

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

Crl. Appeal No.S-814-SB of 2008 (O&M)
Date of Decision: March 22, 2018

Ajay Kumar

...Appellant

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjiv Gupta, Advocate
for the appellant.

Mr.Arjun Singh Yadav, Asstt. Advocate General, Haryana
for the respondent-State.

Mr.Rishab Lohan, Advocate for
Mr.R.N.Lohan, Advocate for
respondent No.2.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against respondents State of Haryana and Suresh Kumari, challenging the judgment of conviction dated 02.04.2008 and order of sentence dated 03.04.2008 passed by learned Special Judge, Panipat, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Section 3 (x) and (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for brevity SC/ST Act].

The brief facts of the prosecution case as noted down in the judgment passed by learned Special Judge, Panipat, are as under:-

“The case of the prosecution as unfolded during trial is that the complainant is a member of a Scheduled Caste whereas accused belongs to general category. Both of them are employed in the office of Additional Deputy Commissioner, Panipat. The complainant is employed as Gram Saivika and the accused is employed as Priyojna Arth Shastri. Further case of the prosecution is that on 16.3.2004 at about 2.00 P.M. the complainant was present at her seat and was doing some official work when the accused came and asked her to satisfy physically all of them present over there and behaved in the manner as if she was a prostitute. At that time, another employee Karambir and one Surat Singh Chopra, retired Superintendent from Canal Department were also present. When the complainant looked at the accused with anger, the accused called bad names in the name of her caste and called her a prostitute. The complainant reported the matter to the Additional Deputy Commissioner who assured to take legal action against the accused. The accused was called by the Additional Deputy Commissioner in his office and when after meeting the Additional Deputy Commissioner, the accused came out, he taunted the complainant and further told that he would compel her to the extent that she would sleep with him. Again, the complainant reported the matter to the Additional Deputy Commissioner in writing on 18.3.2004, but no action on her complaint was taken. On 31.3.2004, when the complainant came to the office and was marking her presence, the accused caught her hand and again called bad names in the name of her caste. On 5.4.2006, the accused tendered apology for his conduct before the Additional Deputy Commissioner, but he did not improve his conduct and again, called the complainant bad names in the name of her caste. With these averments, the complainant filed the present complaint against the accused for the offence under sections 354/506 of the Indian Penal Code and 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The complaint was instituted on 15.4.2004.”

The accused was summoned under Sections 354, 506 IPC and under Section 3 of SC/ST Act. Finding prima facie case, the accused-appellant was charge-sheeted under Sections 354, 506 IPC and Section 3 of the SC/ST Act, to which he pleaded not guilty and claimed trial.

In support of its case, complainant examined herself as PW-1 and deposed the same facts as narrated above while giving brief facts of the case. PW-2 Karambir, employed as Clerk in the office of Addl. Deputy

Commissioner, Panipat, deposed that he knows Suresh Kumari, who is employed as Gram Sewika in his office and he also knows accused Ajay Kumar. He further deposed that on 16.03.2004 at about 2 p.m., he and complainant were present in the office. One Surat Singh Chopra, a retired employee of Irrigation Department and some other employees and persons from general public were also present there, when the accused came there and asked complainant to satisfy all the persons present over there. When the complainant retaliated, the accused hurled abuses in the name of her caste and called her prostitute. The complainant made a complaint against accused to Addl. Deputy Commissioner, who told her that he will scold the accused. This witness further deposed that the complainant made a written complaint against the accused to different authorities. When Addl. Deputy Commissioner came to know about it on 05.04.2004, he called the complainant and accused in his office. Some other employees including him were also called. The accused confessed his guilt before Addl. Deputy Commissioner and tendered written apology but after coming out of the office, accused again hurled abuses upon the complainant. PW-3 Head Constable Surender Singh mainly brought the copy of complaint dated 01.04.2004, Ex.PB, which was received in the office of SP, Panipat, who forwarded the same to SHO, Police Station, Model Town, Panipat for necessary action, which was then marked to Incharge, Police Post, Kacha Camp, to do the needful. PW-4 Surat Singh Chopra mainly deposed the same facts as deposed by PW-2 Karambir.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence

