

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2144 of 2019

Arising Out of PS. Case No.-274 Year-2003 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

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1. PUJAN THAKUR Son of Late Kali Thakur Resident of Village - Gadiyani Ward No.4, P.S.- Madhubani, Dist.- Madhubani.
 2. Shrawan Thakur Son of Late Shambhu Thakur Resident of Village - Gadiyani Ward No.4, P.S.- Madhubani, Dist.- Madhubani.
 3. Guddu Thakur Son of Pujan Thakur Resident of Village - Gadiyani Ward No.4, P.S.- Madhubani, Dist.- Madhubani.
 4. Amarnath Thakur Son of Pujan Thakur Resident of Village - Gadiyani Ward No.4, P.S.- Madhubani, Dist.- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bauye Jee Jha Mr. Bimal Kumar
For the Respondent/s	:	Mr. Usha Kumari 1, Spl. P.P.
For the Informant	:	Ms. Kusum Rani

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 19-12-2024

Heard learned counsel for the appellants and learned
Special Public Prosecutor appearing on behalf of the State as
well as learned counsel for the informant.

2. The present appeal has been preferred against
Judgment and Conviction dated 25.04.2019 in C.R. Case No.
274/2003/T.R No. 55/2019 passed by Ist Additional Sessions
Judge cum Special Judge, Madhubani whereby and whereunder
the appellants have been found guilty of offence under sections
341, 323, 504/34 I.P.C and Sections 3(i) (x) of the Scheduled
Castes and the Scheduled Tribes (Prevention of Atrocities) Act,



1989 (For short the 'SC/ST Act') Act and sentenced them of imprisonment of 1 month under Section 341, 1 year under Section 323, 2 years under Section 504 I.P.C and 2 years under Section 3(i) (x) 'SC/ST Act' and Rupees 1000/- as fine, in failure of payment of fine appellants have to undergo further imprisonment of 3 months imprisonment.

3. The prosecution story in brief is that one Kishori Safi filed a Complaint bearing No. 274/2003 in the Court of C.J.M Madhubani arraying 6 (six) persons as accused including the appellants for the offences punishable under sections 147, 341, 323, 379, 504, 34 I.P.C and Sections 3 (i)(x) of the 'SC/ST Act'. S.A was recorded on 19.05.2003, on 30.05.2003 and 11.06.2003. Ganesh Safi and Lakshmi Safi were examined under section 202 Cr.P.C. By order dated 21.01.2004, the C.J.M took cognizance and issued process under section 204 Cr.PC. for the offences under sections 341, 323, 379, 504, 34 I.P.C and Sections 3 (x) of the 'SC/ST Act'. Accordingly T.R No. 407/04 was registered. The case was transferred to Special Judge Cum Ist A.D.J., Madhubani. Charges were framed on 28.11.2006 for offence under sections 341, 323, 504/34, 379 of the I.P.C and Sections 3(i) (x) of the 'SC/ST Act'.

4. It has been submitted by the learned counsel for the



appellant that 7 witnesses were examined for prosecution as P.W
1- Ganesh Safi, P.W 2- Lakshmi Safi, P.W 3- Kishori Safi, P.W
4- Chandra Kumar Das, P.W 5- Subhash Chandra Mishra, P.W
6- Ram Parikshan Yadav, P.W 7- Nathuni Mehta.

5. It is further submitted on behalf of the appellants that that Ist Addl. Sessions Judge Cum Special Judge, Madhubani through his Judgment/Conviction dated 25.04.2019 in C.R. No. 274/2003/T.R. No. 55/2019 found the appellants guilty and accordingly sentenced them for 1 month under Section 341, 1 year under Section 323, 2 years under Section 504 and 2 years under Section 3(i)(x) of the 'SC/ST Act' and Rs. 1000/- as fine. He submits that the Court ordered to undergo imprisonment concurrently with further direction to undergo 3 months imprisonment in default of payment of fine. The Trial Court has granted provisional bail to the appellants till 25.05.2019 which was continued by this Court.

6. It is argued that the Trial Court failed to consider that the impugned Criminal case was lodged on account of Land dispute and the trial Court failed to consider that prosecution has filed Complaint without approaching the Police.

7. He next submits that trial Court erroneously held that appellants committed offence under provisions of the 'SC/ST



Act' whereas dispute between the parties is going on.

8. It is submitted that the trial Court failed to consider that alleged occurrence was not with the intent to humiliate the complainant in public view and no independent witness has been examined on behalf of prosecution rather the witnesses are interested witness. Hence, the impugned Judgment and conviction is vitiated.

9. The learned Special Public Prosecutor Smt. Usha Kumari has submitted that the impugned judgment is a well reasoned judgment and the same cannot be interfered with. The Special Judge has rightly convicted the appellants under the provisions of the 'SC/ST Act' and the other provisions of the Indian Penal Code.

10. P.W.-1 is the son of the informant. In his examination-in-chief, he has supported the prosecution case but in the cross-examination, he has said that he does not remember the date of occurrence. He does not remember as to when he had gone to call the Amin. He does not remember the time at which he reached the municipality and he does not remember the time when the Amin reached the disputed land. He has further said that the occurrence took place long back. He also says that the Amin had accompanied with a person whose name he does not



remember. He has also said in his cross-examination that his father has sustained 14-15 injuries but he had not fainted. He has also said that they had not taken the injured to the hospital.

