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KHUMAN SINGH

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 1283 of 2019)

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AUGUST 27, 2019

[R. BANUMATHI AND A. S. BOPANNA, JJ.]

- Penal Code, 1860 – s.302 – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – s.3(2)(v) – Murder –*
- C *Prosecution case that when victim was cultivating the field and grazing his cattle, appellant-accused came to the field of the victim and left his buffaloes for grazing – In a wordy altercation, the appellant hit the victim on his head with an axe due to which victim fell down and later succumbed to injuries – FIR was registered against the appellant u/s. 302 IPC and u/s. 3(2)(v) of the SC/ST(Prevention of Atrocities) Act – Trial Court convicted appellant under the said sections of the Act and sentenced him life imprisonment – High Court affirmed the conviction – On appeal, held: In the instant case, the appellant and deceased exchanged wordy abuses on which, appellant gave deceased blows on his head*
- E *causing six head injuries – Where the occurrence took place suddenly and there was no premeditation on the part of the accused, it falls under Exception 4 to s. 300 IPC – Therefore, conviction of appellant u/s.302 IPC is modified as conviction u/s. 304 Part-II IPC – Insofar as conviction under SC/ST (Prevention of Atrocities) Act is concerned, from the evidence and other materials on record, there is nothing to suggest that the offence was committed by the appellant only because the deceased belonged to a Scheduled Caste – Thus, conviction u/s. 3(2)(v) of the SC/ST (Prevention of Atrocities) Act is not sustainable.*
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Partly allowing the appeal, the Court

HELD: 1. The entire incident was in a sudden fight in which the appellant-accused caused head injuries on the deceased with an axe. There was no prior deliberation or determination to fight. The sudden quarrel arose between the parties due to trivial issue of grazing the buffaloes of the appellant for which, the deceased

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raised objection. In a sudden fight, the appellant had inflicted blows on the head of the deceased with an axe which caused six head injuries. Though the weapon used by the appellant was axe and the injuries were inflicted on the vital part of the body viz. head, knowledge is attributable to the appellant-accused that the injuries are likely to cause death. Considering the fact that the occurrence was in a sudden fight, in our view, the occurrence would fall under Exception 4 to Section 300 IPC. The conviction of the appellant-accused under Section 302 IPC is therefore to be modified as conviction under Section 304 Part II IPC. [Para 10] [275-D-F]

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2. The next question falling for consideration is whether the conviction under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be sustained? Deceased belongs to "Khangar" Caste and in a wordy altercation, appellant-accused is said to have called the deceased by his caste name "Khangar" and attacked him with an axe. Calling of the deceased by his Caste name is admittedly in the field when there was a sudden quarrel regarding grazing of the buffaloes. [Para 11] [275-G-H]

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3. The object of Section 3(2)(v) of the Act is to provide for enhanced punishment with regard to the offences under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable. [Paras 12, 13] [276-F; 277-B-C]

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Dinesh alias Buddha v. State of Rajasthan (2006) 3 SCC 771 : [2006] 2 SCR 793 – relied on.

Case Law Reference

[2006] 2 SCR 793

relied on

Para 13

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- A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1283 of 2019.

From the Judgment and Order dated 02.02.2018 of the High Court M.P. bench at Gwalior in CRA No. 799 of 2006

- B Dr. J. P. Dhanda, Mrs. Raj Rani Dhanda, Vineet Dhanda, N.A. Usmani, Advs. for the Appellant.

Ms. Pragati Neekhra, AAG, Ms. Kaveri Vats, Rahul Kaushik, Advs. for the Respondent.

- C The Judgment of the Court was delivered by
R. BANUMATHI, J.

Leave granted.

- D 2. This appeal arises out of the judgment dated 02.02.2018 in Criminal Appeal No. 799 of 2006 passed by the High Court of Madhya Pradesh at Gwalior Bench in and by which the High Court affirmed the conviction of the appellant-accused under Section 302 IPC and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the sentence of life imprisonment imposed upon him.

- E 3. Brief facts which led to filing of this appeal are as under:-

F On 14.08.2005 at about 11:00 AM, complainant-Rajaram (PW-1) along with his brother Raghuveer (PW-2), deceased Veer Singh and relative Badam Singh (PW-7) had gone to cultivate the fields and for grazing their cattle. When deceased Veer Singh was cultivating the field and others were grazing the cattle, appellant-accused Khuman Singh came to the field of deceased Veer Singh and left his buffaloes for grazing.

