

CRM-A-1651-MA-2014

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1651-MA-2014
Date of decision: 12.03.2015

Jasbir Singh

.... Applicant/Appellant(s)

Versus

Raj Kumar and others

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) *Whether Reporters of the 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?*

Present: Mr. Parveen K. Kataria, Advocate,
for the applicant.

PARAMJEET SINGH, J. (ORAL)

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 19.07.2014 passed by Additional Sessions Judge, Amritsar whereby complaint filed by applicant under Sections 452/323/148/149/506 of the Indian Penal Code and Section 3(i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity, 'SC/ST Act') has been dismissed and respondents have been acquitted of the charges framed against them.

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Brief facts of the case are that a complaint was filed by the applicant-complainant under Sections 452/323/148/149/506 of the Indian Penal Code and Section 3(i) (x) of SC/ST Act with the averments that he belongs to scheduled caste community. The father of the complainant was constructing his house. On 03.03.2008, at about 6.15 P.M., all the accused persons entered in his house and accused-Suman raised lalkara "Is Kute Chure Nu Gali Which Retta Te Bajri Kathi Karan Da Maja Chkha Deo" and accused Raj Kumar shouted that "Kutia Churia Ik Tan Tu Sade Ghar Agge Reta Kathi Kiti Hai Uton Sade Agge Boli Ja Reha Hai" and accused Ashu, Baldev Raj, Balwant Rai, Uttam Singh, who came out at the asking of accused nos.1 and 2 caught hold the complainant from his neck and shouted that "Kutia Churia Toon Ki Gand Paya Hoya Hai Ajj Tenu Sade Agge Bolan Da Maja Chakhaune Hai". It is further averred that all the accused persons gave slps on the face of complainant. At that time, Amarjit Kaur wife of Ajit Singh, resident of H.N.D7/6485, Main Bazar, Guru Nanak Purai, P.O. Jawala Flour Mill and Kawaljit Kaur wife of Manmohan Singh gathered there, in whose presence, the accused shouted and insulted the complainant. With the intervention of the respectables, the complainant was saved from the clutches of the accused. All the accused belong to upper caste and they have knowledge that complainant belongs to scheduled caste category. The accused had intentionally insulted the complainant in General Public in order to humiliate him. The complainant approached

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the police but no action was taken. Therefore, the complaint was filed.

On the basis of preliminary evidence, the accused were ordered to be summoned to face trial under Section 3(i) (x) of the SC/ST Act and 452/323/148/149/506 of the Indian Penal Code vide order dated 06.02.2009 passed by the lower Court.

Accused put in appearance in Court and were released on bail. Thereafter, the case was committed by the Judicial Magistrate Ist Class, Amritsar vide commitment order dated 27.01.2012, which was entrusted to the Court of Additional Sessions Judge, Amritsar.

During the trial, accused-Gurjant Pal alias Ashu was declared juvenile and he was ordered to be tried by the Juvenile Justice Board.

On the basis of evidence and other material available on file, trial Court framed the charges under Section 3(1) (x) of the SC/ST Act and Sections 452/323/506/148 of the Indian Penal Code were framed against the accused, to which they pleaded “not guilty” and claimed trial.

In support of his case, complainant himself appeared into the witness-box as PW 2 besides examining Amarjit Kaur as PW 1, Kanwaljit Kaur as PW 3 and Atma Ram, Clerk, office of Deputy Commissioner, Amritsar as PW 4. Thereafter, evidence of the complainant was closed.

Statements of the accused were recorded under Section 313 Cr.P.C. The accused denied all the incriminating circumstances appearing against them in the evidence led by the complainant and

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claimed to be innocent.

The trial Court after appreciating the evidence acquitted the accused of the charges levelled against them, vide impugned judgment dated 19.07.2014.

I have heard learned counsel for the applicant and gone through the impugned judgment.

