

CRA-S-1889-SB-2005

[1]

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

(Sr. No.350)

CRA-S-1889-SB-2005

Date of Decision:-May 10, 2017

Balwinder Singh

.....Appellant

V/S

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present : Mr. S.P.S. Sandhu, Advocate,
for the appellant.

Mr. D.S. Virk, DAG Punjab.

A.B. Chaudhari, J. (Oral)

Being aggrieved by the impugned judgment and order dated 18.10.2005 passed by the Judge Special Court, Moga by which the learned trial Judge has convicted the appellant-Balwinder Singh for offence under Section 3(1) (x) (xiv) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the 'Act') and sentenced him to undergo rigorous imprisonment for 02 years and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo rigorous imprisonment for 04 months, the present appeal was filed by the appellant-Balwinder Singh in this Court.

Heard learned counsel for the appellant as well as the learned counsel for the respondent-State.

Learned counsel for the appellant has submitted that the learned trial Judge has based the conviction by relying on the answers to the questions given by the accused in his statement under Section 313 Cr.P.C.

According to him, the prosecution did not prove its case and, therefore, the

trial Judge could not have based his conviction on the basis of statement of the accused under Section 313 Cr.P.C. He further submitted that there is no other evidence against the appellant-Balwinder Singh on the basis of which conviction could be recorded. He, therefore, prayed for acquittal.

Per contra, the learned counsel for the State has vehemently opposed the appeal and supported the impugned judgment and order passed by the trial Court. He further submits that the trial Court has recorded the conviction not only on the basis of the statement of the accused under Section 313 Cr.P.C. but also on the basis of the documentary evidence namely the complaints made by the complainant to the police authorities, which are on record. He then submitted that the conviction has rightly been made by the trial Court and no interference is required to be made in the present appeal.

I have gone through the impugned judgment passed by the trial Court and the reasons recorded therein. It is not in dispute that the complainant PW-1 Jaswinder Kaur who was the star witness of the prosecution turned completely hostile. Not only that, there is evidence reproduced by the learned trial Court that the complainant PW1-Jaswinder Kaur and the appellant-Balwinder Singh had entered into compromise in relation to the offence in question. Be that as it may, even if they had entered into compromise, the conviction could have still been recorded relying on any other reliable evidence, as there is no bar in basing the conviction if the legal evidence is on record. However, in the instant case, I find that except the evidence of complainant PW1-Jaswinder Kaur, there is no other legally admissible evidence. What the trial Court has done is that, it has relied on the documents namely representations or applications Ex.P-1, P-2 and P-3 made by the complainant but

then her documents were not proved by anybody and there were some papers placed on record which were not found to be admissible in evidence. The trial Court sought to rely upon the averments in those applications and representations as admissible evidence for concluding that the charge under Section 3(1)(x)(xiv) of the Act was proved, merely because the applications and representations contained the abuses in the name of the caste of PW1-Jaswinder Kaur. In my opinion, this is wholly misconceived and misplaced reading of the admissibility of evidence. The learned trial Judge did not even understand as to what is the admissible evidence. Nevertheless, PW1-Jaswinder Kaur never supported those applications or the contents of those applications and as a result, the trial Court could not have lead the same as admissible evidence. Thus there is a patent mistake made by the learned trial Judge in relying on such type of evidence, which has no place in law. The aforesaid finding is recorded by the learned trial Judge in paragraph-10 of the impugned judgment, which I quote hereunder:-

“10. In criminal complaint two more witnesses namely Veer Singh and Gurbhej Singh were cited who had eyewitnessed the occurrence besides complainant herself. Accused had intentionally insulted complainant and her son which had activated her to move an application before the Deputy Inspector General of Police, Ferozepur Range, Ferozepur. Her such application is Ex.P-1. Version contained in Ex.P-1 application of Jaswinder Kaur is fully agreeing with version contained in criminal complaint Ex.P-3. Ex.P-1 application was drafted on 16.10.2001 which was received on 20.10.2001 obviously in office of the Deputy Inspector General of Police, Ferozepur Range, Ferozepur. In Ex.P-1 it was mentioned that complainant is a widow lady and she has a dumb son and accused had beaten him and when she went forward to rescue him she was also beaten by him and he shouted by calling her “Kutie