of the prosecution and he denied the correctness of the evidence and pleaded

himself as innocent and his false implication in the present case. He further pleaded that Suresh Kumari was posted as Gram Sewika and working under his supervision for the last several years. On 16.03.2004, she was present in the office and talking loudly and he asked her not to speak loudly as it causes disturbance to other employees. Neither he called her by bad names nor he made any derogatory remarks regarding her caste as alleged. Accused further pleaded that she made a false complaint on 01.04.2004 to SP, Panpat and allegations against him were found false by the police. Earlier, a case under Section 13(i) (d) of the Prevention of Corruption Act and various offences was registered against the complainant on 01.07.2002 and during the enquiry of said case, he appeared before the enquiry officer and thus, complainant Suresh Kumari has got involved him in this case.

In defence, accused examined DW-1 Rajinder Singh, Clerk, who deposed the same facts as deposed by the accused-appellant in his defence. He further deposed that accused never made any derogatory remarks about scheduled caste nor ever insulted any member of scheduled caste. In cross-examination, this witness stated that no outsider was present in the office at that time and talk between the accused and complainant was not in public view. DW-2 Surinder Singh, Addl. Ahlmad in the Court of CJM, Panipat, mainly brought the summoned record pertaining to FIR No.39 dated 01.07.2002 under Sections 218, 409, 420 IPC etc. read with Section 13(1) of the P.C. Act, Ex.DD. He also deposed that in the above-said FIR, no challan has been received in the Court.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant accused as stated above.

Aggrieved from the above-said judgment of conviction and

order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that the occurrence is stated to be on 16.03.2004 and the first complaint was made to the police on 01.04.2004, Ex.PB, which is on the record. Therefore, the first version is delayed version. Neither any written complaint was made to the Addl. Deputy Commissioner nor to the police immediately. The present criminal complaint was filed on 15.04.2004 and the version is concocted one. He further argued that it is case of the complainant that accused tendered written apology but no such written apology is on the file nor any document showing compromise has been placed on the record to prove that accused has confessed the guilt or any such alleged occurrence has taken place. He next argued that presence of PW-4 Surat Singh Chopra on the spot, is also doubtful as he was not employee of that department but a retired employee of Irrigation Department. He has been shown as a witness as he was president of Association for Scheduled Castes. Learned counsel for the appellant further contended that the police enquired into the matter and found this version false, which is clear from Ex.DA. He next contended that there is motive for filing false complaint against the accused-appellant as in the corruption case, which was registered against the present complainant, the accused-appellant was shown as witness. He also contended that cross-examination of the complainant further shows that her statement cannot be relied upon. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel as well as learned

counsel for respondent No.2 argued that PWs have consistently deposed regarding prosecution version. There are no material contradictions or improvements in the statements of the witnesses. It is further argued that prosecution has duly proved its case and the judgment of conviction and order of sentence have been rightly passed. Learned State counsel and learned counsel for respondent No.2, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the perusal of the record, first of all, I find that as per prosecution version, the occurrence took place on 16.03.2004 at about 2.00 p.m. but no written complaint to Addl. Deputy Commissioner or police on that very day or immediately thereafter, was filed. The complaint placed on record is dated 01.04.2004, which was sent to SP, Panipat, i.e. after about 15 days of the occurrence and there is no explanation as to why no written complaint was filed before the police or to Addl. Deputy Commissioner immediately.

Secondly, I find that as per complainant version, she had given written complaint to the Addl. Deputy Commissioner on 18.03.2004 but no such complaint has been produced or proved by the complainant. Further, PW-2 Karambir, in chief examination, has stated that when Addl. Deputy Commissioner came to know about the incident on 05.04.2004, he called the complainant and accused in his office, which means that Addl. Deputy Commissioner, in whose office this occurrence took place, was not aware regarding the occurrence earlier. It looks unnatural that Addl. Deputy

Commissioner came to know about the incident on 05.04.2004 and not

earlier. If it is so, then it also falsifies the version of the complainant that she gave written complaint to the Addl. Deputy Commissioner on 18.03.2004. The version also looks improbable that after reporting the matter to the Addl. Deputy Commissioner, he did not hear the aggrieved party etc.

