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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 497/2016

KASHMIRI DEVI

..... Petitioner

Through: Mr. M.L. Yadav & Mr. Vivek Kumar,
Advocates.

versus

STATE (GOVT OF NCT OF DELHI) & ORS Respondents

Through: Ms. Radhika Kolluru, APP along with
SI Lalit Kumar, PS-Krishna Nagar,
for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

19.09.2016

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Crl. M.A. No. 14561/2016

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.L.P. 497/2016

The petitioner has preferred the present leave to appeal to assail the judgment dated 26.02.2011 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi in Sessions Case No.17/2009 arising out of FIR No.107/2000 registered at Police Station – Krishna Nagar under Section 3(1)(X) of the SC/ST Act against the respondents/ accused. By the impugned judgment, the Trial Court has acquitted the respondents/ accused.

The submission of learned counsel for the petitioner is that even though some of the prosecution witnesses had turned hostile, others did

support the case of the prosecution. PW-6 was the complainant and the star witness in the case. The further submission of learned counsel for the petitioner is that PW-2 was an independent witness and his partial testimony was not considered.

Here itself, I may observe that PW-2 had offered himself for examination. He was partially examined by the prosecution whereafter he did not appear. Consequently, his partial testimony was correctly not taken into account by the Trial Court since he was not fully examined and was not offered for cross-examination at all.

Having heard learned counsel for the petitioner, I find absolutely no merit in this petition. The Trial Court has marshalled the evidence and analysed the same in depth. It is evident that there are serious contradictions in the statements made by the prosecution witnesses, including the complainant PW-6. The relevant extract from the impugned judgment, from which it is evident that the Trial Court has applied its mind and given good reasons for acquittal of the respondents, reads as follows:

“A. PW6 Smt. Kashmere Devi being complainant is the star witness of this case and other two material witnesses are PW8 Mr. Kardam as well as PW3 whereas PW1 having turned hostile has not supported the case of the prosecution and PW4 despite being present in house of complainant on 23.2.2000 had not witnesses any such incident. PW6 i.e complainant has deposed about the incident dated 23.2.2000 that it was at about 7.30/8 pm, she was sitting in her house and other persons namely Kishori Ram, Daya Ram, Master ji , Shri V.S. Kardam and one other master Virender were sitting in her house. Virender had come alongwith Mr. V.S.Kardam, while other persons were sitting for calculating of their balance of their wages as they had worked for the construction at her house for last many dates. There was electricity in her house at that time

as well as outside her house on the street electricity pole. At that moment, Accused Ved Prakash and his wife Asha and his brother Vinod and another brother whose name was Rameshwar came in street in front of main gate of her house and started abusing and uttering words 'Chamari Chamar bahar nikal'. On hearing these words she opened her main gate which was closed. She stood on the steps outside her door. She requested the accused person that they should not abuse her as some persons and relatives are sitting with her. On this accused Ved Prakash uttered the words to her by saying 'Chamari Chamari bahar nekel, tujhe chiro ga tujhe nangi karonga, tujhe es makan me rehne nehi dunga, chamari es ache makan me pandit ke barabar nehe reh sakti. At that moment accused Asha wife of Ved Prakash insulted her by uttering the words' Tu chamari ho kar es ache makan me rehe gai or main panditan ho kar neche wale makan me rahungi, and she pushed her. Accused Vinod had exhorted Ved Prakash by saying that he should take out her from her house and further exhorted co - accused Ved Prakash by saying 'Chamari chamari bahar nekel, tujhe chiro ga tujhe nangi karonga, tujhe es makan me rehne nehi dunga, chamari es ache makan me pandit ke barabar nehe reh sakti or us chamar Vinod Kardam ko beh bahar nekal, aaj us ka bhe muh petainge jase pehle kiya tha. Accused Asha also insulted her by saying that 'Use BS Kardam chamar ko bahar nekel aaj use ka bhei ase muha begare gain jaise p hele begare tha'. Again Vinod exhorted co accused his brother Ved Prakash Sharma by saying that 'Ved Prakash khench le aaj es chamari ko or V S Kardam aaj ese nanga kar do, or BS Kardam do be pitange'. While Rameshwar brother of accused persons exhorted by saying that 'Aaj en donu ko ghar se bahar neikal dange aur es charmari ko nanga karange, or BS Kardam ko pithan gai'. Accused Vinod threatened her that 'Yeh chamari hamara kuch nehe bigare sakti, ham ne police or thana kharida huiya hai.' Asha Devi pushed her as a result of which she fell down on ground but she stood up. She also deposed that the incident was witnessed by V Skardam , Jaya Ram , Kishori Ram as they had also come to the gate alongwith Masterji Virender. Raj rani also witnessed the incident and she

came for her rescue. According to PW6 all accused came in street in front of her main gate and all of them abused, after which she opened gate and requested them not to do so, yet all of them continued and thereby she had attributed overt act to all accused persons whereas PW8 describes about the incident but in different sequence and also deposed that accused Asha was acting on instigation of other accused. He has also alleged about breaking up of window glasses and wire of landline phone as well as damaging of his scooter by accused persons which does not find corroborated from statement of PW6 though PW6 and PW8 had stated about the breaking of window glasses by accused persons on previous occasions. However, according to PW3 accused Ved Prakash had knocked the door of the complainant, she opened the door and then Ved Prakash dragged her outside, she fell down and then PW8 took her back inside the house. PW3 had not seen any other person joining Ved Prakash but in cross examination by Ld Addl PP he admitted other facts with respect to allegations imputed against all the accused persons however, in cross examination by Ld. defence counsel he was again not able to recollect those allegations and according to him all the accused persons had not come together for humiliation of the complainant but had come one after another. PW3 also deposed about occurrence of incident in the year 2002 and confirmed by saying that he worked as mason at the house of complainant about 2 years ago during his examination in the year 2004.

B. The incident is dated 23.2.2000 and the complainant stated that she reported to the police after the incident but no action was taken. Complainant also made the complaints against the accused persons to the police dated 25.2.2000, 4.4.2000, 17.4.2000, 4.5.2000 and lastly, it was on the complaint dated 10.5.2000 that the FIR of the instant matter was registered. All these complaints Dated 25.2.2000, 4.4.2000, and 4.5.2000 comprised general allegations against accused persons with respect to the making of the castiest remarks against the complainant but there was no reference of the incident dated 23.2.2000. It is unlikely that such a big and major incident would escape reference in the subsequent four complaints

made. For the first time reference of the incident dated 23.2.2000 was found mentioned in the complaint dated 10.5.2000 based upon which FIR of the instant case was registered.

Further according to Complainant on the night of incident she had approached the police and had also given written statement against receipt but no action was taken. The said complaint was EXPW6/A, but case was registered on her complaint after many months. However, as per record EXPW6/A is the complaint dated 10.5.2000 and not of dated 23.2.2000. It was also deposed by complainant that she had gone to PS in person whereas PW8 also says that he did not accompany to PS on the night of 23.2.2000 and he had also not lodged any written complaint to the police. However he had gone to PS on next day but had not lodged any complaint because dispute was with the complainant and not with him. PW6 on the other hand says that PW8 had lodged the complaint on her behalf vide complaint 'mark A'. The said complaint 'mark A' is dated 23.2.2000 and is also received as per stamp of PS dated 23.2.2000 though there are no signatures of the person who had received the said complaint. Even otherwise, in terms of the complaint 'mark A' which is under signatures of PW8, Sh V S Kardam had called at 100 number but the police came only at 2.45 and Ved Prakash ran away after having seen the police. The incident dated 23.2.2000 is of 7.30/8 pm and the complaint has also been received on 23.2.2000 whereas PW8 had never visited PS on 23.2.2000 in terms of his own statement, besides the fact that the contents of complaint point towards incident which had occurred atleast prior to 2.45 on 23.2.2000 which is contrary to the case of the prosecution.

C. It was stated by PW3 that construction activities were going on in the house of the complainant in the year 2002 and on the day of incident after the day's work they were sitting for calculation of their wages in the house of the complainant whereas according to PW6 Mistri had come to collect tools since some construction work was yet pending at her house, is contrary to the statement of PW3 and other wise also PW3 has not narrated the incident pertaining to year 2002 and also

with respect to the lack of corroboration to the statements of PW6 and PW8 , his presence at the spot as on 23.2.2000 remains doubtful.

D. Accused Rakesh Sharma was also named as one of the accused persons who hurled abuses upon the complainant as well as other witness namely Shri V. S. Kardam. Complainant and accused persons were immediate neighbours and initially had cordial relationship and visiting terms. Accused Rakesh Sharma was hospitalized as on the date of alleged incident i.e 23.2.2000 which was also admitted by complainant . Vide orders of Hon'ble High Court dated 27.11.2001 accused Rakesh Sharma was discharged from the case. It was sought to be clarified by the complainant that actually, the name of the accused was Rameshwar, but inadvertently, it was mentioned as Rakesh.

It is not the case that the complainant and all the accused persons were not known to each other whereby this error could have been accepted as the case of mistaken identity but it is the matter of record that the other accused Rameshwar who was subsequently named in place of Rakesh was also the brother of accused Ved Prakash and known to the complainant besides the fact that PW3 even during his examination before the court in the year 2004 still named him as Rakesh . It seems that after realizing the mistake that Rakesh Sharma was hospitalized on that day, to cover up, another name was sought to be substituted in his place. An application under section 319 CrPC was also moved for summoning of the accused Rameshwar Dayal which was dismissed by order of my Ld Predecessor. The revision petition against the said order as filed by the complainant before Hon'ble High Court was also subsequently withdrawn by the complainant.

E. The pre requisite for offence to be proved under section 3 (1) (x) of SC/ST Act that the humiliation must have been caused in any place within public view. According to PW6 many persons had gathered at the time of incident including PW1 Rajrani but she denied having seen any such incident. PW4 Virender also did not witness any such incident whereas the

witnesses who have deposed about the incident are complainant herself, her close relative PW8 and PW3 who is also stated to be relative of the complainant and had known her since childhood and also had visiting terms with her. No other public witness was examined in this matter before whom the complainant was humiliated or atleast to prove that she was humiliated within public view.

Ld counsel for defence placed reliance upon II(2010) CCR 285 Bombay High Court Mahesh Sakharam Patole Vs. State of Maharastra, 2009 CRI L J 350 SC Gorige Pentaiah Vs. State of A. P and ors, 2002 (2) JCC 1180 High Court of Delhi titled as Shri D P Vats Vs. State and others and 2001 (2) JCC (Delhi) 235 Mukesh Kumar Saini and ors Vs. State (Delhi Administration) High court of Delhi where interalia it was held that that mere presence of family members, or resident servant is not sufficient to constitute offence under Section 3 (1) (x) Act. Family members, or resident servant cannot be treated as members of public To constitute offence under section 3 (1) (x) of Act, incident should occur in presence of public or at least utterances should be audible to members of public.

F. It was argued that cast certificate of the complaint is neither placed on record nor the same is verified and even accused persons were not aware that the complainant belonged to Schedule caste nor there is any proof on record to show that she actually belonged to Schedule caste.

It was pointed out that copy of the caste certificate as placed on record is 'mark A' for which verification was never done nor the same was proved before the court. PW14 deposed that he had written letter to SDM for verification of caste certificate but the same was not verified whereas PW 9 came to know that caste certificate of complainant was issued by Seelampur Distt., yet he also did not verify the same. The incident is dated 23.2.2000 whereas charge sheet in the instant matter was filed on 8th June' 2000 and Complainant had applied for Schedule Caste certificate on 06.06.2000 which was issued on 07.07.2000 much after date of proceedings of the instant case, though complainant sought to clarify that she did

not have original caste certificate which had been previously issued and had only copy which was placed on record as mark A, therefore, she applied for issuance of certificate again. It was argued by Ld. Addl PP that the complainant should not suffer because of the fault of the investigating agency , if the caste certificate was not verified, but at the same time perusal of the record reveals that there is also no rebuttal to the fact of complainant belonging to SC community. Therefore, these facts atleast would not help the case of the defence .

G. It was also argued that the accused persons have also been lodged with the allegations forcing the complainant to leave her house and Ld. Addl PP also argued that the accused persons had created atmosphere for the complainant to leave her house which was sought to be rebutted by Ld. Defence counsel by submitting that , first of all, complainant was not owner of the house, secondly, she had already been residing in the same locality and accused family had shifted in that locality later on, there is no statement of any of the witnesses to force the complainant to leave her house who is still residing in the same locality rather the family of the accused has sold the said house and have shifted in the other locality.

H. The relationship between accused family and complainant were cordial as admitted by the complainant herself. She had been residing in her house for 1415 years as on the date of her examination whereas accused Ved Prakash and her family had come to reside in neighborhood after five years. Initially they had good relationship and also had visiting terms with each other but the relationship became strained due to installation of generator by the accused towards her house about 78 years ago, from the date of her examination, which was followed by complaint against accused Ved Prakash even in the year 1999. The counsel for defence also sought to submit about the status of relationship between the complainant and Mr V S Kardam i.e PW8. It is from deposition of PW6 that her husband died in the year 1975. She had two sons and one daughter. Her younger son was 20/23 years in the year 2005 which goes to show that her son namely Virender was born in the year 86/ 87 whereas her husband had already expired in the year 1975.

PW8 was close relative of PW6, and in terms of his deposition he had not married with the complainant though copy of the proceedings pending in other court were placed on record in which complainant has mentioned herself as wife of PW8. PW6 said that she was owner of the house where she was residing whereas PW8 stated that he was owner of the house but the amount for construction of the house was spent jointly by PW6 and PW8 but subsequently he said that Virender was his son and the house was in the name of Virender and subsequently again said Virender was son of the complainant and being close relative of the complainant, he also used to treat him as his son. It was submitted that because of the illicit relationship between PW6 and PW8, the complaint was filed before the police by the locality people on which accused Ved Prakash had also signed . It may be noted here that the personal life of the complainant is not required to be discussed here nor is desirable since she has every right to live her personal life, the way she wants and making of complaint by accused Ved Prakash alongwith other locality people in this respect was also not appreciable and rather condemnable but at the same time the possibility of the complainant implicating accused persons , in these circumstances, for the above said reason, cannot be ruled out, in view of particularly the fact that this complaint by the locality people was dated 05.03.2000 whereas even in the subsequent complaint that was made only one day after day of incident i.e 25.02.2000 there was no reference of any incident dated 23.2.2000, pointing out towards the complaint dated 10.5.2000 being after thought.”

In view of the aforesaid, I find absolutely no merit in this petition.

Dismissed.

VIPIN SANGHI, J

SEPTEMBER 19, 2016

B.S. Rohella