Chuharie” that she would not be allowed to remain in the village and also threatened her to kill. It was also mentioned in Ex.P-1 that accused had used indecent language against her caste and she was badly defamed. She had moved an application at Police Station, Kot Ise Khan but no action was taken on her such application. She had also appeared before Deputy Superintendent of Police, Dharamkot and Senior Superintendent of Police, Moga but no action was taken. All such contents of Ex.P-1 are satisfying the requirement of offence under Section 3(1)(x)(xiv) of Act. Though on enquiry on Ex.P-1 again complainant did not get satisfactory relief and vide report Ex.P-2 it was ordered to be filed. Then she filed criminal complaint Ex.P-3. On her complaint Ex.P-3, after recording preliminary evidence learned Chief Judicial Magistrate summoned the accused and secured his presence and sent the case by way of commitment to this Court. After waging such a long struggle a poor illiterate widow lady having a dumb son could get a sigh of relief when accused could be made to stand in the court to face trial.”

The aforesaid finding is completely wrong and illegal. As to the hostility of PW1-Jaswinder Kaur, the trial Court has observed that she being a poor lady, the appellant-Balwinder Singh has pressurized her and so and so forth. All these observations are de hors the record and should not have been inserted in the impugned judgment by the trial Court. In the absence of such evidence being on record, it can be only called the figment of imagination on the part of the learned trial Judge. I quote paragraph-11 from the impugned judgment of the trial Court about the above aspect, which reads thus:-

“11. Examination-in-chief of PW-1 Jaswinder Kaur complainant was recorded on 15.01.2005. It was yet to be completed when on the request of learned Public Prosecutor further

examination of witness was deferred as some record was wanted to be summoned. Such record was produced by C.Narinder Pal Singh on 21.2.2005. Thereafter remaining examination-in-chief of PW-1 was recorded on 7.9.2005 On that day her cross-examination by defence counsel was also recorded. As PW-1 in her cross-examination took side away from prosecution version therefore, on request of learned Public Prosecutor she was allowed to be cross-examined. After he cross-examination by learned Public Prosecutor again opportunity to accused to cross-examine the witness was granted but no question was put to her in her such cross-examination. On 7.9.2005 learned Public Prosecutor has closed the prosecution evidence.”

There is no other evidence with the prosecution. The submission made by learned counsel for the appellant as to the answers to the questions in the statement under Section 313 of Cr.P.C. seems to be correct, which is apparent from the reading of the following paragraph being quoted by me:-

(Page-25) “In answers to questions No.8 and 9 under Section 313 Cr.P.C. accused had clearly admitted that there had been gathering of panchayat and he had requested complainant Jaswinder Kaur to forgive him and he had publically apologized. Such facts stated in answers to such questions in statement of accused under Section 313 Cr.P.C. are admissible in evidence in view of Section 313(4) Cr.P.C. Such statement of accused under Section 313 Cr.P.C. being evidence and read against accused is clearly showing that accused had put high pressure on complainant to parlay her from pursuing the

judicial proceedings against him in this criminal complaint and when he had done so he cannot be regarded for that.”

But then, it can be seen that even if the answers given by the accused in his statement under Section 313 Cr.P.C. are considered, the same takes one to nowhere, much less even remotely nearer to the offence for which he was charged. The only answer given by the appellant-Balwinder Singh was that he had publicly apologized to the complainant PW1-Jaswinder Kaur and had no intention to humiliate her. That does not mean as a sequel that he has abused in the name of the caste and, therefore, he had apologized to her. Be that as it may, it is the case of no evidence. In the result, I make the following order:-

ORDER

1. CRA-S-1889-SB-2005 is allowed.
2. The impugned judgment and order dated 18.10.2005 passed by the Judge Special Court, Moga in Sessions Case No.16 dated 06.05.2004 by which the learned trial Judge has convicted the appellant-Balwinder Singh for offence under Section 3(1) (x) (xiv) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities), Act, 1989 is set aside.
3. The appellant-Balwinder Singh is acquitted of the charge framed against him.
4. Fine, if paid be refunded to the appellant.

May 10, 2017

Pankaj

(A.B. Chaudhari)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No