

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

CRL.A.No. 389 of 2006 (F)

AGAINST THE JUDGMENT IN SC 103/2002 of
SESSIONS COURT, PATHANAMTHITTA DATED 17-01-2006

APPELLANT/ACCUSED:

RAJAN @ RAJU, RAJI BHAVAN,
PULLOLI COLONY, PERUMPETTI MURI, PERUMPETTY VILLAGE.

BY ADVS.SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY SMT.S.HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.389 OF 2006

Dated this the 8th day of October, 2015.

J U D G M E N T

The accused was prosecuted for the offence punishable under Sections 3(1)(x) of SC/ST (Prevention of Atrocities) Act. He was found guilty. He was therefore convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.2,000/- with default clause of simple imprisonment for two months.

2. The prosecution case in brief is as follows:

PW1, the victim, is a member of Scheduled caste community and she was working as L.D Clerk in the Kottanadu Grama Panchayath at the relevant time. The allegation is that on 11.11.2000, while PW1 was engaged in some election duty, the person who had booked the community hall for marriage purpose had come to get the key of the hall. She obtained the key and handed it over to the person and had also told him that water tank shall be kept clean for pumping water. The accused who

was standing nearby is alleged to have abused PW1 using her caste name and other abusive words. The allegation is that the matter was informed immediately to the Police who came to the spot and took the accused into custody. PW1 also alleges that she had complained to the authorities of the Panchayath and District Collector and also to the Police about the incident. Since nothing happened on those complaints, she finally laid Ext.P1 First Information Statement on 15.12.2000. PW6, Station House Officer, recorded Ext.P1 First Information Statement furnished by PW1 and on that basis, registered Crime No.140/2000 under Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act as per Ext.P4 First Information Report.

3. Investigation was taken over by PW7, Deputy Superintendent of Police attached to Thiruvalla. He went to the place of occurrence and prepared Ext.P5 scene mahazar. After ascertaining the proper and correct address of the accused, he filed Ext.P6 report. He recorded the statement of witnesses and obtained the caste certificates relating to the accused and the victim which are marked as Exts.P2 and P2(a). He completed the

investigation and laid charge before court.

4. The court before which final report was laid took cognizance of the offence and finding that the offence is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Pathanamthitta under Section 209 Cr.P.C after following necessary procedures. The said court, on getting records and on appearance of the accused, framed charge for the offence under Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act, to which, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 7 examined and Exts.P1 to P6 marked.

5. After the close of the prosecution evidence, accused was questioned under Section 313 Cr.P.C wherein he denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. He also added that he was a worker of the CPM party and at the relevant time Jose Mathew was the President of the Panchayath. The accused was a close associate of the said person. He would say that the behaviour of PW1 towards the persons who came to Panchayath for various

purposes was far from satisfactory and that resulted in an objection being raised in the Panchayath office. Under the impression that the said objections were at the behest of the Panchayath President, as the Panchayath President could not be harassed, accused had been trapped.

6. Finding that the accused could not be acquitted under Section 232 Cr.P.C, he was asked to enter on his defence. He examined DW1 and had Ext.D1 marked.

7. The court below accepted the evidence of PW1 in toto and found the accused guilty. Conviction and sentence as already mentioned followed.

8. Learned counsel appearing for the appellant, assailing the conviction and sentence, pointed out that the solitary evidence of the incident is furnished by PW1. A close reading of the evidence of PW1 would clearly show that it is far from satisfactory and is not creditworthy at all. Learned counsel pointed out that he does not dispute the proposition that if the evidence of the victim is found to be above board and is without blemish, conviction can be based on the same. But, in the case

