

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.135 of 2011**

Dr. Sunil Kumar Bhandekar S/o Jivrakhan Lal Bhandekar, R/o Street No. 4,
Pushpak Nagar, Bhilai, Distt.-Durg, C.G.

---- Appellant

Versus

1. State of Chhattisgarh through the P.S Station Aa.Ja.Ka Rajnandgaon,
District Rajnandgaon (CH)
2. Dr RU Khan @ Dr. Rafique Ulla Khan, Son of Ajij Ulla Khan, aged 52
years, R/o Dhar Road, Manvar, District Dhar (MP), at present R/o Qtr
No.F-1, Pashu Chikitsa Mahavidyalaya Parisar, Anjora Road, Pulgaon,
District Durg (CG)

-----Respondents

For Appellant:

Shri TK Tiwari, Advocate

For Respondent No.1/State:

Shri BP Banjare, PL.

Single Bench:Hon'ble Shri Deepak Kumar Tiwari J
Order On Board

14.12.2021

1. This Appeal is directed against the judgment dated 05.09.2011 passed by the Special Judge, Rajnandgaon in Special Case No.46/2010 whereby the Appellant has been acquitted from the offence punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Brief facts of the case are that the complainant Dr. Sunil Kumar Bhandekar (PW-3) Subject Expert, Animal Husbandry, who was working under the sub-ordination of accused/Respondent No.2-Dr. Ayub Khan, Program Coordinator at Agricultural Science Center Rajnandgaon. The complainant had made a written complaint on 04.05.2009 to SHO,

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 stating that on 31.03.2009 at 3.00 p.m, when the complainant and other staff members went to the chamber of the accused for redressal of their official problem, the accused got annoyed and threatened them to spoil their CRs and also abused the complainant in front of other staff in the name of his caste by saying "मोची चमार मादरचोद, कुत्ते की पूंछ, फ्री फोकट में नौकरी मिल गई है" and thereby humiliated him. On such complaint, upon enquiry, the police has registered FIR on 01.11.2010 and also seized the caste certificate of the complainant. After completing the investigation, the charge sheet was filed.

3. The accused/Respondent No.2 denied the charge and in his statement, stated that he had made a complaint against Dr. Sunil Bhandekar (PW-3) to the CG Minority Commission for which, Collector had conducted an enquiry, therefore, he made a false complaint against him.

4. In order to prove the case, the prosecution has examined as many as 7 witnesses.

5. After completion of trial, the accused was acquitted from the charge mentioned as above.

6. Learned Counsel for the Appellant submits that the judgment passed by the Court below is illegal and erroneous and deserves to be set aside. The trial Court has failed to consider the evidence in its proper perspective. The offence has been committed by the accused in presence of the witnesses at his office, which is a public place but the trial Court has not considered it and wrongly acquitted the accused, therefore, it is prayed that the Appeal be allowed and Respondent No.2 be convicted.

7. I have heard the arguments and perused the record carefully.

8. This is an Appeal against the acquittal order and the law regarding the Acquittal Appeal is by now well settled in the catena of judgments propounded by the Supreme Court, which is as under:-

(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.

9. In view of the above legal position, if the case in hand is examined, it is clear that a complaint was made by the Subordinate employee against his senior and the accused had, prior to the incident, made a complaint against the complainant Dr Sunil Bhandekar (PW-3) in the CG Minority Commission for which, enquiry was being conducted and he had also admitted in para-10 of his statement that prior to such incident, in the month of February, the accused had sealed his almirah and before the present complaint, the complainant had also lodged another complaint at PS Basantpur against the accused/Appellant. The complainant has stated in his statement that he has no knowledge that such complaint was filed.

10. There is material contradiction in the written complaint and the statement of Dr Sunil Bhandekar (PW-3) wherein the complainant called the accused to his chamber or the complainant along with other staff went to the chamber for redressal of their grievances. So there is material contradiction about the manner of dispute in the statement of prosecution witnesses. Hanumant Singh Tomar (PW-2) Farm Manager deposed in para-2 of his statement that on the date of incident i.e. 31.03.2021, as it was the last date of the financial year, therefore, the meeting was going on and in the said meeting, when they were making their submissions, then the accused got annoyed and adjourned the meeting and a dispute arose between him and the complainant and the accused said to the complainant only that "तुम नेतागिरी करते हो, ग्रुप बना कर चलते हो, तुम को देख लूंगा" and

nothing else happened.

11. As the incident took place on 31.03.2009, but immediately, no FIR was lodged by the complainant and on his written complaint after about more than a month, the police registered the FIR after more than 1 year. So there is no sufficient explanation by the prosecution for such registration of delayed FIR, which is also fatal and the incident also took place in the chamber of the accused.

12. Therefore, looking to all these aspects, this Court is of the view that there are material contradictions and omissions in the prosecution witnesses and also considering the infirmities pointed out above, I am of the opinion that the trial Court has properly appreciated the evidence at length and the impugned judgment does not suffer from any infirmity, which warrants any interference.

13. In view of the foregoing discussions, the Appeal is liable to be and is hereby dismissed accordingly.

14. The record be sent back to the trial Court along with a copy of this judgment.

Sd/-

(Deepak Kumar Tiwari)
JUDGE