The trial Court, after appreciating the evidence on record, observed as under:-

“16. To prove the charge under Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the prosecution is required to prove the following ingredients of the offence:

- “(a) that there must be an 'intentional insult' or 'intimidation' with intend to humiliate SC/ST member by a non-SC/ST member;*
- (b) and that insult must have been done in any place within the ""public view";*
- (c) the use of expression ""ntentional insult or intimidation" with ""intention" to humiliate, makes it abundantly clear that the mens rea is an essential ingredient of the offence;*
- (d) it must also be established that the accused had the knowledge that the victim is the SC/ST and that the offence was committed for that reason;*
- (e) Merely calling a person by caste would not attract the provisions of this Act.”*

17. Now it is to be seen whether the evidence on the file fulfills all the ingredients of the offence as depicted above. For that purpose, the evidence on the file is to be appreciated.

18. The learned defence counsel has drawn my attention towards the statement of PWI Amarjit Kaur,

who as per prosecution, was present at the time of occurrence in question. While deposing in the Court, she stated that on 3.3.2008 at about 6.15 P.M., she was present in the house of Jasbir Singh, complainant. Then all the accused forcibly entered into his house and then accused Suman raised lalkara that ""Ina Kutian Churian Nu Gali Which Ret Bajri Ikathi Karan Da Maja Das Deo" and then accused Raj Kumar shouted "Kutio Khurio Ik Tan Sade Ghar Te Reta Suti Hai Atte Sade Agge Bole Rahe Ho". Then on asking of accused Raj Kumar and Suman, all other accused namely Ashu, Balwinder alias Baldev Raj, Balwant Rai alias Sukhdev Singh, Uttam Singh and Dilbagh Singh had caught Jasbir Singh from his neck and started uttering words "Kute Churia tun Ki Gand Paya Hai Tenu Sade Agge Bolan Da Maja Chakha Dinde Han" and they also gave slaps to him. On raising noise, the people of the locality gathered and complainant Jasbir Singh was saved from the clutches of the accused.

19. *Then he referred the statement of PW2 Jasbir Singh, complainant of the present case. While deposing in the Court, he stated that on 3.3.2008 at about 6.15 P.M., construction work was going on in his house and his father was not present in the house. He stated that accused Suman raised a lalkara in gali ""Kutia Churia Nu Gali Which Retan Khilaran Da Maja Chakha Deo"" and thereafter accused Raj Kumar and Suman forcibly entered into his house. The complainant requested them that they will remove the sand from the gali. Then Raj Kumar shouted that ""Kutia Churia Ik Tan Tun Gali Which Reta Khilari Hai Te Utton Tun Sade Agge Boli*

Jandan Hai". Thereafter, accused Raj Kumar and Suman called other accused namely Uttam Singh, Dilbagh Singh etc. and then they entered into his house and caught hold him from his neck and started uttering words ""Kutia Churia Tun Ki Gand Paya Hoya Tenu Aaj Sade Agge Bolan Da Maja Chakhande Hain" and gave him slaps.

20. *The learned counsel for the accused raised point that whatever PW1 Amarjit Kaur had stated and whatever PW2 Jasbir Singh had stated, there is no consistency in their statements. As per statement of PW 1 Amarjit Kaur, all the accused at about 6.15 P.M., forcibly entered into the house as discussed above, whereas PW 2 Jasbir Singh had stated that accused Suman first of all raised lalkara and uttered words "Kutia Churia Nu Gali Which Reta Khilaran Da Maja Chakha Deo" in gali and then Raj Kumar and Suman entered into their house and Raj Kumar uttered words ""Kutia Churia Ik Tan Tun Gali Which Reta Khilari Hai Te Vtton Tun Sade Agge Boli Jandan Hai" and then at their asking, rest of the accused came inside. This inconsistency appearing in the statements of witnesses makes the case doubtful one and there is merit in the arguments of learned defence counsel that it amounts to improvement.*

