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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 29.01.2018

Judgment delivered on: 01.02.2018

+ CRL.A. 99/2011

RESHAM

..... Appellant

Through Ms.Inderjeet Sidhu, Adv. DHCLSC.

versus

DEVENDER K.YADAV & ORS. Respondents

Through Ms.Neelam Sharma, APP for the State
along with SI Manmohan.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

IUNDERMEET KAUR, J.

1 This appeal has been preferred by the complainant against the judgment dated 23.11.2010 vide which the accused persons (respondent nos.1 and 2) stood acquitted of the charges leveled against them.

2 Record shows that a complaint was made by the appellant (R) pursuant to which an FIR had been registered on 14.4.2008. The allegations in the complaint were that in the year 2005 and continuously thereafter the accused persons being members of the Yadav community intentionally insulted the complainant and her husband Ashok Kumar. The complainant and her husband being the members of the scheduled caste were subjected to

utterances like “*tum chure chamar, tum mere makaan se door apne mohlle mein anyatra kahin bhi raho, hamare poorvaj toh tumhari parchai se bhi door rehte the. tumhare chure chamaron ke darshan subah sawere hone se pura din kharab rehta hai.*” These utterances were made by the accused person with the intention to humiliate the appellant and her husband. They were made within public view.

3 Pursuant to this complaint charges had been framed against the respondents under Section 3(1)(x) as also Section 3(1)(xv) punishable under Section 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC/ST Act) read with Section 34 of the IPC.

4 The prosecution had examined 10 witnesses. The star witnesses were the complainant and her husband. As per the prosecution these utterances had been made in the public view i.e. in the presence of PW-3 (Subey Singh) and PW-4 (Rajinder). The vehement submission of the learned counsel for the complainant/appellant is that the Trial Court has failed to appreciate the evidence in the correct perspective. Testimony of PW-1 and PW-2 which was fully corroborative of the complaint has been ignored. The Trial Court has wrongly relied upon the compromise (Ex.PW-2/DX1) entered into prior

in time to the aforementioned complaint and has ordered acquittal; the lapses in the investigation have also not been answered by the Trial Court; these were mere irregularities; even otherwise these lapses were deliberate and intentional as respondent no.2 is a Head Constable in the serving police and he had ample opportunity to influence the investigating authority. That apart these being mere irregularities the same should have been ignored.

5 Learned counsel for the appellant has placed reliance upon a judgment of the Apex Court reported as (2012) 8 SCC 263 Dayal Singh and Ors Vs. State of Uttranchal to support a submission that a defective investigation is no ground to order an acquittal. The evidence of the witnesses has to be examined dehors the contaminated conduct of the official who in the instant case, at the cost of repetition, had influenced the investigation as respondent no.2 was a serving police officer. Reliance has been placed upon a judgment of the Apex Court reported as (1976) 4 SCC 369 Sarwan Singh and Ors. Vs. State of Punjab to support the same submission. Learned counsel for the appellant has also placed reliance upon a judgment reported as AIR 1983 SC 753 Bharwada Bhoginbhai Hirjibhai Vs. State of Gujrat; submission being that minor lapses in the testimony of a witness have to be necessarily ignored as no witness has a photographic memory and keeping in view the fact that

the witnesses come into the witness box several years after the date of the incident even presuming that there are slight improvement/s they must necessarily be overlooked.

6 Arguments have been countered. Learned counsel for the State supports the judgment.

7 Learned counsel for the private respondents submits that the judgment calls for no interference. The Trial Court has appreciated the evidence in the correct perspective. He has placed reliance upon the judgment of this Court reported as 115 (2004) DLT 202 Smt.Deepa Bajwa Vs. State. Submission being that lacuna or gaps in the testimony of a witness cannot be allowed to be filled in at a later stage. For the same proposition he has placed reliance upon a judgment of this Court delivered in CrI.Rev.P.5/2016 State Vs. Amit Gupta and Ors. which was the judgment under the SC/SC Act; submission being that in this case also the Court had noted that where there was an improvement qua the initial complaint made by the complainant, the order of discharge of the accused persons was not interfered with by the High Court. Reliance has also been placed upon another judgment delivered by this Court in CrI.Rev.P. 622/2013 State Vs.Om Prakash Rana and Ors. Submission being that if the offence has not been

committed within 'public view' which is a necessary ingredient of the offence for which the respondents had been charged the order of acquittal would suffer from no infirmity.

