

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2013-SB-2003 (O&M)
Date of Decision: 29.07.2015

Tilak Raj

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

Present: Mr. D.S. Pheruman, Advocate
for the appellant.

Mr. Deep Singh, AAG, Punjab.

Mr. Mohan Singla, Advocate
for the complainant.

ANITA CHAUDHRY, J.

1. For the sake of brevity, few facts essential for disposal of the appeal, may now be narrated. Pargat Singh filed a complaint before the Special Judge, Amritsar containing the allegations that he was a Mazbi by caste while the accused Tilak Raj and Ram Lubhaya were Aroras. Tilak Raj accused was working as an LIC Agent whereas Ram Lubhaya, the second accused (since acquitted) was running a grocery shop in village Sidhwa. Complainant's brother Sawinder Singh had got himself insured through Tilak Raj. Sawinder Singh died and the other brother Karaj Singh and his sister-in-law went to the accused to inquire about their claim. The allegations are that accused called them names in

the name of caste. A criminal complaint was filed in the Court. The Panchayat got the matter settled and Karaj Singh withdrew his complaint.

3. On 30.09.2001, the complainant along with his brother Balwinder Singh was going to the shop of the accused to inquire about the claim. The allegations are that both the accused in one voice again abused them "Kuty Chudeon" and called out that they would not do their work and they had earlier filed a complaint and they could not cause them any harm and they could do what they liked. Gajjan Singh, a bystander had witnessed the occurrence. The accused, thereafter, sped away on their motorcycle. The complainant approached the police but they did not take any action and thereafter, the complaint was filed.

4. Preliminary evidence was recorded and both the accused were summoned under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (here-in-after referred to as the Act).

5. Charge was framed to which the accused pleaded not guilty.

6. The prosecution examined the complainant i.e. Pargat Singh and his brother Balwinder Singh. The only independent witness was give up.

7. The accused, in their defence pleaded false implication and tendered documents Mark-A and Mark-B.

8. The Special Judge, Amritsar accepted the statements and convicted Tilak Raj of insulting and humiliating the

complainant within public view and recorded his conviction while Ram Lubhaya was acquitted after giving him the benefit of doubt. Tilak Raj was sentenced to undergo rigorous imprisonment for a period of 1 year along with a fine of Rs.500/- for commission of offence under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of one month.

9. Aggrieved by the verdict, this appeal has been filed.

10. Learned counsel for the appellant submits that different castes exist and Balmiki/Chura/Bhangi find place at serial no.2 with respect to State of Punjab while Mazbi is a separate caste which finds reference at serial no.23 of the list attached with the Constitution of India. It was urged that the complainant had pleaded that he was a Mazabi Sikh but failed to place any document. It was urged that there was no evidence regarding his caste and the words said to have been uttered was of a different caste and not that of the complainant. It was urged that an offence can be committed if there is an intentional insult and the complainant does not mention that the accused intimidated or threatened the complainant or had intentionally insulted him in public view. It was urged that earlier a complaint had been filed but it was withdrawn without there being any evidence and the complainant was annoyed as they had failed to get the claim

from life insurance. It was urged that the policy in favour of Sawinder Singh had lapsed in September, 2000 and it was a policy of Rs.30,000/- and Sawinder Singh had died in June, 2001 and there was a difficulty as the premium had not been paid and therefore, they were exerting pressure upon the agent and he was finding it difficult to oblige. It was urged that two documents Mark-A and Mark-B have been placed on record to show that the bank had been asking the family to submit papers. It was urged that the complaint did not fall under the S.C. & S.T. Act.

11. The submission on the other hand was that at no point any objection had been taken by the accused that the complainant was not a Mazbi and therefore, the appellant cannot raise this ground. It was urged that earlier also the appellant and his brother had humiliated and intentionally insulted the complainant and a complaint was filed but with the indulgence of the Panchayat, a compromise was effected but they resorted to the same act. It was urged that this fact is not disputed and the accused had placed documents Mark-A and Mark-B on record. It was urged that the incident occurred in full public view and Gajjan Singh was a witness but he was given up as he had been won over by the accused.

12. There is no dispute that Balmiki/Chura/Bhangi is a caste which finds mentioned at serial no.2 of the list for the State of Punjab whereas 'Mazbi' find place at serial no.23 of the list.

13. The case set up by the petitioner in brief in so far as is relevant was that the complainant's brother had got an insurance policy from LIC Agent, Tilak Raj. The complainant's brother died and the complainant's brother Karaj Singh contacted the agent to inquire about the claim, the accused called the names in the name of caste and abused them. Karaj Singh filed a complaint against the accused but a compromise was effected and the complaint was withdrawn after a month. The case of the complainant further was that the accused assured the complainant that they would get the claim. The complainant along with his other brother Sawinder were proceeding towards the shop of the accused to inquire about the progress of the claim case. The accused were coming on a motorcycle from the opposite direction. The complainant stopped them on the way and inquired about the insurance claim on which both the accused in one voice insulted and humiliated them in the name of the caste and said that the work would not be done. Gajjan Singh, a bystander was a witness to the incident. The allegations are that the accused then fled from the spot on their motorcycles. The police was informed but no action was taken and thereafter, a complaint was filed after two months.

