

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-1400-SB-2004

Date of decision: 25.05.2017

Jarnail Singh and others

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Daldeep Singh, Advocate for the appellants.

Mr. TN Sarup, Addl. A.G., Punjab.

RAMENDRA JAIN, J.

1. Appellants-Jarnail Singh, Amrik Singh and Baljit Singh have preferred the instant appeal against the judgment of conviction and order of sentence dated 09.07.2004, passed by the learned Special Judge, Mansa, in a complaint case under Sections 352 and 504 read with Section 34 of the Indian Penal Code (for short 'IPC') and Sections 3(x) and 3 (xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the 1989 Act'), whereby the appellants were convicted under Sections 353 and 504 read with Section 34 IPC and Section 3 of the 1989 Act and sentenced as under:-

1.	<u>Jarnail Singh</u>	
	Under Section 3 of the 1989 Act	To undergo rigorous imprisonment for the period of one year and to pay a fine of ₹ 200/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 10 days.
	Under Section 352/34 IPC	To undergo rigorous imprisonment for a period of three months.
	Under Section 504/34 IPC	To undergo rigorous imprisonment for a period of three months.

2.	<u>Amrik Singh</u>	
	Under Section 3 of the 1989 Act	To undergo rigorous imprisonment for the period of one year and to pay a fine of ₹ 200/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 10 days.
	Under Section 352 IPC	To undergo rigorous imprisonment for a period of three months.
	Under Section 504 IPC	To undergo rigorous imprisonment for a period of three months.
3.	<u>Baljit Singh</u>	
	Under Section 3 of the 1989 Act	To undergo rigorous imprisonment for the period of one year and to pay a fine of ₹ 200/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 10 days.
	Under Section 352 IPC	To undergo rigorous imprisonment for a period of three months.
	Under Section 504 IPC	To undergo rigorous imprisonment for a period of three months.

All the substantive sentences were ordered to run concurrently.

2. Briefly stated, complainant-Gurcharan Singh was the Nambardar of village Deluana. On 24.07.1999, Tehsildar Mansa, summoned him for inspection of fields, for correction of Girdawari in a case, titled Bhura Singh etc. Vs. Jarnail Singh etc. On one hand Bhura Singh and Kaka Singh sons of Inder Singh residents of village Deluana and others, asserting their possession over the disputed fields falling on the way to Lakhmirwala 3 kms. away from village Deluana whereas Jarnail Singh and his sons, namely, Amrik Singh and Baljit Singh (appellants herein) were asserting their possession over it. The complainant suffered a statement in favour of Kaka Singh and others before Tehsildar Mansa, qua the possession of disputed fields which became the reason for annoyance of the appellants. Hence, around 6.30 P.M., after the return of Tehsildar from the spot, appellant No. 1-Jarnail Singh asked the complainant as to how he

dared to appear as a witness being Nambardar despite the fact that his parents had been carrying night-soil, dung, garbage and carcass of their forefathers. Jarnail Singh-appellant No. 1 also threatened to see him by calling him '*Kuta Chuhra*'. Thereafter, both the sons of Jarnail Singh, namely, Amrik Singh and Baljit Singh (appellants No. 2 and 3) tried to assault him with their sticks but he managed his escape by boarding the tractor of Mithu Singh son of Nand Singh resident of village Akkanwali. Bhura Singh, Nand Singh and Kaka Singh sons of Inder Singh resident of village Kot Dharmu, Kashmira Singh, Ex-Sarpanch of village Deluana, Chet Singh and Gurjant Singh sons of Jang Singh residents of village Kot Dharmu, being present at the spot had witnessed the whole occurrence. In the above manner, the appellants lowered the image of the complainant in the estimation of public by using filthy language about his caste. The complainant approached the police of Police Station Sadar, Mansa to report the matter but it did not take any action. Hence, he was compelled to file a private complainant in the Court.

3. In preliminary evidence, Gurcharan Singh-complainant appeared as CW-1 followed by Kashmir Singh, CW-2.

4. On finding a *prima facie* case on the basis of preliminary evidence, the appellants were summoned under Section 504 IPC and Section 3 of the 1989 Act.

5. Since, the case was triable by the Sessions Court, therefore, the same was committed to the Sessions Court. Consequently, the learned Special Judge, Mansa, charge-sheeted the appellants under Sections 352 and 504 read with Section 34 IPC and Section 3(x) and 3(xv) of the 1989 Act, to which they pleaded not guilty and claimed trial.

6. To substantiate the charges, complainant-Gurcharan Singh appeared as PW-1 followed by Mithu Singh as PW-2.

7. On closure of complainant's evidence, statements of the appellants under Section 313 Cr.P.C., were recorded by putting the entire incriminating evidence brought on record against them to which they pleaded their innocence and false implication. They took the stand that the complainant had filed the instant complaint against them with ulterior motive in connivance with Bhura Singh, Nand Singh, Kaka Singh sons of Inder Singh residents of village Kot Dharmu; Muthu Singh son of Nand Singh resident of village Akkanwali; Chet Singh, Gulzar Singh and Ex-Sarpanch Kashmir Singh, as he is closely related to Bhura Singh, Nand Singh and Kaka Singh with whom their civil litigation was pending. In defence, the appellants have examined five witnesses, namely, DW-1 Bachan Singh, DW-2 Balwinder Singh, DW-3 Gurpiar Singh, DW-4 Surinder Pal, Kanungo and DW-5 C-II Gurtej Singh.

