

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 3rd March, 2016

+ **CRL.A. 686/2012**

KUSUM LATA

..... Appellant

Through Ms Manika Tripathy Pandey and Mr
Ashutosh Kaushik, Adv. with appellant in
person

versus

STATE & ORS.

..... Respondents

Through Mr.Hirein Sharma, APP for the State.
Mr K.S. Goswami, Adv. for R2 and 3
alongwith R2 and 3 in person

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This appeal under Section 372 of Code of Criminal Procedure has been filed by the appellant / complainant feeling aggrieved by the judgment and order dated 28.11.2011 passed by learned Additional Sessions Judge in Sessions Case No.10/2009 in FIR No.55/2009 under Sections 323/452/506/34 IPC Police Station Harsh Vihar, Delhi and 3(1)(x)(xi)(xv) of Scheduled Caste /Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') whereby the respondent nos. 2 and 3 were acquitted.

2. The appellant / complainant filed a complaint under Section 200 read with Section 156(3) Cr.PC in the Court of Additional Chief Metropolitan, Karkardooma Courts, Delhi against Soraj Singh, Smt. Rama Sharma and Shikha for offence punishable under Sections 323/452/506/34 IPC Police Station Harsh Vihar, Delhi and 3(1)(x)(xi)(xv) of the Act. Vide order dated 28.03.2009, under the directions of the ACMM, SHO Police Station Harsh Vihar, Delhi registered an FIR under the provisions of the Act. After completing investigation, charge-sheet was submitted initially against Soraj Singh. Since accused Rama Sharma was evading her arrest as such after she surrendered in the Court, supplementary charge-sheet was filed against her. Accused Shikha was found to be a juvenile as such charge-sheet was filed in Juvenile Justice Board against her.

3. In order to substantiate its case, prosecution in all examined six witnesses. All the incriminating evidence was put to the accused persons wherein they denied the allegations made against them. They examined eight witnesses in support of their defence. Vide impugned judgment, accused persons were acquitted of the offence alleged against them by granting them benefit of doubt on the ground that only an altercation took place between the complainant and the accused persons on the issue of throwing garbage by the complainant and no caste related remarks were uttered by the accused persons. Moreover, in order to attract the provisions of the Act, it was necessary that caste related remarks must have been passed within public view which was missing in the instant case.

4. Feeling aggrieved, the present appeal has been preferred by the complainant.

5. Assailing the findings of learned Additional Sessions Judge, learned counsel for the appellant/complainant submitted that the complainant had succeeded in establishing her case not only by her own deposition but the same was duly corroborated by her husband Mr Surender Singh (PW2) and PW4 Smt. Rajesh Lata (PW4). The Trial Court fell in error in ignoring their testimony and acquitting the accused persons. The impugned judgment deserves to be set aside and the accused persons are liable to be convicted for the offences alleged against them.

6. Per contra, learned counsel for the respondents nos.2 and 3/ accused referred to the limitations on the powers of this Court while entertaining an appeal against acquittal by submitting that the Court is to interfere only when there are compelling and substantial reasons for doing so. The Trial Court has minutely considered the testimony of all the prosecution witnesses and also took into consideration the defence raised by the accused and then acquitted the respondent nos. 2 and 3/ accused which does not suffer from any infirmity as such the appeal is meritless and is liable to be dismissed.

7. I have given my considered thoughts to the respective submissions of learned counsel for the parties and have carefully perused the record.

8. This is an appeal against an acquittal order and the law regarding appeal against acquittal is by now well-settled. In ***Muralidhar @ Gidda and Another v. State of Karnataka***, (2014) 5 SCC 730, Honble Supreme Court referred to the earlier decisions in para 10, 11, 12 and 13 which are reproduced as under:-

Lord Russel in Sheo Swarup v. King Emperor¹, 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 Lord Russell has been followed over the years.

11. *As early as in 1952, this Court in Surajpal Singh v. State² 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 UP, AIR 1954 SC 637, Atley v. State of UP, 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 UP, (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 SCC 529, Ram Kumar v. State of Haryana, 1995 Suppl. (1) SCC 248, Madan Lal v. State of J & K, (1997) 7 SCC 677, Sambasivan v. State of Kerala,*

¹ AIR 1934 Privy Council 227

² AIR 1952 SC 52

(1998) 5 SCC 412, Bhagwan Singh v. State of MP, (2002) 4 SCC 85, Harijana Thirupala v. Public Prosecutor, High Court of AP, (2002) 6 SCC 470, 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. “

13. In **Ghurey Lal v. State of UP**³, the Court has culled out the principles relating to the appeals from a judgment of acquittal which are in line with what we have observed above.