11. P.W.-2 is the second son of the informant who who has also supported the prosecution case. In his cross-examination, he has said that his father was beaten with fists and slaps and no injury was caused to him. He has also said that he does not remember the date of occurrence, the date of measurement and he does not remember the name of the person who accompanied the Amin. The measurement was going on at 04:30 p.m.

12. P.W.-3 is the informant of the case. He has supported the prosecution case and has said that they were assaulted with fists and slaps because of land dispute. In his cross-examination, he has said that he had not gone to the doctor or the police station. He further says that the lawyer had drafted the complaint and he had put his thumb impression of the complaint. He does not know what was written in the complaint. He further says that the case has been filed to make Shiv Pujan to leave the land. He further says that if Shiv Pujan leaves the land then he will withdraw the case. He has also said that he does not know the date of occurrence, the month of occurrence



and does not know who had done the measurement. He does not know as to who had called the Amin. He further says that there was no mark of injury therefore he cannot show that. In the occurrence, he had become senseless because of the scuffle.

13. P.W.-4, P.W.-5, P.W.-6 are formal witness and P.W. 7 has been declared hostile.

14. From the evidence of the witnesses, the very occurrence becomes doubtful. The material witnesses are the two sons and their father who is the complainant. They have not been able to given the details of the date and month of occurrence. There are contradictions in the statement of the witnesses. P.W.-1 has said that his father had sustained 10-15 injuries whereas P.W.-3 the Complainant has said that there is no outer mark or outer injury sustained by him. P.W.-3 has further said that he had given his thumb impression on the complaint prepared by his lawyer but he does not know what was written in the complaint and the case has been filed because of the land dispute and if the land is given to him, he will withdraw the complaint.

15. In the case of **Darshrath Sahu Vs. State of Chhattisgarh (2024 SCC Online SC 72)** the Hon'ble Supreme Court has held as follows:-

“6. The short point arising for consideration of this



Court is as to whether the conviction of the appellant for the offence punishable under Section 3(1)(xi) of the SC/ST Act and the rejection of the application under Section 320 CrPC was justified and lawful.

7. Section 3(1)(xi) of the SC/ST Act reads as below:-

*"3. **Punishments for offences of atrocities.**-(1)*

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(1)-(x).....

(x) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

8. A plain reading of the section makes it clear that the offence of outraging the modesty should be committed with the intention that the victim belonged to the Scheduled Caste category.

*9. We have gone through the FIR and the sworn testimony of the prosecutrix/complainant as extracted in the judgments of the High Court as well as that of the trial Court. The case as projected in the FIR and the sworn testimony of the prosecutrix would reveal that the prosecutrix/complainant was engaged for doing household jobs in the house of the accused appellant who tried to outrage her modesty while the prosecutrix/complainant was doing the household chores. Apparently thus, even from the highest allegations of the prosecutrix, the offending act was not committed by the accused with the intention that he was doing so upon a person belonging to the Scheduled Caste. This issue was dealt with by this Court in the case of **Masumsha Hasanasha Musalman Vs. State of Maharashtra** wherein it was held as below:*

"9. Section 3(2)(v) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Penal Code, 1860 punishable with imprisonment for



*a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. In the present case, there is no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe **and that the offence under the Penal Code, 1860 is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe.** In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises. In that view of the matter, we think, both the trial court and the High Court missed the essence of this aspect. In these circumstances, the conviction under the aforesaid provision by the trial court as well as by the High Court ought to be set aside."*

(Emphasis supplied)

10. In the said judgment, this Court dealt with a case involving offence under Section 3(2)(v) of the SC/ST Act. The language of Section 3(1)(xi) of the SC/ST Act is pari materia as the same also provides that the offence must be committed upon a person belonging to Scheduled Castes or Scheduled Tribes with the intention that it was being done on the ground of caste."

16. Section 3(1)(s) and Section 3(1)(x) reads as follows:-

"(s) abuse any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within pubic



view;

(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used”

17. Though the appellants have been convicted under Section 3 (1)(x), but in my opinion, no offence under 3(1)(x) is made out against the appellants.

18. From the evidence brought on record, the prosecution has not been able to prove the occurrence beyond reasonable doubt and from the evidence of the informant itself it appears that the complaint was filed with an intention to get the land. The complainant does not know what has been written in the complaint. He does not remember the date of occurrence, the month of occurrence and the other vital details. Similar, is the case with the two witnesses i.e. P.W.-1 and P.W.-2.

19. From the reading of the complaint, it appears that the alleged offending act was not committed by the appellants with an intention that the victim belongs to the Scheduled Caste category.

20. In view of the above, this appeal is allowed.

21. Accordingly, the Judgment and Conviction dated



25.04.2019 in C.R. Case No. 274/2003/T.R No. 55/2019 passed by Ist Additional Sessions Judge cum Special Judge, Madhubani is hereby set aside.

22. The appellants shall be discharged from the liabilities of the bail bonds.

23. Interlocutory application, if any, is also disposed of accordingly.

(Sandeep Kumar, J)

Saif/-

AFR/NAFR	NAFR
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