Even when PW2 Jasbir Singh was confronted during cross-examination that whether he got mentioned these facts when he got recorded his statement in preliminary evidence, he gave evasive reply. He was confronted with his statement dated 23.4.2008. This fact was not found to be mentioned. So, a clever attempt has

*been made to change the version by making improvement and I find merit in the arguments of learned defence counsel that this improvement is made just to make out the offence, because it is only when the castiest remarks are uttered in the public view, only then the offence is attracted. He raised point that if the complainant remains stick to his previous statement that the said occurrence took place in the four walls of the house, then the said offence is not attracted. For that purpose, reliance is placed upon **Dr. Onkar Chander Jagpal and another Vs. Union Territory. Chandigarh and another. 2012(1) RCR (Criminal). 931** where Hon'ble High Court held as under:-*

“Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3 (x) -Dispute between complainant (a Schedule Caste) and accused (non-schedule Caste) over purchase of house-Accused abused the complainant in a fit of anger by uttering the words "Chura-Chammar Neich Jati De Kute Log” - FIR quashed -Held:

It is matter of common knowledge that such words in a quarrel between the two enemies at a spur of moment, are common and in routine and cannot possibly be taken to be an offence under the Act - That means, merely uttering such words in the absence of intention/mens - rea to humiliate the complainant in public view, every such quarrel or altercation between the members of non-scheduled caste and scheduled caste and if the

imputations are grossly vague and perfunctory, would not, ipso facto, constitute acts of commission of offence, which are capable of cognizance under the Act".

21. *Another point raised by the learned defence counsel is that the complainant admitted in his cross-examination that FIR No. 57/2008 was got registered at the instance of Raj Kumar, who is accused in the present case of the occurrence dated 3.3.2008 at about 6.00 P.M. against him and other family members. He raised point that the occurrence as narrated in the present complaint is also of dt 3.3.2008 at about 6.15 P.M. He rightly raised point that when a criminal case was registered by accused Raj Kumar of present case against the complainant side regarding injuries caused to them, then in order to counter blast, the said false complaint is filed. This fact is admitted that in that criminal case, Jasbir Singh alongwith other persons were convicted on 30.1.2013 and appeal is pending before learned Addl. Sessions Judge.*

22. *The learned defence counsel raised point that while defending the criminal case registered against the complainant and others bearing FIR No. 57/2008 regarding the occurrence of 3.3.2008 at about 6.30 P.M., no such plea was taken by the complainant side, who were accused in that case that they had filed a criminal complaint against the complainant of that case under Sections 3 (i) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Sections 452/323/148/149/506 of IPC and it is a cross version.*

I find merit in his these arguments, because if

there was any truth in the version of the complainant, then they might have taken the plea that on that day, Raj Kumar accused etc. had abused them by calling them by the name of caste and creed and a criminal complaint has been filed by them and it be treated as cross version and matter be decided together.

23. *The learned defence counsel raised point that the complainant has admitted this fact that he became aware on 19.3.2008 that an FIR regarding the occurrence dated 3.3.2008 has been registered against them. In this context, he raised point that why this fact is not mentioned in the present complaint. If the complainant was true to his version, then he might have mentioned the same in his complaint and took the plea that it is a version and cross version and both the matter are tried together.*

Here at this juncture, I appreciated the arguments of learned defence counsel that the present complaint is a counter blast to the criminal case registered against them. In this context, he raised point that as per complainant, the occurrence is dated 3.3.2008, whereas the present complaint has been filed on 1.4.2008. He raised point that the complainant side has failed to explain this long delay in filing the complaint.

24. *At this juncture, the learned counsel for the complainant raised point that matter was reported to the police regarding the occurrence, but when police failed to take any action, only then the complaint was filed.*

25. *Here the question arises whether the complainant has proved on record any such complaint*

filed by him regarding the occurrence before police. No such complaint has been proved on file. No record has been summoned from the concerned police Station that such and such complaint was filed by the complainant regarding the occurrence in question. So in the absence of same, how it can be said that matter was reported to the police and police did not take any action. So, this also makes the case doubtful one.

