, Aged about- 42 years.

All cultivators, R/o- Village Kampa, P.S. Dongargaon, District-
Rajnandgaon, (M.P.) Now (C.G.).

---- Appellants

Versus

The State of Madhya Pradesh now State of Chhattisgarh

---- Respondent

For appellants : Mr. F.S. Khare, Advocate
For State : Mr. Aman Kesharwani, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 25th of August, 1999, passed by Special Judge, Rajnandgaon, (M.P.) (Now C.G.), in Special Case No. 13/1999, wherein the said Court convicted all the appellants for charge under Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 7 of the Protection of Civil Rights Act, 1955 and sentenced them to undergo S.I. for 1 year and fine of Rs. 1000/-, S.I. for three months and fine of Rs. 300/- respectively with default stipulations.

2. As per version of the prosecution, the complainant Bhagawati Bai (PW-1) is a member of Scheduled Caste. Bhagawati Bai (PW-1) filed a written complaint to the police that there was demand of barber in the village by the members of the Scheduled Caste and she being *Sarpanch* called a meeting of the villagers, in the meeting the barber agreed to serve them and signed the agreement but the appellants who are not the member of S.C. & S.T. castes opposed it and said that if the barber will served them, they will not allow the barber to serve their own community, which leads to a dispute in the village and thereafter, report was made and the case was investigated and after completion of investigation appellants were charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Caste certificate of the Bhagawati Bai(PW-1) is not proved, therefore, charge under Section 3(1)(x) of the Act, 1989 is also not established.

(ii) The trial Court has evaluated the evidence against the legal norms, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. Bhagwati Bai (PW-1), deposed before the trial Court that appellants have obstructed in the meeting regarding service by the barber. Rajau(PW-2) deposed general statement before

the trial Court against the persons who were present in the said meeting. No one examined before the trial Court to prove caste of the Bhagawati Bai (PW-1) and Rajau (PW-2).

6. Appellants have been charge-sheeted for offence under Section 3(1)(x) of the Act, 1989 on the basis that complainant is a member of Scheduled Castes. As per Article 341(1)(2) of the Constitution of India, definition of Scheduled Castes is given as under:-

Article 341.—(1) The President may with respect to any State or Union Territory and where it is a State after consultation with the Governor thereof, by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State . Or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause of any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

7. In the present case, no one appeared before the trial Court to established that above prosecution witnesses are member of scheduled castes. Again, version of the prosecution witnesses are general in nature. In the present case, number of persons

have been prosecuted, therefore, act of each person should be explained with clarity. From the evidence, it is clear that all villagers were present in the meeting, therefore, omnibus statements regarding villagers is not sufficient to prove guilt of any appellant. Act of the appellants should be clarified otherwise there is possibility of conviction of innocent person. As the general statement is not sufficient it is not safe to act on the said statements and record finding of conviction for criminal act on the basis of caste and Untouchability as defined in Section 4 and punishable under Section 7 of the Act, 1955.

8. Finding arrived by the trial Court is not sustainable and same is hereby set aside. Conviction and sentence against the appellants is also set aside. Appellants are acquitted of the charge under Section 3(1)(x) of S.C. & S.T. Act, 1989 and Section 7 of the Protection of Civil Rights Act, 1955. The appellants 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.
9. Accordingly, the appeal is allowed.

Sd/-

(Ram Prasanna Sharma)
Judge