

Criminal Revision No. 961/2011

20.07.2011

Shri Narendra Nikhare, counsel for the applicants.

Shri Prakash Gupta, Panel Lawyer for the respondent/State.

With the consent of learned counsel for the parties, matter is finally heard.

The applicants have challenged the order dated 18.5.2011 passed by Special Judge (SC/ST Prevention of Atrocities Act), Jabalpur by which the charges for the offence punishable under Section 306/34 of IPC and offences punishable under Sections 3(1)(v) & 3(2)(v) of SC/ST (Prevention of Atrocities) Act (hereinafter referred to as "the Act") were framed against the applicants.

Prosecution's case in short is that the deceased Shankar was the member of Scheduled Tribe, whereas the applicants No.1 & 2 belongs to Scheduled Tribes and the applicant No.3 neither belongs to Scheduled Caste nor Scheduled Tribe. As per allegation, the deceased Shankar had required to irrigate his field from the well of his brother Dharmu, but the applicant No.3 Dhusar Sahu did not permit for such irrigation, therefore, a Panchayat was called. The applicant No.1 informed the victim Shankar that everything was destroyed due to his elder brother. However, the dispute was started between the deceased and the applicants No.1 & 2. Ultimately the deceased raised an axe against the applicants but nothing could be done in the Panchayat. Thereafter, the deceased Shankar committed suicide by jumping in the well of his brother Dharmu.

Learned counsel for the applicants submits that there is no relation of the applicants with the deceased so that

presumption under Section 113-A of evidence Act may apply. The overt act as alleged against the applicants does not fall within the purview of Section 107 of IPC and, therefore, no offence under Section 306 of IPC is made out against the applicants. Consequently, no offence under Section 3(2)(v) of the Act may be constituted against the applicants and, therefore, charges framed for such offences were without any proper basis.

Learned Panel Lawyer for the State opposes the revision. He submits that there is sufficient evidence against the applicants to frame such charges.

It is true that presumption under Section 113-A of Evidence Act is not applicable in the present case. The overt act as alleged against the applicants is that, due to them, the deceased could not take the facility of irrigation from the well of his brother Dharmu. But, the overt act as alleged against the applicants does not fall within the purview of Section 107 of IPC. By the overt act of the applicants, it was not for the deceased to commit suicide. The applicants were never intended that the deceased may commit suicide. It appears that the deceased has committed suicide due to some depression etc or due to hypersensitiveness. Under such circumstances, no offence under Section 306 of IPC is made out against the applicants either directly or with the help of Section 34 of IPC. In framing of charges, it is necessary to look by the trial Court that if the evidence adduced by the police is considered as it is, then the conviction should be directed for that offence and if it is possible then charge of that offence shall be framed.

In the present case, if evidence is considered as it is, then none applicants shall be convicted for the offence punishable under Section 306 or Section 306/34 of IPC and consequently for the offence under Section 3(2)(v) of the Act, therefore, the charges of such offences are framed by the trial Court, without any basis and, therefore, the impugned order appears to be without any basis and hence, suffers with the perversity. Consequently, it is necessary for this Court to interfere in the impugned order by way of revision.

Consequently, the revision filed by the applicants is hereby partly allowed. The impugned order passed by the learned Special Judge relating to the charges of offence punishable under Sections 306 or 306/34 and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act is hereby set aside. The applicants are discharged from the offences punishable under Sections 306 or 306/34 of IPC and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act.

Under such circumstances, the applicants namely Kallu @ Bal Kishan and Chokhelal shall be discharged *in toto*, whereas the trial for remaining charges against the applicant Dhusar Sahu @ Munna @ Ksheer Sagar shall continue.

Copy of this order be sent to learned trial Judge for information and compliance.

C.C. as per rules.

(N.K. GUPTA)
JUDGE