14. The complainant, in his statement before the Court levelled a variety of allegations and narrated the sequence in detail as contained in the complaint. In the cross-examination, the facts which came out were that Sawinder Singh, brother of the complainant had died in June,

2001. There was a dispute also with respect to his date of death. Though, that is not relevant, a suggestion was made that the death was on account of consumption of some poisonous substance. It was admitted, however, that autopsy was not conducted. The complainant side also did not inform the LIC Officers. It was admitted that the policy had elapsed the previous year i.e. in September, 2000. In the cross-examination, the complainant stated that Gajjan Singh was also accompanying them to inquire about the LIC claim. He stated that 3 – 4 other customers were present at the time of occurrence but he could not give their names. He stated that the matter was not reported to the police or to the higher officers. No resolution was passed in the Panchayat. He admitted that no written complaint was given to the Panchayat. He stated that he orally complained to the Panchayat.

15. Balwinder Singh PW2, brother of the complainant supported the complainant's version. He admitted that there was a dispute regarding the insurance claim. He denied that his brother had committed suicide by consuming poisonous substance. He, however, admitted that no postmortem examination was got conducted. He admitted that Harjinder Kaur, widow of his brother had married Karaj Singh, their brother. In the cross-examination, he stated that they had remained at the shop of the accused for about 20 – 25 minutes and 2 – 3 persons also had come there but he could not tell their names.

16. A reading of the two statements brings out a contradiction with respect to the place of incident. The complainant had stated that the occurrence had taken place on the road whereas Balwinder Singh PW-2 was categorical that the incident took place at the shop of Ram Lubhaya. He had stated that they had stayed at the shop of the accused for about 20 – 25 minutes.

17. The basic ingredient of the offence under Section 3(1)(x) are that there must be an intentional insult, intimidation with intention to insult a member of the SC and ST by a known SC and ST member, secondly the insult must have been done in any place within the public view and lastly the intention to humiliate makes it abundantly clear that *mens rea* is an essential ingredient.

18. It has also to be established that the accused had the knowledge that the victim is an SC and ST and that the offence was committed for that reason. Merely calling a person by caste does not attract the provisions of the Act. The complaint must contain specific accusations alleged against each of the accused. Omnibus statement that both the accused uttered the humiliating word is not enough. Since, these are penal provisions though it has to be given a strict introduction and if any of the ingredient is found lacking, it would not constitute the offence. Reference can be made to **Satya Narain V. State of Rajasthan, 1991(1) RLW 573, Chandra Poojari V. State of Karnataka, 1998(3) RCR (Cri.) 373 (Kar.): 1998 Cri. L.J. 53, Haridas V. State of**

Maharashtra, 1997 CrI. L.J. 122, Ramesh Prasad Bhanja V. State of Orissa, 1996 CrI. L.J. 2743, Munir Khan V. State of Rajasthan, 1991(2) RLW 309, Pankaj D.Suthar V. State of Gujarat, 1992 (1) Guj. Law Reporter 405 and Karan Singh V. State of M.P. 1992 CrI.L.J. 3054.

Section 3 (1) (x) o the Act reads as under:-

“ 3. Punishments for offences or atrocities.

(1) whoever, not being a member of a Scheduled Caste or a Scheduled Tribe.

i) to (ix) xxx xxx

(x) intentionally insults or intimidates with intent to humiliate a member of a Schedule Castes and Scheduled Tribe in any place within public view.”;

19. Thus, for the aforesaid ingredients to be satisfied, allegations in the complaint must show that a person was called by his caste in order to humiliate, insult and intimidate as also that the said person must have knowledge that he belongs to Schedule Castes and Scheduled Tribe.

20. Now coming back to the present case, there is no iota of suggestion that the accused knew that the complainant belong to Mazbi caste. Not a word had been stated by the complainant that the words were intentionally used to humiliate or insult him on account of his belonging to the particular caste. There is no evidence either that the incident occurred at a place within the public view. It appears

that the incident had not occurred at a place within the public view. It appears that there was a dispute with respect to the policy. The claim was not to be paid by the Agent. It is admitted that the policy had not been renewed. There was no postmortem and the complainant side were insisting for the amount and the accused was not able to help and it led to animosity between the two. The complaint is silent that the accused had intimidated or threatened the complainant or that the incident had occurred in the full public view. No witness from the public came forward to support the complainant.

21. In view of the above, the judgment of the Court below has to be set aside. The accused is acquitted of the charges.

The appeal is allowed.

(ANITA CHAUDHRY)
JUDGE

29.07.2015
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