- G Deceased Veer Singh objected to it and drove the buffaloes of the appellant-accused out of his field on which, appellant became furious and started abusing and scolding the deceased that how the deceased

- H who belongs to *Khangar* Caste could drive away the buffaloes of *Thakurs* out of his field. When deceased objected to it, it is alleged that the appellant with an intention to kill the deceased, attacked him with an axe due to which, deceased Veer Singh fell down. Thereafter, appellant-accused allegedly gave two-three blows on the head of the deceased with axe. On seeing the complainant (PW-1), his brother (PW-2) and Badam Singh (PW-7) coming, appellant-accused ran away from the

spot. Deceased died on the spot itself. Rajaram (PW-1) lodged the *Dehati Nalishi/complaint* (Ex.-P1) based on which, FIR in Crime Case No.306/2005 was registered against the appellant-accused under Section 302 IPC and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Dr. Pradeep Sharma (PW-5) had conducted the post-mortem on the dead body of deceased Veer Singh and found six injuries on his head. PW-5 issued post-mortem certificate (Ex.P10) opining that the cause of death was shock due to excessive external and internal bleeding. Upon completion of investigation, charge sheet was filed against the appellant-accused under Section 302 IPC and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

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4. To prove the guilt of the accused, the prosecution examined three eye witnesses viz. Rajaram (PW-1), Raghuvir (PW-2) and Badam Singh (PW-7) who have spoken about the occurrence and R.C. Bhoj, Police Incharge (PW-4), who has recorded *Dehati Nalishi* (Ex.-P1), Dr. Pradeep Sharma (PW-5) who has conducted post-mortem on the dead body of deceased and other witnesses. Upon consideration of evidence, the trial court held that the prosecution has proved the guilt of the accused beyond reasonable doubt and vide judgment dated 11.09.2006 convicted the appellant-accused under Section 302 IPC and sentenced him to undergo life imprisonment. Since the deceased was a Scheduled Caste, the appellant-accused was also convicted under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and sentenced to undergo life imprisonment along with a fine of Rs.1,000/- . Being aggrieved, the appellant has preferred appeal before the High Court.

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5. The High Court affirmed the conviction of the appellant-accused by holding that mere delay in recording the statement of the witnesses under Section 161 Cr.P.C. is not fatal to the case of prosecution. After referring to the evidence of Mohinder Kanwar (PW-9)-Investigating Officer, the High Court held that there was a communal tension in the locality and therefore, PW-9 could not immediately record the statement of the witnesses and therefore, delay in recording the statement of witnesses would not affect the case of prosecution. The High Court also held that the delay in sending the FIR (Ex.-P9) to the Magistrate cannot be said to be fatal to the case of prosecution. Insofar as the conviction under Section 3(2)(v) of the Scheduled Castes and Scheduled

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- A Tribes (Prevention of Atrocities) Act, the High Court held that the deceased Veer Singh belonged to *Khangar* Caste which is a Scheduled Caste and when deceased objected to the act of the appellant-accused of leaving his cattle in the field of deceased, appellant got furious and scolded that as the deceased belongs to *Khangar* Caste, how he could dare to drive the cattle of a person belonging to *Thakur* Caste and hence, the prosecution has proved the commission of the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the sentence of imprisonment imposed upon the appellant does not call for any interference.
- B 6. We have heard Dr. J.P. Dhanda, learned counsel appearing on behalf of the appellant and Ms. Pragati Neekhra, learned counsel appearing for the State of Madhya Pradesh and perused the impugned judgment, evidence and other materials on record. The point falling for consideration is whether the conviction of the appellant-accused under Section 302 IPC and under Section 3(2)(v) of the Scheduled Castes and
- C Scheduled Tribes (Prevention of Atrocities) Act is sustainable?
- D 7. Rajaram (PW-1) and Raghuvir Singh (PW-2) are the real brothers of deceased Veer Singh. Badam Singh (PW-7) is the real brother of the wife of deceased and is not resident of the village where occurrence took place. PWs 1, 2 and 7 who are eye-witnesses have consistently stated that on the date of occurrence-14.08.2005, when deceased Veer Singh was cultivating the field and they were grazing their buffaloes at nearby place, at that time, appellant-accused Khuman Singh came there along with his buffaloes and started grazing his buffaloes at the farmyard of the field of deceased Veer Singh. When deceased drove the buffaloes out of his field, the appellant is alleged to have abused the deceased calling him by his caste "*Khangar*" as to how he can force away the buffaloes of "*Thakurs*". In a wordy altercation, the appellant-Khuman Singh hit the deceased on his head with an axe due to which, deceased fell down and later succumbed to injuries. On considering the evidence of PWs 1, 2 and 7 who have consistently spoken about the occurrence,
- E G the prosecution has proved that the appellant caused the injuries on the head of the deceased with an axe.
- F 8. The question falling for consideration is whether the appellant-accused intentionally caused the death of deceased Veer Singh? The entire incident occurred when the appellant had taken his buffaloes for
- H grazing in the field of deceased for which the deceased objected and

