

KASHIBEN CHHAGANBHAI KOLI

A

v.

STATE OF GUJARAT

(Criminal Appeal No. 1967 of 2008)

DECEMBER 4, 2008

B

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – s.3(1)(v) – Evidence established that accused interfered with possession and enjoyment of rights of the complainant over land and also damaged sugarcane crops thereon by using a tractor – Complainant belonged to ST community – Held: Accused liable to be convicted u/s.3(1)(v) of the Atrocities Act as also u/s.427 IPC – Penal Code, 1860 – s.427.

Words and Phrases – Mischief – Meaning of – Penal Code, 1860 – s.425.

Criminal Law – Conviction under Atrocities Act and under IPC – However, accused stated to be suffering from paralysis – Hence, direction issued that he need not surrender for 3 months – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – s.3(1)(v) – Penal Code, 1860 – s.427.

The prosecution case was that appellant interfered with the possession and enjoyment of PW1 over the land in question and also damaged the sugarcane crops thereon by using a tractor. PW1 belonged to the Scheduled Tribe Community.

In appeal to this Court, the appellant challenged her conviction under s.427 IPC and s.3(1)(v) of the Atrocities

A Act.

Dismissing the appeal, the Court

B HELD: 1.1. s.3(1)(v) of the Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act, 1989
makes punishable any wrongful dispossession of any
member of Scheduled Caste or Scheduled Tribe from his
land or premises or interference with the enjoyment of
his rights over his land, premises or water. PWs 1, 2 & 3
C have proved that the accused had not only interfered
with the possession and enjoyment of the claimant over
the land, but also damaged the crops thereon. Therefore,
the High Court was justified in holding the accused guilty
of offence punishable under s.3(1)(v) of the Atrocities Act.
[Para 8, 10 and 11] [1184-B, C, D, E]

D 1.2. So far as s.427 IPC is concerned, the expression
"mischief" has been defined in s.425 IPC to mean an act
done with intent to cause or knowing that it is likely to
cause wrongful loss or damage to the public or to any
E person, causes the destruction of any property etc. In the
instant case the evidence on record clearly establishes
that the sugarcane stems in the fields of the claimant were
totally destroyed by using a tractor. Therefore, s.427 IPC
is clearly established. [Para 11] [1184-E-F]

F 1.3. However, it was stated before this Court that
appellant had suffered from paralysis on the left side of
her body and in spite of treatment is unable to walk. In
view of the statement made, it is directed that for a period
of three months the appellant need not surrender. [Paras
G 12 and 13] [1184-G-H; 1185-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1967 of 2008.

H From the Judgment and Order dated 3.12.2007 of the High

Court of Gujarat at Ahmedabad in Criminal Appeal No. 920 of 1996. A

Aniruddha P. Mayee, Sanjeev Kumar Choudhary, Rucha A. Mayee and Sanjay Visen for the Appellant.

Yashank Adhyaru, Hemantika Wahi, Pinky and Somnath for the Respondent. B

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted. C

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Gujarat High Court confirming the conviction of the appellant for offence punishable under Section 427 of the Indian Penal Code, 1860 (in short the 'IPC') and under Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short the 'Atrocities Act'). Learned Additional Sessions Judge, Surat at Vyara in Special Case No.19 of 1995 found the accused guilty of offences punishable under Section 427 IPC as well as Sections 3(1)(iv) and 3(1)(v) of the Atrocities Act and sentenced her to rigorous imprisonment for one year and fine of Rs.500/- with default stipulation for the offence relatable to Section 427 IPC and four years for the offence under the Atrocities Act with fine of Rs.1,000/-. The two substantive sentences were not made concurrent. It needs to be noted that the appellant was charged with having committed offence under Sections 427 and 504 as well as Sections 3(i)(x) of the Atrocities Act. The trial judge held that the charge under Section 3(i)(x) has not been proved. But held that the appellant has committed offence punishable under Section 427 IPC as well as under Section 3(i)(iv) and 3(i)(v) of the Atrocities Act. D E F G

3. Background facts in a nutshell are as follows:

Appellant-original accused was owner of one agricultural H

- A land bearing Survey No.128 of village Paniyari, Taluka Vyara. She agreed to sell the land to the complainant for Rs.1,45,000/- . Complainant initially paid a sum of Rs.40,000/- by cheque. He thereafter paid another sum of Rs.60,000/-, entered into a writing for sale of the land and the appellant agreed to hand over possession of the land in question. As per the complainant, after paying further sum of Rs.60,000/- he was given possession of the land in question by the appellant. The complainant was cultivating the land and had planted sugarcane plantation therein. He had already taken one crop of sugarcane and had left the field open awaiting for re-growth of the sugarcane plants. On 24th January 1995, the appellant illegally and forcibly entered the land in question, tilled the land with the help of tractors and thereby committed substantial loss of crop to the complainant. It is also the case of the complainant that the appellant used derogatory words against him. It is not in dispute that the complainant belongs to Scheduled Tribe.

