

In the High Court of Punjab and Haryana at Chandigarh

**CRM-A-23-MA of 2015 (O&M)
Date of Decision: March 09, 2015**

Rani Kaur

... Applicant/Appellant

Versus

Sneh Lata and another

... Respondents

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. P.P.S.Duggall, Advocate,
for the applicant/appellant.

Paramjeet Singh, J.

Instant application has been filed under Section 378 (4 & 5) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 01.11.2014 passed by learned Sessions Judge, Faridkot whereby complaint filed by the applicant-appellant under Sections 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "SC&ST Act"), as well as Sections 323/341/506 IPC has been dismissed and respondents have been acquitted of the charges levelled against them.

Brief facts of the case are that a complaint was filed by the applicant-complainant under Sections 3/4 of the SC & ST Act as well as

Sections 323/341/506 IPC alleging that the complainant – Rani Kaur wife of Gurjant Singh, is resident of Village Rori Kapura, Police Station Jaitu and is Mazbi Sikh by caste. Lovejot Singh @ Mangal Singh son of the complainant was studying in 5th class in the Primary School of the village, but however, last year, he could not pass the 5th Class examination. When the complainant for the continuation of studies of her son, had gone for admission of her son in the school, then Madam Sneh Lata, who was present in the school, had refused to admit her son. When the complainant had pleaded Madam Sneh Lata to do the needful, then, Gurmeet Singh, who is also resident of their village and who is also posted in Government Senior Secondary School, had also come there and he also stated to the complainant that “Churhiye Tere Munde Nu Dakhal Nahin Hon Dena Atte Eh Churha Tan Seeri Laggan De Kabal Hai, Je Churhe Parh Gaye Tan Saade Gharan Bich Seeri Kaun Laggega”. The complainant had pleaded to Madam Sneh Lata that they have nothing except studies. Then, Madam Sneh Lata also, in a loud voice stated that “Kuttiye Churhiye Toon Ethon Chali Jai, Asin Tere Munde Nu Dakhal Nahin Hon Dena”. Again the complainant had pleaded not to use insulting words, qua her caste, then, Madam Sneh Lata had given a push to the complainant and the complainant was turned out of the school. The entire occurrence had taken place in public view. Thereafter, the complainant had apprised her husband of the aforesaid occurrence, who along with Sukhdev Singh son of Karnail

Singh, Gurjant Singh son of Chheena Singh, Boota Singh son of Gurcharan Singh and Kaku Singh son of Mohna Singh, residents of Village Rori Kapura had gone to the school. There, again Madam Sneh Lata and Master Gurmeet Singh, in the presence of the aforesaid persons, had stated that “Asin Churhian Nu Parhan Nahin Dena, Je Eh Saare Parh Gaye Taan Saade Seeri Kaun Laggega”. After having felt insulted, all of them had returned home. Intimation regarding the aforesaid occurrence was given to the Police Station, Jaitu, but no action was initiated.

On the basis of preliminary evidence, both the accused were summoned for the commission of offence under Sections 3/4 of the SC & ST Act as well as under Section 323 IPC. Charge was framed under Sections 3(1)(x) of the SCT & ST Act, as well as 323 read with Section 34 IPC. Accused pleaded not guilty and claimed trial.

The complainant, in order to prove her case, examined herself as PW1, Gurjant Singh son of Karnail Singh as PW2, Kaur Singh, Reader to Sub Divisional Magistrate, Jaitu as PW3 and Sukhdev Singh as PW4 and thereafter, closed the evidence. Thereafter, statements of the respondents-accused under Section 313 Cr.P.C. were recorded wherein they pleaded innocence and false implication.

The trial Court, after appreciating the evidence, acquitted the respondents of the charges levelled against them, vide impugned judgment dated 01.11.2014. Hence, this application for grant of leave to appeal.

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:-

“10. In the light of the rival submissions made by the learned Public Prosecutor as well as learned counsel for the accused, the point formulated for determination, in the present case is, as follows:-

(A) Whether accused Sneh Lata and Gurmeet Singh had intentionally insulted and intimidated with an intent to humiliate complainant Rani Kaur, a member of Scheduled Caste, while they themselves belong to general category and, thus, committed an offence under section 3 (1) (x) of Scheduled Caste and Scheduled Tribes (Prevention of atrocities) Act 1989 and whether during the same occurrence the accused caused hurt to the complainant and thus, committed an offence under section 323 read with section 34 Indian Penal Code?