9. This being the legal position, let us revert to the case in hand.

³ (2008) 10 SCC 450

10. Respondent nos. 2 and 3 were charged for offence under Section 3(1) (x) of the Act and 323/452/506/34 IPC. Section 3(1)(x) of the aforesaid Act reads as under:

"3. Punishments for offences of atrocities—

(1) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe,--

(i) to (ix). xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe, in any place within public view:

(xi to (xv) xxxxxxxxxxx

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(2) xxx xxx xxx"

11. The SC/ST Act was enacted as the laws like the Protection of Civil Rights Act, 1955 and provisions of the Indian Penal Code was found inadequate to arrest the commission of atrocities against members of Scheduled Castes and Scheduled Tribes. A special legislation to check and deter crimes committed by non-Scheduled Castes and Scheduled Tribe members thus became necessary. The statement of objects and reasons of the Act reads:

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons."

12. Keeping in view the aims and objects of the Act, let us revert to the case in hand.

13. According to the complainant the accused persons used to throw garbage in front of her house. On the date of the incident i.e. 11.01.2009, her relatives had come to her house and the main gate of the house was open. At about 3.20 pm both accused alongwith their daughter Shikha started abusing her relatives. Her husband inquired from them as to whom they were abusing and why. On this, accused persons brought

danda from their house and entered the house. Accused Rama Sharma gave brick blow on her back while accused Soraj Singh passed caste related remarks by saying “*saali chamari chamati isko aise hi peeto*”. Thereafter, the accused criminally intimidated them to leave the vicinity. Their relatives intervened. The accused persons went out from her house and public gathered there. Then accused persons again uttered various caste remarks and went back. She called the police who reached at the spot but went away without taking any action. Thereupon accused Soraj Singh again intimidated her by saying that she could not do anything against him as he had managed the police by giving bribe and that he was working in MCD and has number of *gundas* at his disposal and he can get her murdered. She sustained internal injuries and, therefore, she did not get herself medically examined. She made a complaint to police officers and an enquiry was conducted but no action was taken. Therefore, she filed a complaint. PW2 Surender Singh, husband of the complainant and PW4 Rajesh Lata, sister of the complainant, also deposed to the same effect. PW6 ACP Nirmal Kaur is the Investigating Officer of the case who deposed that she had tried to record the statement of public witnesses but none came forward to support the prosecution story. In fact, they stated that a quarrel had taken place but none stated that accused had used caste-related remarks or words against the complainant.

14. On the other hand, accused examined DW1 – Yaad Ram, DW2 – Smt. Kamlesh, DW3 – Sanjeev Tyagi, DW4 – Malti, DW5 – Dayawati, DW – 6 Smt. Sunita, DW – 7 Smt. Gayatri Devi, all neighbours of the complainant as well as accused persons. All these witnesses deposed that due to throwing of garbage on the road by the complainant an altercation took place between the complainant and the accused persons. Both sides exchanged abusive language and thereafter they went away to their houses. DW2 – Smt. Kamlesh also deposed that the complainant is a quarrelsome lady and she used to pick up quarrels with the neighbours. DW7 – Smt. Gayatri Devi deposed that there was no physical fight. All these witnesses further deposed that the police came at the spot and recorded their statements Ex.DW1/A to Ex.DW7/A. DW 8 ASI Bhupender Singh deposed that on 11.01.2009, he received various calls vide DD Nos. 9A, 14A, 16A, 18B, 22A and 26A from Smt. Kusum wife of Surender. During the enquiry, he recorded statements of aforesaid defence witnesses and concluded the enquiry by reporting that it was a trivial issue. The abuses were initiated by the complainant Kusum Lata. Nobody told him about the use of caste-related remarks. He did not find

commission of any cognizable offence under the SC/ST (PoA) Act and therefore he filed status report Ex.PW6/A.

15. Even ACP Nirmal Kaur has deposed that during the course of investigation, she tried to record the statement of public witnesses but none came forward to support the prosecution story. The public witnesses stated that a quarrel had taken place but none stated that accused had used caste related remarks or words against the complainant.

