

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1930-SB of 2003

Date of Decision : July 17, 2015

Kirpal Singh and another

..... Appellants

Vs.

State of Punjab

..... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Argued by:Mr. Atul Jain, Advocate
for the appellants.

Mr. Surjeet Singh Chaudhary, DAG, Punjab.

RAJ RAHUL GARG, J.

Kirpal Singh and his wife Gurmit Kaur brought this appeal against the judgment of conviction dated 08.10.2003 and order on sentence of even date, whereby, both the appellants were convicted for committing offence punishable under Section 3 (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC and ST Act') and for the offence punishable under Sections 353, 186 and 506 of Indian Penal Code (for short 'IPC'). For committing offence punishable under Section 3 (x) of the SC and ST Act, both the appellants were sentenced to undergo rigorous

imprisonment for a period of 3 years and to pay a fine of Rs. 1,000/- each. In default of payment of fine to further undergo rigorous imprisonment for a period of one month each; for committing offence punishable under Section 353 IPC, they were sentenced to undergo rigorous imprisonment for a period of 1 ½ years each and to pay a fine of Rs. 300/- each. In default of payment of fine to further undergo rigorous imprisonment for one month each. Likewise for committing an offence punishable under Section 186 IPC, both the appellants were sentenced to undergo rigorous imprisonment for a period of 3 months each and to pay a fine of Rs. 200/- each. In default of payment of fine to further undergo rigorous imprisonment for a period of 10 days each and for committing an offence punishable under Section 506 IPC, both the appellants were sentenced to undergo rigorous imprisonment for a period of 1 ½ years each and to pay a fine of Rs. 300/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of 1 month each.

Brief facts of the case are like this; that as per statement of complainant-Gurmit Singh Ex.PB, Kirpal Singh (accused-appellant) filed a case in the Court of Shri Tarsem Singh, Naib Tehsildar, Kapurthala, for correction of khasra girdawari. Tehsildar directed both the parties to remain present at the spot on 21.05.1999 in the afternoon. On 21.05.1999 at about 4:00 P.M. he along with Tarsem Singh, Naib Tehsildar and Peon Gian Singh reached village Fattudhinga in connection with correction of khasra girdawari. Anokh Singh, Fauja

Singh and other persons were also present there. After sometime Kirpal Singh and his wife Gurmit Kaur (accused-appellants) came at the spot and started abusing him telling that “ *patwariya, kutiya and churiya, tu sadi zamin which ki karan aaya hai, sade khet which vad ke ta dekh, tenu janu na mar mukaya ta sanu jat na aakhi*”. Complainant and Tarsem Singh, Naib Tehsildar, forbidden them from hurling abuses and using hard words but they did not stop. Anokh Singh and Fauja Singh also tried to pacify them but they did not. As per complainant, Kirpal Singh had filed a case regarding land in dispute in the Court of SDM against Surinder Singh, Sukhwinder Singh and Kulwinder Singh sons of Avtar Singh, residents of village Fattudhinga. That case was decided in favour of Surinder Singh and others, therefore, Kirpal Singh and his wife abused them and also used filthy language against them while they were on duty. They also prevented them from discharging their official duties. Complainant further alleged that they had brought this incident to the notice of their senior officials and, thereafter, informed the police. Complainant made a complaint Ex.PA under Section 195 Cr.P.C. to the police. The above information was given to the police on 22.05.1999. On this information, endorsement Ex. PB/1 was made and formal FIR Ex. PG was recorded. Chain Singh, Inspector/SHO prepared the rough site plan of the spot as Ex. PH. He recorded the statements of Anokh Singh and Fauja Singh. Appointment letter of Patwari Gurmit Singh and his posting order taken into police possession vide memo. Ex.PF. Accused were arrested

and, thereafter, investigation of this case was handed over to DSP Surinderjit Singh as offence under Section 3 (x) of SC and ST Act was added. DSP prepared the site plan of the spot as Ex. PJ on 24.11.1999. Statements of accused were recorded.

After completion of necessary investigations, the challan was put in the Court.

Finding a prima-facie case against the accused for committing offence punishable under Section 3 (x) of SC and ST Act and under sections 353, 186 and 506 of IPC, both the accused were charge sheeted to which they did not plead guilty but claimed trial.

After taking prosecution evidence, statement of accused under Section 313 Cr.P.C. were recorded, wherein they denied each allegation appearing against them in the prosecution evidence and pleaded their innocence. It is the defence of the accused that the case is false against them.

In defence, accused examined Lakhbir Kaur, Senior Assistant, D.C.Office, Kapurthala as DW-1. By brining the original complaint record from the office, she proved the complaint made by the accused Kirpal Singh which was marked to SDM for inquiry. That complaint was received through the office of C.M whereas the other complaint was received directly by the office of D.C. Complaints are Ex. D-1 and Ex.D-2. Sandip Maini, Clerk, office of Commissioner, Jalandhar, Division was examined as DW-2. He deposed that the complaint filed by Kirpal Singh, was received in their office vide

receipt No.497-A dated 16.06.1999 and the same was sent to the office of D.C. Kapurthala for report. UPC receipt Ex. D3 was tendered in evidence by the defence. DW Balwinder Singh was given up by the accused as having been won over by the complainant. Samittar Singh, Junior Assistant, D.C. Office, Kapurthala, was examined as DW-3. He also brought the summoned record of the complaint and proved the photocopy of the complaint as Ex.DW3/A and also proved the affidavit of Kirpal Singh, photocopy of which is Ex. DW3/B. Copy of report in the roznamcha was tendered in evidence as Ex.DA.