11. In order to secure verdict of conviction for the accused, it is incumbent upon the prosecution, to establish the guilt of the accused, beyond shadow of reasonable doubt. However, tested on such touchstone, when we go through the evidence brought on the record, the entire claim of the prosecution falls to the ground, like a house of cards. At the very outset, it is pertinent to mention that in the complaint Ex. CWI/A, there is no mention of the date, as to when the occurrence had taken place. No date, month or year, as such, has been mentioned. However, from the various materials coming on

the record, it is evident that the occurrence in question had taken place, in the month of April, 2008. However, the present complaint has been filed on 10.1.2009. As such, definitely, there is delay, in initiation of action. Very true, as pointed out by learned Public Prosecutor for the State, delay simplicitor is not fatal to the prosecution version, but however, it is always unexplained delay, which proves fatal to the prosecution version. It is pertinent to mention that in the complaint, there is assertion of no action, having been initiated by the police, even though, matter was reported to the police. Thus, in these circumstances, at the maximum, it can be taken that it was only, on account of non-initiation of action, at the instance of police that delay has occurred and this fact is also to be kept in mind, while appraising the evidence brought on the record. As per version of the prosecution, in the month of April, 2008, when the son of the complainant Lovejot Singh, who was student of 5th class in Government Primary School Rori Kapura, had failed, then, the complainant had gone to the school of her son and met Madam Sneh Lata, who refused to admit her child in the school. It is also further claim of the prosecution that Madam Sneh Lata abused the complainant in the name of her caste by stating that "Churhiye Tere Munde Nu Dakhal Nahin Hon Dena". Also further, it is claim of the prosecution that Master Gurmeet Singh had also come there, who had also stated that the children of "Churhas" are not capable of studying. They are capable of only to work as Seeri. Also again, they refused to admit her child and Madam Sneh Lata had also proclaimed to the complainant, that "Churhiye" go away from

that place and she gave a push to her. Also further, it is claim of the prosecution that the complainant felt insulted and then, returned to her house and apprised about the occurrence to her husband. Further, she along with Sukhdev Singh, son of Karnail Singh, Gurjant Singh, Buta Singh and Kaku Singh had gone to the school to plead aforesaid teachers to admit her child. Again, Madam Sneh Lata and Master Gurmeet Singh, in the presence of the aforesaid persons, abused the complainant in the terms "Churhiyan Nu Parhan Nahin Dena". Further, it is claim of the prosecution that the complainant and her companions had gone to the D.E.O to report about taking place of the occurrence, but they were not listened and then, the complaint Ex.CW1/A was filed. Complainant Rani Kaur, while, in the witness box as PW1, has reiterated the entire version, as stated in the complaint Ex. CW1/A. She has also reproduced the insulting language used by the accused persons, qua her caste. Further even, Gurjant Singh, husband of the complainant, who had gone to the School of his son, while, in the witness box as PW2, as well as PW4 Sukhdev Singh have deposed about causing of the occurrence by the accused persons and also deposed about the complainant, to have been insulted, in the name of her caste by the accused persons.

12. So far as the complainant, belonging to Scheduled Caste is concerned, it is pertinent to mention that only photostat copies of the Scheduled Caste certificates have come on the record, which are Mark A and Mark B. The originals of the same have not seen the light of the day. But any how, even if, in the light of the clear and specific

testimonies of the complainant and her husband, it is assumed that the complainant belongs to Mazbi Sikh category, even then, it is pertinent to mention that no where, it is mention about the caste of the accused persons. Also further, it is now, required to be seen about any such insult, having been made by the accused, regarding the complainant, to be belonging to Scheduled Caste and humiliated her, in public view. As already reproduced aforesaid, the complainant and her witnesses, in their examination-in-chief; have deposed in a parrot like manner vis-a-vis contents of the complaint. However, the version, so put forth, falls to the ground, like a house of cards, when we go through their cross-examination. One thing becomes very certain from the cross-examination of the complainant, that the husband of the complainant had earlier, filed complaints under SC/ST Act against various persons, in which, the complainant herself had appeared as an eye witness. She admitted, to be knowing Atma Singh and Karam Singh, residents of Village Chaina. She further admitted, to be correct that her husband had filed a complaint under SC/ST Act against aforesaid Atma Singh and Karam Singh and she had appeared as an eye witness, in the same. She also admitted, to be correct that Atma Singh and Karam Singh were acquitted by Shri M.S. Viridi, the then learned Additional Sessions Judge, Faridkot about 6-7 years ago. Likewise, she further admitted, to be knowing Rattan Singla and Pirthi Singla of Jaitu. She also further admitted, to be correct that her husband Gurjant Singh had filed a complaint against Rattan Singla and Pirthi Singla under SC/ST Act and she was