16. Under the circumstances, it becomes clear that none of the public witnesses stated before ASI Bhupender Singh, who had initially investigated the matter and recorded statement of seven witnesses of the locality nor ACP Nirmal Kaur, who subsequently investigated the matter after registration of FIR, that any caste related remarks were used by the accused persons.

17. As regards the submissions of learned counsel for the appellant that testimony of the complainant duly corroborated by PW2 Surender Singh, her husband, and PW4 Smt. Rajesh Lata, her sister, who have deposed regarding caste related remarks uttered by the accused persons could not have been ignored by the learned Trial Court, it is to be seen whether their testimony falls within the expression “public view” as contemplated under Section 3 (1) (x) of the Act.

18. The question as to what is the correct and real meaning of the expression “public view” occurring in Section 3(1) (x) of the Act came up for consideration before this Court in *Daya Bhatnagar and others v. State*, 109 (2004) DLT 915, which was a case where reference was made consequent upon the difference of opinion on the interpretation of the expression “public view” in this section while hearing the petition seeking quashing of the First Information Report under Section 3(1) (x) of the Act against them. In that case, petitioner and the complainant were neighbours and were residing in the same complex at Vikas Puri, Delhi. Some disputes arose amongst them which resulted in registration of the two cross cases – one under Section 3(1) (x) of the Act and other under Section 354/34 IPC.

19. Hon'ble Justice V.S. Aggarwal (as His Lordship then was) after exhaustively dealing with facts and the law referred to the meaning of the words "public" and "view" as explained in *Corpus Jurisdiction Secumdatum*, Black's Law Dictionary (6th edition) page 1568, Stroud's Judicial Dictionary of Words and Phrases (6th Edition Volume 3)

observed that the expression "public view" does not necessarily mean that large number of persons should be present to constitute public; and that even when one or two members of the public hear and view the offending words being used, offence would be made out, provided other ingredients of section are satisfied. It was held:

".....In other words, it is patent that, therefore, to bring a matter within the scope and ambit of expression "public view" firstly the words must be uttered at a place which is within public view and it is unnecessary that the number of public persons herein should be more than one. Even if one or two members of the public hear and view, as the case may be, the same and the other ingredients of section are satisfied, the case would fall within the ambit of said provision."

20. However, Hon'ble Justice B.A. Khan while interpreting the expression "public view" in Section 3(1)(x) of the Act went a step further. Learned Judge after referring to the principles governing interpretation of statutes as laid down by the Supreme Court in *RMD Chamarbaugwalla v. Union of India* [1957] 1 SCR 930 and *Commissioner of Income-tax, Orissa v. N.C. Budharaja and Company and Anr.* AIR 1993 SC 2529 held that the report of Babu Lal is liable to be quashed as persons present with Babu Lal were his associates, friends, participating members and were not independent persons so as to constitute "public" within the meaning of Section 3(1)(x) of the Act.

21. In view of above difference of opinion, a reference was made by the Hon'ble Chief Justice framing two questions, one of which is relevant for the present controversy and the same is as under:

- (i) What is the correct and real meaning of the expression "public view" accrued in Section 3(1)(x) of SC/ST (PoA) Act, 1989; and whether it would include the view of the accused in a counter FIR.

While answering, it was observed as under:

"10. What is the true meaning and scope of the expression "public view" used in Section 3(i)(x) of the Act? Is it necessary that the derogatory or humiliating words to constitute an offence, should be uttered in the presence of the independent persons? Or would it be sufficient, if these are used, in the presence of any one or two members of the public, whether they are relatives, friends,

associates or otherwise connected with the complainant? These are questions which require determination.

15. Basic ingredients for the offence under Clause (x) of Sub-section (1) of Section 3 of the Act, revealed through the bare reading of this section are as follows: (a) there should be intentional insult or intimidation by a person, who is not a member of SC or ST; (b) the insult must be with an intent to humiliate the member of the SC or ST. As the intent to humiliate is necessary, it follows that the accused must have knowledge or awareness that the victim belongs to the SC or ST. This can be inferred even from long association; and (c) the incident must occur in any place within the public view.

