IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 2nd OF FEBRUARY, 2024

CRIMINAL APPEAL No. 2629 of 2005

BETWEEN:-

1. **RANOODAS PANKA S/O MANGALDAS PANKA, AGED ABOUT 35 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)**

2. **SAMANDAS PANKA S/O MANGALDAS PANKA, AGED ABOUT 50 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)**

3. **RAMMUDAS PANKA S/O MANGAL DAS PANKA, AGED ABOUT 32 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)**

4. **NANHEDAS PANKA S/O MANGALADAS PANKA, AGED ABOUT 26 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)**

5. **SOMDAS PANKA S/O MANGALDAS PANKA, AGED ABOUT 45 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)**

6. **SARVANDAS PANKA S/O SADANAND PANKA, AGED ABOUT 40 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)**

7. **SMT. RAMBAI PANKASARVANDAS PANKA, AGED ABOUT 35 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)**

8. **SMT. DROPDIBAI PANKARANTODAS PANKA, AGED ABOUT 30 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)**

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9. SMT. SOHAGBAI PANKARANOODAS PANKA, AGED ABOUT 32 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)

10. KULPATDAS PANKA S/O MANGALDAS PANKA, AGED ABOUT 45 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)

11. ROOPDAS PANKA S/O MANGALDAS PANKA, AGED ABOUT 37 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)

12. SMT. CHANDARBAI PANKAKULPATDAS PANKA, AGED ABOUT 38 YEARS, VILL.BHURKA,P.S.DINDORI,DISTT.DINDORI (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI VINIT MISHRA -ADVOCATE)

AND

THE STATE OF MADHYA PRADESH DINDORI (MADHYA PRADESH)

.....RESPONDENTS

(BY MS. PRIYANKA JAIN - PANEL LAWYER)

RESERVED ON :- 25-01-2024
PRONOUNCED ON :- 02-02-2024

This appeal having been heard and reserved for judgment, coming on for pronouncement this day, ***Justice Gajendra Singh*** *passed the following:*

JUDGEMENT

This Criminal Appeal under Section 374(2) of Cr.P.C has been preferred feeling aggrieved by the judgment dated 02-12-2005 in Special Case No. 63/2004 by the Special Judge, SC/ST (POA) Act, 1989 whereby the appellants/accused have been convicted under Section 3(1)(v) of

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SC/ST Act, 1989 and sentenced to RI for six months and fine of Rs. 500/- with default stipulations.

2. The case in brief are that the appellants/accused does not belong t o the SC/ST category but, victim-Premvati (PW-5) and Kripal Singh (PW-8) belongs to the Schedule Tribe Category. Victim Premvati (PW-5) purchased a land of 0.48 RA of Survey No. 479/2 situated at village Bhurka Tahsil Shahpura District Dindori from Kemon Das Panka through registered sale deed in the year 1999 and Kripal Singh (PW-8) purchased a land of 0.48 RA of Survey No. 479/3 situated at village Bhurka Tahsil Shahpura District Dindori through registered sale deed in the year 1999 from Rambai Panka.

3 . Naib Tahsildar-Mehandwani ensured the possession of those lands to victim on 03-11-2012 and victims cultivated the crop of wheat. On 26-03-2023, the appellants/accused started to reap the victim's crop and take away the victim's crop valued at Rs. 5,000/- dishonestly without their consent and threatened to kill the victim calling by their caste name 'Gondua'. Smt. Premvati Bai (PW-5) got registered a Crime No. 87/03 at police station AJAK, District Dindori. After completion of investigation, a final report under Section 173 (2) of Cr.P.C was submitted to the competent court.

4. The appellants/accused were tried under Section 379 of IPC and 3(1)(v) of SC/ST (POA) Act, 1989 before the Special Judge SC/ST Act, Dindori.

5. The appellants/accused abjured the guilt and claimed for trial.

6. Prosecution examined victim Premavati Bai (PW-5), Kripal Singh (PW-8), witness Aklu Singh (PW-1), Kanahiya Lal (PW-2), Hovelal (PW-

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3), Dharm Singh (PW-4), Dhan Singh (PW-6), Bhajanlal Bisen (PW-7), Dhirulal Parthe (PW-9), Deva Singh (PW-10), Assistant Sub-Inspector-S.S.Rajput (PW-11), Head constable- Arun Kumar Sarothe (PW-12), Police Inspector-R.K. Jyotisi (PW-13), Adun Singh (PW-14) and B.S. Rajput (PW-15).

7 . Appreciating the prosecution evidence and defence version, learned trial Court acquitted the appellants/accused from the charge under Section 379 of IPC but, convicted under Section 3(1)(v) of SC/ST (POA) Act,1989 and sentenced the appellants/accused as per paragraph-1 of the judgment.

8. Being aggrieved by the judgment and conviction, this appeal has been preferred on the ground that when the appellants/accused have been acquitted of the major offences then, conviction under Section 3(1)(v) of SC/ST Act is illegal. Sentence is also severe and uncalled for.

9. Learned Public Prosecutor has supported the conviction and sentence.

10. Perused the record.

11. Appreciating the testimony of Premvati Bai (PW-5) and Kripal Singh (PW-8), trial Court concluded in paragraph-18 that the appellants/accused interfered in the possession of victims land. For drawing this conclusion the learned trial Court has referred to paragraph-18 of the Premvati Bai (PW-5) and concluded in paragraph-38 that the appellants/accused have committed the offence under Section 3(1)(v) of SC/ST Act by interfering in the possession over the lands of Survey No. 479/2 and Survey No. 479/3 situated at Tahsil Shahpura District Dindori.

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12. For recording this finding, the learned trial Court has referred to the testimony of Premvati Bai (PW-5) that appellants/accused have reaped their crop. This Premvati Bai has stated in paragraph-9 of her statement that she was not present when the crop was reaped. The same statement has been reiterated by Kripal Singh (PW-8) in paragraph-7 of his statement. Hovelal (PW-3) also stated in his cross-examination in paragraph-11 that he was not present at the field, when the crop of field was reaped. Dhan Singh (PW-6) does not support the prosecution and Adun Singh (PW-14) was also found unreliable. For the reasons mentioned in paragraph-44 of the judgment, the evidence of Inspector-R.K. Jyotisi (PW-13), Dharm Singh (PW-4) and Dhan Singh (PW-6), was not found reliable to implicate the appellants/accused for reaping the crop of victims. Premvati Bai (PW-5) has admitted in paragraph Nos. 7 and 8 of the statement that there is a civil dispute pending between the appellants and the victims. Kripal Singh (PW-8) also admits this fact in paragraph-10 of his statement.

13. The fact that a civil dispute is pending between the appellants/accused and victims relating to possession over the lands of Survey No. 479/2 and 479/3, case of reaping the crop has been failed then on re-appreciation of evidence, the findings of learned trial Court regarding conviction of appellants/accused under Section 3(1)(v)of SC/ST Act, 1989 cannot be maintained.

14. This appeal is **allowed.** The conviction of appellants/accused under Section 3(1)(v) of SC/ST Act is set aside. The appellants/accused are acquitted of the charges. Their bail bonds stands discharged.

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(GAJENDRA SINGH)
JUDGE

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