

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.216 of 2003

1. Shailendra Jha @ Shailendra Kumar Jha @ Gauri Kant Jha, son of Sahdeo Jha
2. Shiv Thakur
3. Sri Thakur, both sons of Yogeshwar Thakur, all resident of village Hatte, P.S. Basopatti, District- Madhubani

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	None
For the State	:	Mr. A.M.P. Mehta, A.P.P.
Amicus Curiae	:	Ms. Pallavi Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date : 21-06-2023

This appeal is directed against the judgment of conviction and order of sentence dated 02.04.2003 passed in T.R. No. 139 of 2002/ T.R. No. 111 of 2003 arising out of C.R. Case No. 275 of 1996 by Sri Upendra Narayan Yadav, Special Judge, SC/ST(Prevention of Atrocities) Act, Madhubani, whereby and whereunder the appellants and others have been convicted for the offence under sections 323 and 379 of the Indian Penal Code and section 3(1)(X) of the SC/St Act and have sentenced to undergo rigorous imprisonment for six months under each of the sections.

2. The prosecution case, in brief, is that the land of plot Nos. 2338, 2339 and 2340 corresponding to new Khesra



No. 4406 under Khata No. 506 was purchased by the complainant in name of his son namely, Ramchandra Ram through a registered sale deed from one Maksudan Sah. On 18.05.1996, in the evening the appellant no. 1, Shailendra Kumar Jha and the said Maksudan Sah came to the house of the complainant and asked him to sell sisam tree in his favour, which the complainant refused to sell. On 19.05.1996 at about 8 A.M. the aforesaid accused persons alongwith others came to the aforesaid land of the complainant and started to cut away the sisam tree standing on the land. The complainant went there and made protest, at which, the accused persons assaulted him with fists and slaps and uttered abusive language against the scheduled caste community. The accused persons cut away the sisam tree from the aforesaid land worth Rs. 3000/- and loaded it on tyre cart and took away the same.

3. On the basis of the aforesaid complaint filed by the complainant, Dukh Mochan Ram bearing C.R. No. 275 of 1996 before the Court of Chief Judicial Magistrate, Madhubani, the case proceeded and after solemn affirmation of the complainant and other witnesses and after inquiry under section 202 of the Code of Criminal Procedure, cognizance was taken on 04.07.1997 and the case was transferred to the designated



Court for trial.

4. In support of its case, the prosecution has examined altogether six witnesses. P.W. 1 Kari Paswan, P.W. 2 Md. Idrish, P.W. 3 Dukh Mochan Ram (complainant), P.W. 4 Sunfil Das, P.W. 5 Chandra Kumar Das and P.W. 6 Brajlal Sinha.

5. The prosecution, in support of its case, produced the following documents as exhibits :

<i>Exhibit 1</i>	<i>Rent Receipt</i>
<i>Exhibit 2</i>	<i>Signature of Maksudan Das and witness Jibach Sah in the sale deed</i>
<i>Exhibit 3</i>	<i>Sale Deed</i>
<i>Exhibit 4</i>	<i>Khatiyani</i>
<i>Exhibit 5</i>	<i>Complaint Petition</i>

6. The statement of the accused persons recorded under section 313 of the Code of Criminal Procedure is of complete denial.

7. The defence in support of its case has also examined one witness namely, Maksudan Sah, who was accused no. 2 in complaint.

8. The appellants have assailed the impugned judgment submitting that the trial Court has failed to consider that the dispute involved between the parties is purely civil in nature and the judgment of conviction has been passed



completely in a mechanical way even though the prosecution had failed to prove the case beyond all reasonable doubts. The defence witness Maksudan Sah had categorically deposed that the land in question was vacant and no sisam tree was standing on it. It is further submitted that as per the provision incorporated in the Benami Transaction (Prohibition) Act, 1988, none except for Ram Chandra Ram can be said to be the owner of the land covered by the sale deed. Therefore, the complainant cannot legally claim to have the possession over the land or the alleged trees on the basis of the sale deed referred in the case, as the same stands in the name and favour of Ram Chandra Ram.

9. On the other hand, learned Special Public Prosecutor appearing for the State submitted that plot nos. 2338, 2339 and 2340 were purchased by the complainant in the name of his son through a registered sale deed, which had included the trees present over it. As per the prosecution case, the accused persons had stolen the tree from the premises and had assaulted the complainant and others alongwith hurling abusive language against the complainant's community.

10. Heard learned counsel for the parties and perused the record.

11. The disputed land is in the name of the son of



the complainant but the son is not the complainant. He is not even a witness in the case.

12. The disputed land was purchased by the son of the complainant from accused no. 2 of complaint namely, Maksudan Sah and the present complainant is neither the purchaser nor the seller and therefore he is not in possession of the aforesaid plots of land, which is an essential ingredient for constituting an offence of theft described under section 379 of the Indian Penal Code.

13. The documentary evidence (sale deed and khatiyani) also do not show that there was any tree standing on the disputed land.

14. The complainant in his evidence has clearly stated that all the four sisam trees were about 3ft. in width and 20 haath (30 ft.) in length and it took about 3 hours to cut away all the four trees, but during this period he neither informed the Mukhiya or Sarpach nor went to the Police Station though it is his evidence that earlier he was a chowkidar.

If he had informed the police about the above incidence then the fact regarding cutting away the trees would have come in the investigation as it is his evidence that for six months the logs of the trees were kept in the house of Gauri



Babu. But the complainant instead of lodging a formal first information report, files a complaint petition where there is no scope of investigation.

15. With regard to the offence under section 323 of the Indian Penal Code, the complainant has stated in his evidence that he was assaulted to the extent that his temporal region of both sides as also his back got swollen. He has stated that he got treated by Dr. Diliip Kumar and took his medicines for 4-5 days, but in support of it he neither produced any prescription of the doctor nor any bill of medicines nor got the doctor examined as a witness in the case.

16. So far as the offence constituted under the Special Act {(S.C. and S.T. (Prevention of Atrocities) Act} is concerned, it is clear that the genesis of the offence begun with the cutting away of the tree and the assault made to the complainant and the hurling of abusive language against the complainant's community.

Where three acts are part of one transaction and the first and second acts have not been proved beyond all reasonable doubts, the third act in itself comes under the shadow of doubt.

17. Under the aforesaid circumstances, it can be



very well said that the prosecution has failed to prove its case beyond all reasonable doubts and accordingly the accused persons are entitled to be acquitted by giving them the benefit of doubt.

18. Accordingly, the appeal is allowed. The impugned judgment of conviction and order of sentence dated 02.04.2003 passed in T.R. No. 139 of 2002/ T.R. No. 111 of 2003 arising out of C.R. Case No. 275 of 1996 by Sri Upendra Narayan Yadav, Special Judge, SC/ST(Prevention of Atrocities) Act, Madhubani, is hereby, set aside.

All the accused persons are already on bail. They are also discharged from the liability of their bail bonds.

19. I put on record special thanks for Ms. Pallavi Pandey, advocate, who was appointed as an amicus curiae in this case, for rendering full assistance to the Court in hearing the appeal. The Registry is directed to make payment of the prescribed fee to Ms. Pallavi Pandey, the amicus curiae.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	N.A.F.R.
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