8. On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the learned Special Judge, Mansa, convicted and sentenced the appellants as referred to in the earlier part of this judgment.

9. Learned counsel for the appellants contended that the impugned judgment is based on surmises and conjectures and thus, the same is liable to be set aside. He further contended that the essential ingredients of none of the offences under Sections 352 and 504 read with Section 34 IPC and Sections 3(x) and 3(xv) of the 1989 Act were proved by the complainant or any other prosecution witness(s). Thus, conviction of the appellants is illegal.

10. On the other hand, learned State counsel vehemently opposed the arguments advanced by learned counsel for the appellants.

11. I have given my thoughtful consideration to the submissions made by learned counsel for the appellants as well as the learned State counsel.

12. For effective adjudication and ready reference, Sections 3 (1) (x) and 3 (1) (xv) of the 1989 Act, are reproduced as under:-

“3(1) Whoever, not being a member of Scheduled Caste of Scheduled Tribe,-

(i) to (ix) xxx xxx xxx xxx

(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 (xiv) xxx xxx xxx xxx

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, 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.”

13. In the instant case, perusal of the complaint Ex. PA filed by complainant-Gurcharan Singh and his deposition as PW-1 in the Court shows that in the evening of 24.07.1999, appellant No. 1-Jarnail Singh called him as “*Kuta Chura Teda Chamar Kal Tak Tere Maa Baap Sadi Tati Chukde Rahi Han*” means uptil yesterday his parents had been picking cow dung etc. of their forefathers and on that day how he had dared to give

evidence against them. Jarnail Singh also exhorted his sons, namely, Amrik Singh and Baljit Singh (appellants No. 2 and 3) to caught hold the complainant and he should not be allowed to go. Thereafter, they both made an attempt to hit him with their sticks but, he managed to escape by boarding the tractor of PW-2 Mithu Singh. Except the above version, there is no allegation against the appellants. Undisputedly, the complainant did not receive any injury nor there is any allegation against the appellants that they cause any injury to him. The stand of the complainant on this aspect is that he managed to escape without being hurt by the appellants. Now, it has to be seen as to whether the above utterances of the appellants had caused disgrace, insult or intimidation to the complainant with intent to humiliate him in a public place. In the entire complaint or in the statement as PW-1, the complainant had nowhere mentioned or testified that the appellants were not the members of Scheduled Caste or Scheduled Tribe and they intentionally insulted or humiliated and intimidated him in a space within the public view.

14. Hence, it can safely be held that the basic ingredients of Section 3 of the 1989 Act, were missing in the complaint as well as in the deposition of the complainant as PW-1 and, therefore, in my considered opinion, the appellants have illegally and wrongly been convicted and sentenced under Section 3 of the 1989 Act. Mere, mentioning of words in the complaint or statement, do not constitute an offence under the 1989 Act in the absence of intention or *mens rea* to humiliate the member of Scheduled Caste in a public view. In the instant case, the complainant even did not state in the complaint or his deposition as PW-1 that he belongs to Scheduled Caste community nor he produced any certificate that the caste Ramdassia Sikh to

which he belongs is falling within the domain of Scheduled Caste or Scheduled Tribes declared by the State. The prosecution has miserably failed to prove its case under Section 3 of the 1989 Act against the appellants from any angle. Arriving at the above conclusion, a reference is made to judgments of Hon'ble the Supreme Court in **Asmathunnisa Vs. State of A.P. and another, 2011 AIR (SC) 1905** and **Gorige Pentaiah Vs. State of A.P. & others, 2008(4) RCR (Criminal) 171.** More so, the complainant had levelled the above allegations only against appellant No. 1- Jarnail Singh and not against his sons namely, Amrik Singh and Baljit Singh (appellants No. 2 and 3 herein). They were simply accompanying their father-Jarnail Singh. In **Asmathunnisa's case (supra)**, Hon'ble the Supreme Court has held that a person who was accompanying the accused cannot be held guilty of offence.

15. Now, to see whether the complainant was able to prove the ingredients of Sections 352 and 504 read with Section 34 IPC under which the appellants were convicted. For ready reference, Sections 352 and 504 IPC are reproduced as under:-

“352. Punishment for assault or criminal force otherwise than on grave provocation.- Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.- Grave and sudden provocation will not

mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

504. Intentional insult with intent to provoke breach of the peace.-Whosoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

16. From the above, it is very clear that assault or use of criminal force to any person otherwise than on grave and sudden provocation is a necessary ingredient to punish a person under Section 352 IPC. In the instant case, as per own version of the complainant-Gurcharan Singh, he was not subjected to any assault or criminal force by the appellants as he managed to escape by boarding the tractor of Mithu Singh (PW-2). Similarly, to satisfy the ingredients of Section 504 IPC intentional insult with intent to provoke breach of the peace is necessary to punish a person

but in the case in hand, no public peace was breached and there is no iota of evidence on the record that the appellant had any *mens rea* to insult the complainant or intentionally/knowingly they had provoked him to cause breach to public peace. Thus, the ingredients of Sections 352 and 504 IPC for convicting the appellants are not proved.

17. In view of the discussion made above, the instant appeal is hereby allowed. Consequently, the impugned judgment of conviction and order of sentence dated 09.07.2004 is set aside, as a result of which, appellants-Jarnail Singh, Amrik Singh and Baljit Singh, would stand acquitted of the charges under Sections 352 and 504 read with Section 34 IPC and Section 3 of the 1989 Act.

May 25, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No