

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal S-2133-SB of 2003
Date of Decision : March 02, 2016

Rattan Singh

.....Appellant

VERSUS

Ajit Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Sartaz Singh Gill, Advocate
for the appellant.

None for the respondent.

T.P.S. MANN, J.

Convict Rattan Singh has filed the present appeal for challenging the judgment and order dated 5.11.2003 passed by learned Special Judge, Amrtisar whereby he stands convicted under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as '**the Act**') and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 500/- and in default of payment of fine, to undergo further rigorous imprisonment for one month.

The case of the prosecution, in nutshell, is that

complainant-Ajit Singh, respondent herein claimed himself to be the Mazhbi Sikh (Schedule Caste) whereas the appellant was a Jat Sikh. By misrepresentation and playing fraud with the complainant, the appellant enticed the complainant and grabbed Rs. 20,000/- from him with the promise to get his son recruited in the Punjab Police but the appellant failed to fulfill his commitment. Despite the complainant demanding returning of his money time and again, the appellant failed to do so. On 20.4.2000 at about 2.00 p.m. when the complainant after paying obeisance at Gurdwara Baba Shahidan, Amritsar was returning to his house and reached near Vishkarma Nagar locality, the appellant met the complainant. When the latter again demanded the amount, the former became infuriated and lost his temper besides using derogatory remarks regarding the caste of the complainant. On hearing the noise, people gathered there including Charanjit Singh and Virsa Singh who intervened and requested the appellant not to utter derogatory and objectionable remarks but the appellant again lost his temper and reiterated the remarks. The complainant and others requested the appellant not to humiliate the complainant in the open public but the appellant was adamant in his behaviour. After that he left the place. The matter was reported to the police but no action was taken. Accordingly, the complainant filed a private criminal complaint.

On the basis of the preliminary evidence, the appellant was summoned the appellant to face trial under Section 3 of the Act.

Upon appearance, the appellant was charged for the aforementioned offence as well as under Section 506 IPC to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Ajit Singh as PW1, Charanjit Singh as PW2 and Virsa Singh as PW3.

When examined under Section 313 Cr.P.C., the appellant denied all the allegations of the prosecution and stated that he had an old enmity with the complainant. The complainant had filed civil suit against him and in order to pressurize him in effecting compromise, he had filed the present complaint against him.

In support of his defence, the appellant examined DW1 HC Milkha Singh.

After hearing learned counsel for the parties and on going through the evidence, learned Special Judge, Amritsar while acquitting the appellant of the charge under Section 506 IPC, convicted and sentenced him under Section 3(1)(x) of the Act, as mentioned above.

Despite due service, respondent No.2 has not put in appearance nor there is any representation on his behalf.

Having heard learned counsel for the appellant and on going through the record, this Court finds that there were various contradictions in the testimonies of the three prosecution witnesses, namely, PW1 complainant Ajit Singh, PW2 Charanjit Singh and PW3 Virsa Singh. The contradictions in the testimonies of the witnesses and failure on their part to corroborate each other destroy the very foundation upon which the case of the prosecution stands. In order to establish the malafide intention of the complainant to harass and humiliate the appellant, it may be noticed that the complainant had purchased 19 marlas of land from the brother of the appellant. Later on, the complainant filed suit for possession of those 19 marlas against the appellant, as according to him, the appellant had taken forcible possession of the same. Thus, the present complaint was nothing but a mere counter blast so as to force the appellant to strike a compromise with him in the pending civil litigation.

There is no material on the file from which it could be indicated that the complainant had given Rs. 20,000/- to the appellant in order to get his son recruited in the Punjab Police. In his cross-examination, PW1 Ajit Singh deposed that he did not remember the exact date and month when he had paid

Rs.20,000/- to the appellant. He further stated that the money was paid nine years ago but he did not inform any one about the same. Admittedly, no witness has stepped into the witness box or any document brought on record from which it could be indicated that the complainant had paid Rs. 20,000/- to the appellant.

As regards the alleged occurrence which had taken place when the complainant was said to be returning after paying obeisance at the Gurdwara, the complainant has deposed that he had never seen Vishkarma Nagar locality through which he was passing for going to his house. It may also be noticed that in his cross-examination, PW1 Ajit Singh deposed that after the occurrence, he alongwith Charanjit Singh and Virsa Singh went to the Police Station and from there they went to the Court to institute a complaint. However, PW2 Charanjit Singh, in his cross-examination stated that PW3 Virsa Singh did not accompany them to the Court. Similarly, PW3 testified that after the occurrence, PW1 Ajit Singh left for his house and, therefore, there was no question of his accompanying PW1 Ajit Singh to the Police Station. Though PW1 Ajit Singh in his cross-examination stated that he did not know PW3 Virsa Singh yet Virsa Singh during his cross-examination stated that PW1 Ajit Singh was known to him since his brother-in-law was his neighbour and he used to frequently visit him.

As regards making of statements before the Ilqa Magistrate by way of preliminary evidence, it may be noticed that PW1 Ajit Singh testified about his statement being recorded on the day the complaint was instituted whereas statements of PW2 Charanjit Singh and PW3 Virsa Singh were recorded later on. On the other hand, PW2 Charanjit Singh admitted that his statement was recorded on the same day. At the same time, PW3 Virsa Singh deposed that his statement was recorded after 1½ months of the filing of the complaint.

As regards abusing of the complainant in the name of his caste, PW3 Virsa Singh testified during his examination-in-chief that the appellant had abused the complainant in his presence but in cross-examination he stated that he never heard the appellant abusing. Similarly, PW2 Charanjit Singh stated that the appellant had abused him in the name of his caste and said nothing else whereas PW3 Virsa Singh stated that the appellant had also abused the complainant's daughter.

It has come in the evidence that smuggling case stood registered against PW2 Charanjit Singh. In his cross-examination, PW1 Ajit Singh stated that he did not stand surety for PW2 Charanjit Singh before filing the present complaint. However, he stood surety after filing of the complaint. On the other hand, PW2 Charanjit Singh stated in his cross-examination

that PW1 Ajit Singh never stood surety for him.

On account of the allegations that he had been insulted and humiliated by the appellant in public view, complainant Ajit Singh had filed suit under Order 33 Rule 1 CPC for recovery of Rs.2,00,000/- as damages and compensation. The said suit was dismissed on merits by the trial Court and even the first appeal filed by the complainant came to be dismissed with costs.

In view of the above, it would not be safe to sustain the conviction and sentence of the appellant under Section 3(1) (x) of the Act.

Accordingly, the appeal is accepted, impugned judgment of conviction and sentence passed by the trial Court is set-aside and the appellant is acquitted of the charge under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

March 02, 2016
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(T.P.S. MANN)
JUDGE