16. The difficulty only is as of what is the true and correct import of the expression "public view" which is used by the Legislature in contra distinction to the expression "private view". The 'view' here means sight or vision and hearing. Only meaning of the word "public" is left to be found in the context in which it is used.

17. The expression "public" is a poli-morphus word, which assumes different colours in different context. Judges and jurists have so far not found it possible to work out a complete logical definition of the words "public" universally applicable to all situations. Corpus Jurisdiction (page 844) defines "public" as under:

"PUBLIC AS A NOUN does not have a fixed or definite meaning; it is a convertible terms.

In one sense, the "public" is everybody; and accordingly "public" has been defined or employed as meaning the body of the people at large; the community at large, without reference to the geographical limits of any corporation like a city, town, or country; the people; the whole body politic; the whole body politic, or all the citizens of the state.

In another sense the word does not mean all the people, or most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few. Accordingly, it has been defined or employed as meaning the inhabitants of a particular place; all the inhabitants of a particular place, the people of the neighborhood.

'B. As an adjective--1. In General. It is said to be very difficult, if not impossibly to frame a definition for the word "public" that is simpler or clearer than the word itself; a convertible term, used variously, depending for its meaning upon the subjects to which it is applied. It has two proper meanings."

18. The SC/ST Act was enacted as the laws like the Protection of Civil Rights Act, 1955 and provisions of the Indian Penal Code was found inadequate to arrest the commission of atrocities against members of Scheduled Castes and Scheduled Tribes. A special legislation to check and deter crimes committed by non-Scheduled Castes and Scheduled Tribe members thus became necessary. The statement of objects and reasons of the Act reads:

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on the mass, killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes."

19. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (i) to (xv) of Section 3(i) of the Act enumerate various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, Sub-clause (x) is the only clause where even offending "utterances" have been made punishable. The Legislature required 'intention' as an essential ingredient for the offence of Insult, 'intimidation' and

"humiliation' of a member of the Scheduled Casts or Scheduled Tribe in any place within 'public view'. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

"I accordingly hold that expression within 'public view' occurring in Section 3(i)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used."

20. In the light of the above discussion, one part of the first question under reference, namely, "What is the correct and real meaning of expression "public view" occurring in Section 3(i)(x) of SC/ST (POA) Act, 1989," stands answered."

22. In *Swarn Singh & Ors. v. State*, 2008 (4) RCR (Crl.) 74 (SC) also it was held that for a public view some members of the public should be there and they should not be the relatives and friends of the complainant. In view of the same, the expression "public view" has to be interpreted to mean that public person present should be independent and impartial and not interested in any of the parties. It goes without saying that PW2 Surender Singh and PW3 Rajesh Lata are husband and sister of the complainant and, therefore, they cannot be termed to be independent and impartial. Moreover, according to Smt. Rajesh Lata she had come to the house of the complainant alongwith a friend of her father. The friend of father of the witnesses would have been an independent

witness but he was not examined by the prosecution. The independent witnesses of the locality have not supported the case of prosecution and when examined by ASI Bhupender Singh during the course of his investigation, all of them stated that although a quarrel had taken place between the complainant and the accused but no caste related remarks or words were used against the complainant. That being so, learned Additional Sessions Judge rightly came to the conclusion that the prosecution had failed to prove that offence under Section 3(i) (x) of the Act was made out and the accused were entitled to benefit of doubt.

23. For the same reason, although the complainant deposed that accused Rama Sharma gave brick blow on her back, however, no medical evidence has been proved to substantiate this allegation. Although she deposed that she was taken to GTB Hospital and after medical examination she was sent back, she had sustained injuries and her clothes were smeared with blood but neither the blood stained clothes were seized nor any MLC has been placed on record or proved.

24. Similarly, PW4 – Smt. Rajesh Lata deposed that accused Soraj Singh gave danda blow on the back side of her brother-in-law and the second danda blow was prevented by her brother-in-law. However, this was a material improvement in her statement which was not stated to the police. Moreover, there is nothing on record to show that brother-in-law of the witness sustained any injuries or was medically examined.

25. The result of the aforesaid discussion is that the impugned judgment does not suffer from any infirmity or perversity which warrants interference.

The appeal is accordingly dismissed.

Trial Court record be sent back forthwith alongwith a copy of this judgment.

(SUNITA GUPTA)
JUDGE

MARCH 03, 2016/rd