26. *Another point raised by the learned defence counsel is that one of the ingredient of the offence is that there must be intentional insult with intention to humiliate the person belonging to scheduled caste category. He argued that mere utterance of offending words against the caste will not constitute any offence under the Act in the absence of intention. For that purpose, he relied upon **Dr. Onkar Chander Jagpal and another Vs. Union Territory, Chandigarh and another, 2012 (1) RCR (Criminal) 932**, where Hon'ble High Court held as under:*

“Accused abusing a member of Scheduled Caste – Mere utterances of offending words will not constitute an offence under the Act in the absence of intention or mens rea to humiliate the member of Scheduled Caste in public view. ”

27. *Whatever law is laid down in the above referred citation, if in the light of the same, the facts of the present case are seen and evaluated, then it is found that there was no intentional insult with intention to humiliate a person belonging to scheduled caste category.*

The word "intention" carries with it the meaning that the person is doing the act deliberately and knowing well its implication and his intention is to degrade/humiliate the person by calling him in the name of his caste and creed. This intention has to be gathered from the facts and circumstances of the case. Moreover, such intentional insult must be in the public view and the words "public view" means the public most view the person being insulted. In the present case, as per statement of the complainant, the occurrence had taken place in the house. So, it cannot be termed to be within public view.

28. *So considering the case from each and every angle, in my opinion, the complainant has failed to prove the charges against the accused beyond the reasonable doubt. So by giving benefit of doubt, accused Raj Kumar, Suman, Balwinder Singh alias Baldev Raj, Sukhdev Singh alias Balwant Rai and Uttam Singh stand acquitted. File be consigned to the Record Room subject to its being revived as and when accused Dilbag Singh, who has been declared proclaimed offender in this case, appears or is brought before the court or whenever otherwise warranted as per the provisions of law"*

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr.***

vs. State of Karnataka 2014(2) RCR (Criminal) 507 has held as under:

"10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, "the High

Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

*12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in **Tulsiram Kanu v. State; [AIR 1954 SC 1]**, **Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637]**, **Atley v. State of U.P.; [AIR 1955 SC 807]**, **Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217]**, **Balbir Singh v. State of Punjab; [AIR 1957 SC 216]**, **M.G. Agarwal v. State of Maharashtra; [AIR 1963 SC 200]**, **Noor Khan v. State of Rajasthan; [AIR 1964 SC 286]**, **Khedu Mohton***

v. State of Bihar; [(1970) 2 SCC 450], Shivaji Sahabrao Bobade v. State of Maharashtra; [(1973) 2 SCC 793], Lekha Yadav v. State of Bihar; [(1973) 2 SCC 424], Khem Karan v. State of U.P.; [(1974) 4 SCC 603], Bishan Singh v. State of Punjab; [(1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228], K. Gopal Reddy v. State of A.P. ; [(1979) 1 SCC 355], Tota Singh v. State of Punjab [1987(2) R.C.R. (Criminal) 35: (1987) 2 SCC 529], Ram Kumar v. State of Haryana; [1994(3) R.C.R.(Criminal) 631 : 1995 Supp (1) SCC 248], Madan Lal v. State of J&K; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], Sambasivan v. State of Kerala; [1998(2) R.C.R.(Criminal) 693 : (1998) 5 SCC 412], Bhagwan Singh v. State of M.P.; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], C. Antony v. K. G. Raghavan Nair; [2002(4) R.C.R. (Criminal) 750 : (2003) 1 SCC 1], State of Karnataka v. K. Gopalakrishna; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], State of Goa v. Sanjay Thakran; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] and Chandrappa v. State of Karnataka; [2007(2) R.C.R. (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is

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entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

Learned counsel for the applicant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

As such, application for leave to appeal is dismissed on merit.

12.03.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE