

KUNTI KUMARI v. THE STATE OF JHARKHAND , 2022 SCeJ 0383

Supreme Court of India

S. ABDUL NAZEER, J. VIKRAM NATH, J.

KUNTI KUMARI v. THE STATE OF JHARKHAND

CRIMINAL APPEAL NO(s).590 OF 2022

8th April 2022

Petitioner Counsel: Manish Kumar Saran , Respondent Counsel: Tapesesh Kumar Singh

Probation of Offenders Act 1958 S. 3 , 11 - Confers power upon the court to release certain offenders after admonition when a person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and there is no previous conviction proved against such offender - Conviction is under Section 504 IPC where the maximum sentence provided is two years - There is no previous conviction - Under Section 11 an order under this Act may be made by any court on appeal or in revision - Released instead of carrying out the sentence after due admonition - IPC S. 504. [Para 5]

Petitioner Counsel: Manish Kumar Saran , Respondent Counsel: Tapesesh Kumar Singh

JUDGEMENT

VIKRAM NATH, J. - Leave granted.

2. The complainant Amita Tudu (PW-7), as per the written report at the relevant time, was the President of Village Education Committee, Middle School, Kora Para. Budget meeting for the training for 2008-2009 was scheduled for 18.12.2007 and after the meeting, meal packets were to be distributed to those who were participating in the budget meeting. Around 01:30 PM on the said date, the complainant was about to hand over the meal packet to the appellant. Then, all of a sudden, the appellant snatched the meal packet from complainant hands, abused her with respect to her community and also uttered that she belonged to a low caste which relishes meat of pig and cow and even a dog will not eat from her hands and that how dare she give her the packet and also called her by her tribal name 'Santhal' and left the school premises. The complainant further stated that in this manner she had been abused and insulted in the presence of many teachers and trainees which caused her mental harassment. The said complaint was registered as FIR No.05 of 2007, Police Station Jamtara, District Jamtara, under Section 504 IPC and Section 3(i)(x) of

the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 In short “the SC/ST Act”. After investigation, a charge sheet was submitted, cognizance taken by the special Court and the trial was conducted.

3. The appellant was convicted under Section 504 IPC and Section 3(i)(x) of the SC/ST Act by the trial court vide judgment dated 28.08.2010 and was sentenced to four months simple imprisonment under Section 504 IPC and six months simple imprisonment under Section 3(i)(x) of the SC/ST Act. The criminal appeal filed by the appellant was partly allowed by the High Court vide judgment dated 09.12.2016. The High Court set aside the conviction and sentence under Section 3(i)(x) of the SC/ST Act. It, however, upheld the conviction under Section 504 IPC and reduced the sentence to 15 days simple imprisonment.

4. The finding of conviction under Section 504 IPC has been concurrently recorded by the Trial Court as also by the High Court in appeal based upon appreciation of the evidence led by the prosecution. In that view of the matter, we are not inclined to enter into appreciation of evidence at this stage and accordingly confirm the conviction. However, insofar as the sentence is concerned, learned counsel for the appellant submitted that the appellant may be extended the benefit of the provisions contained in the Probation of Offenders Act, 1958 In short “1958 Act”. Accordingly, the appeal is being considered on the above issue of sentence.

5. Section 3 of the 1958 Act confers power upon the court to release certain offenders after admonition when a person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and there is no previous conviction proved against such offender. In the present case, the conviction is under Section 504 IPC where the maximum sentence provided is two years. There is no previous conviction of the appellant. Further, Section 11 of 1958 Act provides that an order under this Act may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision. Thus, this Court under the 1958 Act itself can pass an order at this stage. (emphasis ours)

6. Considering the facts and circumstances of the case, we deem it appropriate that the appellant may be released instead of carrying out the sentence after due admonition. Accordingly, agreeing with the conviction under Section 504 IPC, the appellant is directed to be released after admonition under Section 3 of the 1958 Act. To that extent the sentence is modified and the appeal is allowed.

7. It may be mentioned here that under the orders of this Court dated 06.07.2021, the appellant has deposited Rs.10,000/- with the Registry as per the Office Report dated 24.03.2022. It is further to be noted that earlier this Court vide order dated 10.02.2020 had directed the appellant to pay a sum of Rs.10,000/- to the complainant but no proof of payment of the said amount was filed by the appellant as such the subsequent order was

passed on 05.07.2021 to deposit the said amount with the registry of this Court. The said amount was for the benefit of the complainant. We accordingly direct the registry to transfer the said amount to the complainant after getting necessary details of the complainant.