

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-370-SB-2007(O&M)

Date of decision:-5.8.2022

Ajit Singh and another

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.Mandeep Singh Bedi, Sr.Advocate with
Mr.Abhishek Thakur, Advocate
for the appellants.

Rana Harjasdeep Singh, DAG, Punjab.

H.S. MADAAN, J.

1. This appeal is directed against the judgment and order dated 30.1.2007 passed by learned Special Judge, Gurdaspur vide which on conclusion of trial against accused Ajit Singh and Kulwinder Singh, in case FIR No.17 dated 1.5.2002, under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act), registered with Police Station Purana Shalla, they were convicted for an offence under Section 3 of the Act and were sentenced as follows:

Name of convict	Offence	Rigorous imprisonment	Fine	In default of payment of fine
Ajit Singh	Section 3 of the Act	1 year	Rs.1,000/-	Rigorous imprisonment for 1 month
Kulwinder Singh	Section 3 of the Act	1 year	Rs.1,000/-	Rigorous imprisonment for 1 month

2. Feeling aggrieved by the said judgment of their conviction and order of sentence, both the appellants have approached this Court by way of filing the present appeal, praying that the appeal be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

3. Briefly stated, facts of the case as per the prosecution story are that both the accused, who are father and son had tried to encroach upon 5 kanals 2 marlas of land comprised in khasra No.50 situated at village Pakhowal Kullian, whereas Gram Panchayat of the village refrained them from doing so and in that regard had reported the matter to BD & PO, Gurdaspur besides lodging a complaint at Police Station Purana Shalla; both the accused were summoned to the police station, where they undertook not to carry out any encroachment, however, despite that they grabbed the land in question and abused the Sarpanch and other members of the gram panchayat calling them *CHURE CHAMAR* stating that they were not in a position to remove the encroachment because the gram panchayat comprised of scheduled caste members only; on 5.4.2002, demarcation was conducted at the spot by revenue authorities, which revealed that accused were in illegal possession of 5 kanal 2 marlas of land, despite that accused had sown sugarcane crop in that piece of land; the gram panchayat however succeeded in getting back the possession from the accused; accused Ajit Singh had filed a suit in the Civil Court for claiming possession of the disputed land; the members of the *HARIJAN* community of the village had been going to the fields in the village in the morning time to ease

themselves; both the accused would go there and stand near such persons causing harassment and embarrassment to them more particularly to the womenfolk; the accused abused the womenfolk from *HARIJAN* community stating that they had made their land dirty by defecating there; the accused would hurl abuses upon them in the name of *CHURE CHAMAR*; Smt.Satya Devi, Sarpanch of Gram Panchayat of village Pakhowal Kullian had addressed a complaint Ex.PK to SSP, Gurdaspur, which was marked to Inspector Mehnga Singh, CIA Staff, Gurdaspur for inquiry.

4. On submission of inquiry report by Inspector Mehnga Singh, FIR in question was registered against both the accused. SI Yashpal carried out investigation in the case, during the course of which, he recorded statements of various witnesses. Both the accused were arrested in this case. After completion of investigation and other formalities, challan against both the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Gurdaspur

5. On presentation of challan in the Court of Judicial Magistrate Ist Class, Gurdaspur, he supplied copies of documents relied upon in the challan to both the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 3 of the Act is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Gurdaspur vide his order dated 20.7.2002 committed the case to the Court of learned Sessions Judge, Gurdaspur and after that the case was entrusted to the Court of learned Special Judge, Gurdaspur.

6. On finding that prima-facie charge for an offence under

Section 3 of the Act was disclosed against both the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

7. To bring home guilt to the accused, the prosecution examined the following witnesses:

PW1 Dalbir Chand one of the aggrieved persons gave the ocular version of the incident.

PW2 Smt.Satya Devi, complainant did not support the prosecution story and was declared a hostile witness. Addl.P.P. was afforded an opportunity to cross-examine her, which he availed off but without much success.

PW3 Rattan Chand and PW4 Radha Devi both of them aggrieved persons supported the prosecution case.

PW5 Mohinder Pal, Kanungo stated that application submitted by Smt.Satya Devi, Sarpanch was marked to him for carrying out demarcation, which he did. He proved relevant papers with regard to demarcation proceedings.

PW6 SI Yash Pal, the Investigating Officer in this case deposed with regard to the investigation conducted by him proving various documents.

PW7 Suneet Singh another eye-witness did not toe the line of the prosecution and was declared a hostile witness at the instance of Addl.P.P., who on being allowed, cross-examined this witness but nothing much favourable to the prosecution could be elicited from his mouth.

PW8 SI Mehnga Singh, who on receipt of the complaint had conducted an inquiry into the matter deposed in that regard proving his inquiry report Ex.PK/1.

PW9 ASI Karam Singh stated that he had arrested both the accused in this case and had given intimation of arrest to the father of accused vide memo Ex.PL.

Learned Additional P.P. tendered into evidence copy of jamabandi for the year 1997-98 as Ex.PM and thereafter evidence of the prosecution was closed.

8. Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case. Accused Ajit Singh stated that he is a retired Subedar Major from Army and his native village is Bhattian within jurisdiction of Police Station Kahnuwan, which is about 40 kms. away from village Pakhowal Kullian; after retirement, he had purchased land in village Pakhowal Kullian and settled there; theirs is the only Saini family in village Pakhowal Kullian and Kulwinder Singh, co-accused is his only son; the complainant party belonged to the majority community in the village and they did not relish the accused purchasing land in their village and settling down there, as such they started harassing the accused unnecessarily and got a false case registered against them. This accused further stated that the disputed land is part of the *NALA* and does not vest in village Gram Panchayat. It was never put to auction by the Gram Panchayat.

Kulwinder Singh accused also took up plea on those lines.

9. The accused examined Swinder Singh as DW1, in support of their version and after tendering various documents closed their evidence.

10. After hearing arguments, learned Special Judge, Gurdaspur convicted and sentenced both the accused for the offence under Section 3 of the Act as mentioned supra, which left them aggrieved and they have filed the present appeal, which was taken up on 20.2.2007 when it was admitted and sentence of imprisonment passed against the appellants/accused was ordered to remain suspended during the pendency of the appeal, subject to furnishing of requisite bonds by the appellants to the satisfaction of the trial Court.

11. Now the appeal has come up for final hearing.

12. I have heard learned counsel for the appellants-accused-convicts and learned Deputy Advocate General for the State of Punjab besides going through the record.

13. I find that there are several infirmities and lacunae in the prosecution story and the prosecution had failed to prove the guilt of the accused conclusively and affirmatively. The reasons for saying so are as under:

- (i) The complainant Smt.Satya Devi, who got her statement recorded as PW2 did not support the prosecution story at all and she was declared a hostile witness on request of Additional P.P., who was granted an opportunity to put questions to her in the form of cross-examination, which he did but nothing favourable to the prosecution could be elicited from her mouth. Similarly PW7

Suneet Singh another eye-witness, did not toe the prosecution line and was declared a hostile witness, in that way, the prosecution case suffered a severe jolt more particularly when the complainant, who had set the criminal machinery in motion backed out not supporting the allegations levelled by her in the complaint.

(ii) The prosecution has been unable to establish on record that on which date, the incident had taken place. In the original complaint Ex.PK submitted by the complainant to the police, the date of occurrence is not mentioned. In the charge framed against the accused, the date of incident is mentioned to be 13.3.2002. During the inquiry conducted on receipt of complaint when statements of witnesses were recorded PW3 Rattan Singh and PW1 Dalbir Chand had given the date of occurrence as 14.3.2002. Thus, under the circumstances when prosecution is not sure of the date of incident, then the very happening of the incident becomes doubtful.

(iii) Another major flaw in the case, which comes out to be there is that the investigation in the matter had been carried out by a police officer of the rank of SI when in terms of Rule 7 of Rules 1995, the Investigating Officer is not to be below the rank of Deputy Superintendent of Police. This rule was formulated to ensure that the inquiry is conducted by a responsible police officer keeping in view the sensitivity of the matter. Thus this rule having been violated clearly caused prejudice to the accused making the credibility of the prosecution story doubtful. In several authorities referred to by learned counsel for the appellants, it has been so laid

down. First judgment on this point referred to by the counsel for the appellants was **State of Madhya Pradesh Versus Babbu Rathore & Anr., 2020(1) Cri.C.C. 594**, wherein it was observed that under Rule 7 of Scheduled Casts & Scheduled Tribes (Prevention of Atrocities) Rules 1995, rank of Investigating Officer cannot be below that of Deputy Superintendent of Police and a police officer below that rank cannot act as Investigating Officer in holding investigation in reference to offences committed under any provisions of the Act, 1989. In the second judgment i.e. **State of MP Versus Chunnilal @ Chunni Singh, 2009(2) RCR(Criminal)758**, the Apex Court had observed that Rule 7 of the Scheduled Casts & Scheduled Tribes (Prevention of Atrocities) Rules provides rank of Investigating Officer to be not below that of Deputy Superintendent of Police and an officer below that rank cannot act as Investigating Officer. The trial Court without following the law laid down by the Supreme Court has rather referred to Full Bench judgment i.e. **Yannam Satyanarayana Versus State of A.P., 2006(3) Recent Criminal Reports, 294** passed by Andhra Pradesh, High Court. It is a settled law that in such an eventuality, the law laid down by the Apex Court is to be followed. In that way, carrying out of investigation by a police officer of the rank of Sub Inspector does not meet the requirement of law.

(iv) Another factor to be noticed is that there comes out to be plausible motive for lodging of the FIR in view of the civil litigation pending

between the accused and village Gram Panchayat and lodging of FIR could be a device to put pressure upon the accused in civil litigation and make them leave the village since as per case of the accused, theirs is the only Saini family in the village, which is otherwise inhabited by members of the *HARIJAN* community.

14. Although all the infirmities pointed out above had been noticed by the trial Court but those were conveniently ignored giving reasoning, which does not come out to be plausible and satisfactory. From the evidence brought on file by the prosecution in light of facts and circumstances of the case, a reasonable doubt arises in the mind about truthfulness of the prosecution story and the prosecution had failed to prove the guilt of the accused conclusively and affirmatively. The benefit of doubt should have been given to the accused, which was wrongly denied to them by the trial Court. Setting that wrong aside, right is called for by acceptance of the appeal.

15. The impugned judgment and order of sentence cannot stand judicial scrutiny and are not sustainable. The same are set aside by way of acceptance of this appeal. The appellants are acquitted of the charge framed against them.

Necessary intimation be sent to the quarter concerned.

5.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**