After hearing both the sides and appraising the entire evidence and material coming on record, Sh. Sham Sunder, the then, Special Judge, Kapurthala, recorded the judgment of conviction and held appellants guilty for committing offence punishable under Section 3 (x) of the SC and ST Act and for the offence punishable under Sections 353, 186 and 506 of IPC and sentenced them as mentioned in the earlier part of this judgment.

I have heard Sh. Atul Jain, Advocate, counsel for the appellants and Sh. Surjeet Singh Chaudhary, DAG, for the State, besides appraising the entire material coming on record.

First of all, it was argued by learned counsel for the appellants that for offence under Section 3(x) of SC and ST Act, the element of intention to commit offence is necessary. The same is missing in this case. Even the certificate of complainant that he belongs to SC and ST category is not on the file. As such, no offence under

Section 3 (x) of SC and ST Act, can be said to be made out. It is, of course, true that for constituting an offence under Section 3 (x) of SC and ST Act, the element of intention has to be established. In the absence of the same, no offence under the aforesaid provisions of law can be said to be made out. From complaint, Ex.PB itself, it is evident that accused had lost the case filed in the Court of SDM against Surinder Singh etc. Complainant himself made a mention in the complaint that since accused-appellants had lost the case against Surinder Singh etc. therefore, they had abused them. As such, if at all, accused had abused the complainant, that was not with an intention to insult a member of Scheduled Caste, that was on account of the fact that the accused were having grudge against the Patwari for his role in the aforementioned case against Surinder Singh etc. which they had lost. Even otherwise, from the complaint Ex. PB, it becomes clear that the complainant and Naib Tehsildar, did not enter the fields of accused, as the accused said “ *tu sadi zamin which vad ke ta dekh*”, as such, when the complainant party did not enter the fields of accused, the question of their preventing the Government Officials from discharging of their official duties is also not there. As such, in fact, no offence either under section 3 (x) of SC and ST Act or under Sections 353, 186 and 506 IPC is made out against accused-appellants. The conditional threat cannot be considered a threat to the life of a person.

There is in fact no evidence/material on the file to show that the accused were having knowledge about the fact that

complainant Gurmit Singh, Patwari, was a member of Scheduled Caste or knowing that the complainant was a member of Scheduled Caste had intentionally insulted him in public view. Gurmit Singh, Patwari as PW-1, Anokh Singh as PW-2 , Tarsem Singh, Niab Tehsidar as PW-4, and Fauja Singh as PW-6 did not depose that the complainant was a member of Scheduled Caste or that the accused were having knowledge about that and further only in order to insult or annoy a member of Scheduled Caste in public view, they had uttered aforementioned objectionable words. In fact, it is not the case where the accused have committed offence on the ground that complainant was a member of Scheduled Caste or Scheduled Tribe. In the absence of oral evidence that the complainant was a member of Scheduled Caste and further the documentary evidence i.e. certificate that he belongs to a Scheduled Caste, it cannot be said that the accused committed offence against him on the basis of that he belongs to a Scheduled Caste or a Scheduled Tribe.

The counsel for the appellants cited judgments i.e. **Masumsha Hasanasha Mauselman Vs. State of Maharashtra, 2000 (2) RCR (Criminal), 116, Dr. Onkar Chander Jagpal and another Vs. Union Territory, Chandigarh & anr. 2012(1), RCR, (Crl.), 931.** He also cited judgment titled as **Ravinder Singh Vs. Sukhbir Singh & ors., 2013(1) RCR (Criminal), 1020.** In this judgment, it was held that merely because the victim/complainant belongs to a Scheduled Caste or Scheduled Tribe, the same cannot be the sole ground for prosecution.

The offence under the SC and ST Act, is made out if it is committed against him on the basis of the fact that such a person belongs to a Scheduled Caste or Scheduled Tribe.

In the present case, accused-appellants were having an ire against complainant on account of previous case instituted by them in the Court of SDM against Surinder Singh etc. which they had lost.

Thus, for the reasons recorded above, the prosecution has infact failed to establish its case against the appellants. As such, this appeal is accepted. Impugned judgment of conviction dated 08.10.2003 and order of sentence of even date are set aside and the accused-appellants are ordered to be acquitted of the charges for which they are facing trial in this case. Their bail bonds and surety bonds stand discharged. Fine, if any paid, is ordered to be refunded to them after the decision of appeal/ revision, if any.

Copy of the order be sent to the trial Court for compliance and report.

(RAJ RAHUL GARG)
JUDGE

July 17, 2015
smriti