drove all the buffaloes out of his field. It is in these circumstances, the appellant became furious and abused the deceased and caused injuries on his head in a sudden fight with axe. There was no premeditation for the occurrence and because of the grazing of the cattle, in a sudden fight, the occurrence had taken place.

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9. The question to be considered is whether the act of the appellant-accused would fall under Exception 4 to Section 300 IPC? Exception 4 to Section 300 IPC can be invoked if death is caused:- (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. In the present case, the appellant-accused and the deceased exchanged wordy abuses on which, appellant gave the deceased blows on his head causing six head injuries. Where the occurrence took place suddenly and there was no premeditation on the part of the accused, it falls under Exception 4 to Section 300 IPC.

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10. As discussed earlier, the entire incident was in a sudden fight in which the appellant-accused caused head injuries on the deceased with an axe. There was no prior deliberation or determination to fight. The sudden quarrel arose between the parties due to trivial issue of grazing the buffaloes of the appellant for which, the deceased raised objection. In a sudden fight, the appellant had inflicted blows on the head of the deceased with an axe which caused six head injuries. Though the weapon used by the appellant was axe and the injuries were inflicted on the vital part of the body viz. head, knowledge is attributable to the appellant-accused that the injuries are likely to cause death. Considering the fact that the occurrence was in a sudden fight, in our view, the occurrence would fall under Exception 4 to Section 300 IPC. The conviction of the appellant-accused under Section 302 IPC is therefore to be modified as conviction under Section 304 Part II IPC.

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11. The next question falling for consideration is whether the conviction under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be sustained? Deceased belongs to "Khangar" Caste and in a wordy altercation, appellant-accused is said to have called the deceased by his caste name "Khangar" and attacked him with an axe. Calling of the deceased by his Caste name is admittedly in the field when there was a sudden quarrel regarding grazing of the buffaloes.

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- A 12. From the evidence and other materials on record, there is nothing to suggest that the offence was committed by the appellant only because the deceased belonged to a Scheduled Caste. Both the trial court and the High Court recorded the finding that the appellant-accused scolded the deceased Veer Singh that he belongs to "Khangar" Caste and how he could drive away the cattle of the person belonging to "Thakur" Caste and therefore, the appellant-accused has committed the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Section 3 of the said Act deals with the punishments for offences of atrocities committed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 3(2)(v) of the Act reads as under:-

"Section 3 – Punishments for offences of atrocities –

- (1)
- (2) Whoever, not being a member of a Scheduled Caste or a Schedule Tribe, -
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- (v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing 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".

The object of Section 3(2)(v) of the Act is to provide for enhanced punishment with regard to the offences under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe.

13. In *Dinesh alias Buddha v. State of Rajasthan (2006) 3 SCC 771*, the Supreme Court held as under:-

- G "15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled

Caste. In the absence of evidence to that effect, Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine. A

As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable. B

14. Insofar as the conviction under Section 302 IPC is concerned, as discussed earlier, the conviction of the appellant under Section 302 IPC is modified as conviction under Section 304 Part II IPC. The appellant-accused has been serving the sentence in jail for more than twelve years. As per the jail certificate issued by the Superintendent, Central Jail, Gwalior, the appellant has served the actual sentence in jail for more than twelve years (as on 04.07.2018) and as on date, he has served the sentence of more than thirteen years. Considering the facts and circumstances of the case, for the conviction under Section 304 Part II IPC, the appellant is sentenced to undergo imprisonment to the period already undergone. C

15. In the result, the conviction of the appellant under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is set aside and he is acquitted of the said charge. The conviction of the appellant under Section 302 IPC is modified as conviction under Section 304 Part II IPC and is sentenced to undergo imprisonment to the period already undergone. Accordingly, the appeal is partly allowed and the appellant is ordered to be released forthwith, if his presence is not required in any other case. D