The complainant, Kanchhibhai (P.W.1) stated, inter alia, that the appellant had agreed to sell Survey No. 128 of village Paniyari to him for a total sale price of Rs. 1,45,000/- – for which agreement to sell was also entered into. He initially, paid a sum of Rs.40,000/- by cheque. Upon payment of Rs.60,000/- the appellant had handed over possession of the land to him. He had taken water from the Irrigation Department for which he produced proof on record. He had cultivated sugarcane crop on the land and sold the sugarcane to Ukai Region Cooperative Sugar Industry. He left the sugarcane plantation after harvesting for one more crop. He stated that apprehending dispossession, he filed a Civil Suit seeking injunction and the Court had granted ex-parte interim injunction. About 8 to 10 days after the court's injunction, the accused tilled the land. To resolve the dispute, he approached the accused but she did not give any reply. He, therefore, filed a case on 1st February, 1995. He stated that he is infirm and when he had gone to meet the accused, she had used bad and insulting language.

With reference to the evidence of the eye witnesses the trial court found the appellant guilty. In appeal the High Court was of the view that the real question that needed to be answered was whether appellant has committed offence punishable under Section 427 IPC and Sections 3(i)(iv) and 3(i)(v) of the Atrocities Act of which she was held guilty. The High Court after analyzing the evidence held that the ingredients of Section 3(i)(iv) of the Act was not established but as noted above the conviction was to be made in terms of Section 427 IPC and Section 3(i)(v) of the Atrocities Act.

4. In support of the appeal learned counsel for the appellant submitted that ingredients of Section 427 have not been established. In any event Section 3(i)(v) has to be related with the community and strong reliance is placed on a decision of this court in *Masumsha Hasanasha Musalman v. State of Maharashtra* [2000(3) SCC 557] more particularly para 9 thereof.

5. Learned counsel for the State on the other hand supported the impugned judgment.

6. Sections 3(i)(iv) and 3(i)(v) of the Atrocities Act read as follows:

"3. Punishments for offences of atrocities – (1)
Whoever, not being a member of Scheduled Caste or a Scheduled Tribe,

(iv) wrongfully occupies or cultivates any land owned by, or allotted to or notified by any competent authority to be allotted to a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water."

A 7. Section 427 IPC reads as follows:

"Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both."

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8. Section 3(i)(v) of the Atrocities Act makes punishable any wrongful dispossession of any members of Scheduled Castes or Scheduled Tribes from his land or premises or interference with the enjoyment of his rights over his land, premises or water.

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9. In that view of the matter learned Additional Sessions Judge committed no error in holding that the accused had committed offences punishable under Section 3(1)(v) of the Atrocities Act.

D

10. PWs. 1, 2 & 3 have proved that the accused had not only interfered with the possession and enjoyment of the claimant over the land, but also damaged the crops thereon.

E

11. Therefore, the High Court was justified in holding the accused guilty of offence punishable under Section 3(i)(v) of the Act. So far as Section 427 is concerned, the expression "mischief" has been defined in Section 425 IPC to mean an act done with intent to cause or knowing that it is likely to cause wrongful loss or damage to the public or to any person causes the destruction of any property etc. In the instant case the evidence on record clearly establishes that the sugarcane stems in the fields of the claimants were totally destroyed by using a tractor. Therefore, Section 427 IPC is clearly established. The sentence imposed suffers from no infirmity to warrant interference.

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12. However, it is submitted by learned counsel for the appellant that the appellant has suffered from paralysis on the left side of her body since July 2004 and in spite of treatment

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she is unable to walk.

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13. Learned counsel for the appellant submitted that an application for reduction of sentence shall be made in terms of Article 161 of the Constitution of India, of India 1950 (in short the 'Constitution') before the Governor of the State. We do not express any opinion in that regard. However, in view of the statement made, we direct that for a period of three months the appellant need not surrender.

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14. The appeal is dismissed subject to the aforesaid observation.

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B.B.B.

Appeal dismissed.