Further, I find that it is the case of the complainant that a written apology was tendered by the accused but no such document or compromise has been proved or placed on record, which further creates doubt in the version of the prosecution. There is also motive of the complainant to file complaint against the accused as it has been proved by the accused that an FIR was registered against the present complainant under Section 218, 409, 420 IPC etc. and Section 13(1) (d) of the Prevention of Corruption Act, which is Ex.DD and the present accused in this case, was the witness in that case.

Next, I find that statement of PW-2 Karambir, who was also stated to be working as Clerk in the office of Addl. Deputy Commissioner and as per the complainant version, was present in the office, has been rebutted by DW-1 Rajinder, who was also Clerk in the same office and deposed that accused has never used any derogatory remarks about the caste ever. In cross-examination, this witness stated that no outsider was present in the office at that time. PW-2 Karambir has admitted in cross-examination that type test was to be taken by the accused. A suggestion was given to him that he was not granted increment for not passing type test. Learned counsel for the accused-appellant argued that as the increment was not granted to PW-2 Karambir as he has not passed the type test, so he deposed against the accused. The statement of PW-2 Karambir cannot be relied

upon. He stated in the cross-examination that on that day at 2.00 p.m., Addl. Deputy Commissioner was present in his office. He does not know whether on that day, Addl. Deputy Commissioner had gone out of his office on some tour. He does not remember that on 16.03.2004, accused was the incharge of establishment branch. It is not possible that this witness, who was working in the office, was not knowing that on the day of occurrence, the accused was working in which capacity. PW-2 Karambir also admitted that PW-4 Surat Singh Chopra, is the President of Scheduled Caste and Backward Class Union and he had come to meet him. He further stated that at the time of occurrence 8-10 persons from the general public were also present at the gate of the room, in which occurrence had taken place. This statement further shows that presence of Surat Singh Chopra in the office at the time of occurrence is doubtful. There is nothing on the record as to why he had gone to the office of Addl. Deputy Commissioner at that time. There is nothing for which work he had gone there. Rather, it looks that he has been made witness to the occurrence by the complainant because he is President of Scheduled Caste and Backward Class Union. The version given by the complainant in the complaint also looks doubtful. She stated that other employees of the department, who were present at the time of occurrence were Mukesh, Jai Prakash, Yudhveer and 2-3 more employees, whose names she does not remember. Further, the complainant has denied the fact that a case under Sections 218, 408, 409 IPC etc. and under Prevention of Corruption Act was registered on 01.07.2002 against her, which fact has been duly proved by the accused. She also denied the suggestion that she applied for bail. She further denied that she was granted conditional bail by the Court. The complainant also denied that accused is a

witness against her in that case. All these facts show that PW-1 Suresh Kumari, complainant has intentionally denied the fact of registration of case against her, which creates dent in her version and shows that she is not reliable witness.

Furthermore, it is also the version that two female employees were also present in the office. It looks unnatural that accused in the presence of other female employees will say such type of words, as alleged, to the complainant. Otherwise, those two female employees should have also made a complaint to the Addl. Deputy Commissioner or they might have appeared before the Court in support of the complainant. Further, I find that in the police enquiry, the contents of the complaint filed by the complainant, were found false.

In view of the evidence produced by the prosecution, I find that prosecution has failed to prove the guilt of the accused beyond doubt and benefit of doubt always goes in favour of the accused.

Keeping in view the above discussion, I find that the judgment of conviction dated 02.04.2008 and order of sentence dated 03.04.2008 passed by learned Special Judge, Panipat, is not as per evidence and law and the same is set aside. Appellant Ajay Kumar is acquitted of the charge as framed against him.

Therefore, finding merit in the present appeal, the same is allowed. Since, appellant Ajay Kumar, is on bail, his bail/surety bonds stand discharged.

March 22, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No