an eye witness in the same. She also admitted, to be correct that against aforesaid Rattan Singla and Pirthi Singla, they had filed a case in the Consumer Court, which was dismissed about 3-4 years ago. She also further admitted, to be correct that regarding the occurrence, which forms basis of present case, D.E.O had conducted an enquiry, in which, her statement and even, the statement of Gurjant Singh were recorded. She also admitted, to be correct that SDM, Jaitu had also conducted an enquiry, in which, their statements were recorded. She also admitted, to be correct that no action was taken by the aforesaid officers against Sneh Lata and Gurmeet Singh. She also further stated that the present complaint was filed, after two days of the taking place of the occurrence in question and this version is contrary to the factual position, as evident from the material on the record. The occurrence had taken place in April, 2008, whereas, the complaint in question had been filed on 10.1.2009. Also further, it is pertinent to mention that she has also admitted that in the application Ex. DB, which was filed, before the Deputy Commissioner, Faridkot, there is no mention of the name of Gurmeet Singh accused. Further more, it is pertinent to mention that she admitted, to be correct that the school authorities had written to the D.E.O, regarding her son to appraise, whether he is capable of studying in the school or not. Also further, she had admitted, to be correct that she had not mentioned word "Churhe" in the application Ex. DC. Further more, it is pertinent to mention that Gurjant Singh, husband of the complainant, while in the witness box as PW2, even had stated that the accused had refused to admit

their son Lovejot Singh, as he is a differently, disabled person and is not fit for studies in the school. Though, he had stated about insulting words, to have been uttered by the accused against their caste, but however, he has made an exaggerated effort and gone a step further; when he stated that accused Gurmeet Singh had given a leg blow to his wife, which is not there on the record. Likewise, he has also made an improvement and stated about, having gone to the school to collect school leaving certificate of their son, few days, after the occurrence in question, which is not so mentioned in the complaint. Also, in the complaint, there is no mention of approaching SDM, Jaitu, regarding the occurrence in question, as deposed by the said witness. Now, coming to the cross-examination of the said witness, it is pertinent to mention that he had admitted about, having filed one complaint under SC/ST Act against some persons of village Chaina and he also admitted about the complaint, having been filed against Rattan Singla and Vicky Singla of Jaitu. This witness also stated that he cannot tell, how many days after the occurrence, present complaint was filed. PW4 Sukhdev Singh also simply stated that Master Gurmeet Singh had stated that if, the wards of "Churhe" are given admission in the school, then, who will arrange fodder for them and besides the same, he did not state about the role of the other accused. However, this witness, in cross-examination, had stated that the occurrence had taken place, in the month of August, 2008, but he does not remember the date of the same. From the cross-examination of the aforesaid witnesses, it is evident that they themselves are not sure about taking place

of the occurrence and the presence of various persons, as claimed as well as the role attributed to the accused persons. In fact, it is pertinent to mention that the complainant, at first instance, had also filed an application, before' the Deputy Commissioner, Faridkot, which has been proved as Ex. DB. Therein, there is mention only of the role of 'Sunita' and no mention of 'Sneh Lata', as such, has been made. Even, no role, as such, has been attributed to accused Gurmeet Singh, in the same. This application is dated 21.4.2008. Even, another application filed, before the Director, Education Board(Primary), Punjab, Chandigarh has been proved as Ex. DC. Therein also, no role has been attributed to Gurmeet Singh about use of insulting words, though his presence is stated, to be there and he had also expressed that admission cannot be given to the child. In both the said applications, there is no detail of insulting words, as claimed, to have been used by the accused. Also further, it is pertinent to mention that in Ex. DW 1/A, the matter was enquired into and it was concluded that no such occurrence had taken place and it was only on account of the son of the complainant, to be a differently disabled person for further studies, when admission was not given, that such a step of so called occurrence, having taken place, was taken. Even, Baljit Grover had conducted enquiry, regarding the son of the complainant, to be not a normal person and to be admitted in Red Cross Special School, Faridkot. Thus, from the material on the record, it is evident that the reason for declining admission to the son of the complainant in the school, was not the caste of the complainant, but in fact, it was condition

of the son of the complainant, on account of which, he could not be admitted in the school. Only to wreck vengeance, present complaint has been filed. In fact, no such occurrence had taken place. It was only, on account of bitterness coming out, due to admission, having not been given to the son of the complainant that the present complaint has been filed. Moreover, the version coming forth, at the initial stage, in the form of applications, filed before various authorities, is different from the contents of the complaint. In complaint Ex. CW 1/A, the complainant has improved upon and stated about insulting words, having been used by the accused, qua her caste, which also do not stand established. Thus, in the light of the same, commission of offence under section 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as under section 323 read with section 34 IPC, as such, does not stand established. Definitely, doubt is raised about truthfulness of the prosecution version. In the light of same, the prosecution has failed to establish the guilt of the accused, beyond shadow of reasonable doubt.....”

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 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 being devoid of merit.

March 09, 2015
vkd

[Paramjeet Singh]
Judge