8 Arguments have been heard. Record has been perused.

9 The star witness of the prosecution is the complainant (PW-1). Her complaint has been proved as Ex.PW-1/A; it is dated 30.11.2007. The gist of the complaint has been perused. This Court notes that PW-1 had come into the witness box on 26.10.2009. As rightly pointed out by learned counsel for the respondents neither in the complaint and nor in the testimony of PW-1 had she stated that the utterances by respondent nos.2 to 4 which were humiliating and insulting and being castist words were uttered in public view which ingredient is a mandate under Section 2(x) of the said Act; this ingredient is missing. PW-2 has made a mention of the presence of Subey Singh and Rajinder being present at the time when these utterances were effected by respondent nos.2 to 4. This has come in the testimony of PW-2 only i.e. later on. It has not been mentioned in the complaint dated 30.11.2007. This ingredient also does not find mention in the testimony of PW-1 which was recorded two years later i.e. on 26.10.2009. The Trial Court in para 61 of the judgment had noted this fact. It had noted that PW-2,

PW-3 and PW-4 are closely related to the complainant (PW-1). The testimony of PW-2 (being the husband of PW-1), PW-3 (being the brother-in-law of PW-1) and PW-4 (being the nephew of PW-1) did not inspire confidence. Testimony of PW-3 reflects that no details of date, time of the incident/incidents had been given by him. The subject matter of the dispute has boiled down over a dispute over a land in Village (Lal Dora). Noting that PW-3 and PW-4 were unaware of the khasra number of the plot of the aforementioned dispute; that apart PW-4 also failed to disclose the details of the date, month or even the year when the offending words were uttered in their presence by the respondents. This was especially so noting the fact that both PW-3 and PW-4 were living in adjacent houses. Their testimony was rightly noted to be vague and being bereft of particulars.

10 The fact that the parties had a civil litigation pending inter se prior to the filing of this FIR was an admitted fact and this fact was never disclosed in the complaint made by PW-1. This is also an admitted position. The investigating officer (PW-7) in his cross-examination admitted that he had failed to verify the civil litigation pending between the parties. He had failed to verify the averments of the respondents that the complainant was agitating this complaint as a revenge in view of the civil litigation which had been

filed by the respondents against her and this was an arm twisting method. Investigation was not carried out fairly by him.

11 The Trial Court had also noted that prior to the present FIR a compromise deed had been executed inter se the parties (Ex.PW-2/DX1). There was no utterance of any remark relating to the SC/ST status; this compromise deed related to the occurrence of 15.7.2007. The Court had rightly noted that the assertion of the complainant that these utterances were being continuously uttered by respondent nos.2 to 4 from 2007 to 2009 is thus largely falsified, if this was the correct position it would have been found mention in Ex.PW-2/DX1.

12 The Trial Court had also correctly appreciated that no independent public witness was examined or produced by the prosecution. PW-2, PW-3 and PW-4 were interested witnesses being closely related to PW-1.

13 That apart this Court notes that before a conviction can follow under Section 3(1)(x) of the SC/SC Act it must necessarily be proved by the prosecution that the utterances/remarks made by the accused persons must be in public view. This is absent not only in the complaint filed by the complainant (Ex.PW-1/A) but also in the entire version of PW-1 on oath in Court. It was only for the first time that in the testimony of PW-2 that the

names of PW-3 and PW-4 were uttered. PW-3 and PW-4 were both closely related to PW-1 and PW-2 and were interested witnesses; they had made improvements upon the initial version given by the complainant. The offending words had to be uttered in public view. This was not proved. Before parting with the case, it would be relevant to extract the finding given by this Court in the judgment of Smt. Deepa Bajwa (supra); it reads as under:

“After considering the submissions made by the learned counsel for the parties, this Court is of the considered view that a complaint, on the basis of which the complainant seeks registration of an FIR, must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceed to register the FIR. If such a course is permitted, it would give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that their initial complaint does not make out the offence complained of. Such a course would be utter abuse of the process of law. First version as disclosed in a complaint is always important for adjudicating as to whether an accused has committed or not an offence. In the complaint dated 19th April, 2001, the Complainant himself alleged that the Councillor Chhannu Mal was introducing him to the petitioner. If that was the case, how could he say later that on that day the petitioner knew that he was a Scheduled Caste. This statement, therefore, was a crude falsity introduced at the behest of the

police to implicate the petitioner under Section 3 of the Act. This effort on the part of the police to supply the deficiency and cover up a lacuna in the complaint in view of legal opinion was totally unwarranted and an abuse of the process of law.”

14 The statement of PW-2 which had tried to fill in the lacuna by mentioning the names of PW-3 and PW-4 at a later stage was rightly not considered by the Trial Court. This Court is thus of the view that the impugned judgment acquitting the respondents suffers from no infirmity. The impugned judgment calls for no interference. Appeal is without merit. It is dismissed.

INDERMEET KAUR, J

FEBRUARY 01, 2018

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