on hand, a reading of the evidence of PW1 would show that she is speaking total falsehood. Drawing attention to her evidence, it is pointed out that she has got a case that on the date of incident, within half an hour, matter was informed to the Police and the Police had come to the place and taken the accused into custody. She then says about having furnished complaint to the Panchayath authorities, District Collector and Superintendent of Police. No copy of any of these complaints is produced by PW1 and no reason is also given for non production of the same. PW2, the witness examined by the prosecution to prove the incident, is none other than the father-in-law of the victim. It is significant to notice, according to the learned counsel, that his name does not appear in the First Information Statement furnished by PW1 nor does she says about his presence in chief examination at all. Learned counsel also pointed out that the incident occurred on 11.11.2000 and the First Information Statement is furnished after one month i.e. on 15.12.2000. The reason given was that she had complained to various authorities and they did not take any action. There is no iota of evidence to

prove that any such complaint was filed by PW1 before any authority and that they had not taken any action in the matter. The evidence of PW7 would clearly show that all the persons who had been named by PW1 as eye witnesses to the incident denied having seen the incident. It is in this context that the evidence of PW1 will have to be appreciated. The accused has a probable version of the incident. In the absence of any supporting evidence, only on the suspicious testimony of PW1, the court below should not have been ventured into come to a conclusion that the accused is guilty and according to the learned counsel, the conviction and sentence cannot stand.

9. Learned Public Prosecutor, on the other hand, pointed out that the evidence of PW1 is clinching enough and is sufficient in law to warrant a conviction. She has stated that she had complained to various authorities and they had not taken any action and that compelled her to file a complaint before Police. The court below found the evidence of PW1 to be sufficient to warrant a conviction and there is no justification in interfering with the said finding. In short, the contention is that the

conviction and sentence need not be interfered with.

10. There can be no dispute regarding the proposition that if the evidence of the victim is found to be clinching, convincing and cogent, certainly, it can be acted upon and the court thereafter need not insist for corroboration. But, for that purpose, evidence of the victim should be without blemish.

11. In the case on hand, the incident is said to have occurred on 11.11.2000. Going by the evidence of PW1, within half an hour of the incident, the matter was informed to the Police and the Police had come to the place and had taken the accused into the custody. This version of PW1 is belied by the evidence of PW6. PW6 is the person who had recorded Ext.P1 First Information Statement furnished by PW1. He has specifically stated that the first time Police had got information about the incident is on the date on which Ext.P1 First Information Statement was furnished. There was no attempt from the side of the prosecution to show that any complaint had been filed before the Police and the Police had come to the place. If, as a matter of fact, the said incident had occurred, it should

have found a place in the General Diary. There was no effort to summon the General Diary. The lower court seems to have been impressed by the evidence of PW2 who is none other than the father-in-law of the victim. It is interesting that his name does not find a place in Ext.P1 nor does PW1 say in her chief examination that the said person was present at the spot and he was an eye witness to the incident. It is therefore clear that PW2 is a planted witness to suit the convenience of the prosecution.

12. To add to this is the evidence of PW7. PW7 says that he had questioned all the witnesses PW1 had named as persons who had seen the incident. But they all denied of having seen any such incident at all. PW7 denied PW1 had filed any complaint prior to the incident and any action has been taken in the matter. The above circumstances cannot be overlooked and one cannot place implicit faith on the evidence of the victim since none of the witnesses who were alleged to have been present at the spot is seen examined and the only person who is examined is PW2 whose name does not figure in the First Information Statement or in the chief examination and his presence is extremely doubtful.

13. In the light of the fact that there was no attempt to prove the claim made by PW1 that she had complained earlier and no action was taken on those complaints, it will be difficult to accept the case that she was compelled to lay the First Information Statement after one month. The long delay in lodging the First Information Statement casts suspicion on the version given by PW1. It is difficult to come to the conclusion that the evidence of PW1 can be accepted without any reservation. Too many lacunas are seen in her evidence and she does not get support from any of the persons she had named in the First Information Statement.

14. For the above reasons, this Court is unable to accept the finding of the court below that the prosecution has succeeded in establishing the case against the accused.

In the result, this appeal is allowed. The conviction and sentence passed by the court below are set aside and it is held that the accused is not guilty of the offence under Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act. He stands acquitted of the charge levelled against him. His bail bond shall stand

cancelled and he is set at liberty. If he has paid the fine amount, the same will be refunded.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.