

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.2391

CRA-S-2323-SB-2006 (O&M)
Decided on:07.06.2023

Rajbir Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Ms.Preeti Manderna, Advocate,
for the appellant.

Mr. Amish Sharma, AAG, Punjab.

N.S. SHEKHAWAT, J.

1. The present appeal is directed against the judgment of conviction and order of sentence dated 07.11.2006 passed by the learned Special Court, Bathinda, whereby the appellant, namely, Rajbir Singh, was convicted for the offence punishable under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SC & ST Act') and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- with a default stipulation.

2. The FIR in the present case was got registered by Swaranjit Kaur wife of Baljit Singh Caste Majhabi Sikh resident of village Bhagwanpura. The complainant stated that she was married to Baljit Singh about 13 years ago and had three children. She as well as her husband were doing the labour work. At about 08.00 PM on 22.05.2005, the complainant along with her son Karampal Singh aged about 10 years, were going to fetch milk from the house of Bhikar Singh of their village and when they passed

in the street in front of the house of Kaka Singh, Rajbir Singh, appellant, was present under the influence of liquor on the platform. On seeing the complainant, he started abusing her. However, she did not speak anything due to fear and went to fetch milk. While she was returning to her house, appellant Rajbir Singh again met her in front of the house of Kaka Singh and on seeing her, he called the complainant 'chuhriya' and said that she along with other 'dheds' had been unable to do any harm to them and they will send all Mazhabis out of the village. The complainant tried to make him understand, but appellant Rajbir Singh had raised his shirt up in front of her and gave her filthy abuses. She did not utter even a single word and returned home along with her son. She disclosed the entire incident to her husband Baljit Singh. The matter was reported at about 07:30 PM on 24.05.2005 to the police and a case for the offence under Section 3(1)(x) of the SC & ST Act was registered against the appellant and the investigation was entrusted to the DSP.

3. After completing the investigation, the challan under Section 3(1)(x) of the SC & ST Act was presented against the present appellant, which was committed to the learned Special Court. After taking into consideration the material collected during the course of investigation, the charge under Section 3(1)(x) of the SC & ST Act was ordered to be framed against the present appellant. As per the formal charge-sheet, at about 08.00/8:30 PM on 22.05.2005, the present appellant had intentionally insulted the complainant, a member of schedule caste by calling her "chuhriya" and "dhed" and intimidated her. The appellant pleaded innocence and claimed trial.

4. To prove the charge, the prosecution examined four witnesses.

The complainant Swaranjit Kaur was examined as PW-1, who supported the

case of the prosecution, as mentioned in the FIR. She stated that while she was returning back after fetching milk, Rajbir Singh met her near the house of Kaka Singh. Rajbir Singh called her “chuhri”, “dhedni” and stated that she should work at his house for cleaning rubbish and dung of the cattle heads, but she refused to oblige. Appellant Rajbir Singh was under the influence of liquor at that time. She asked the accused to remain silent but he uttered lot of words and then he raised his shirt up. In her cross-examination, she admitted that she had worked for four years in the village for cleaning dung of cattle heads, but never worked at the house of accused. She admitted that when she was again returning after fetching milk, residential houses were situated around the place where Rajbir, accused met her but no person gathered at the spot of occurrence. She further feigned ignorance as to how much land of panchayat was under their possession in the village Bhagwanpura. She did not know as to since when the dispute of land was going on in the village. She did not know about the dispute of panchayat land of the village. She did not know whether SDM and Deputy Commissioner visited their village for settling the panchayat land dispute. She did not know whether Jagdeep Singh, Sarpanch of Talwandi Sabo, belonged to their village. She did not know if the Sarpanch collected many persons of her caste for raising hue and cry in the village. The prosecution further examined PW-2 Karam Pal, son of the complainant, who was a child witness and supported the case of the prosecution as mentioned in the FIR. The prosecution further examined PW-3 DSP Jaspal, who was the investigating officer in the present case. In his cross-examination, he admitted that the dispute between the agriculturist and Harijans was going since long in village Bhagwangarh. The SDM had been visiting spot in connection with that dispute. He did not know if Jagdeep Singh, Sarpanch

and Jagdeep Singh, Press Reporter had been pursuing the cases concerning the dispute. He did not know if the peace in the village used to be disturbed due to *dharnas* held by party of Mr. Gehri. He did not record the statement of Swaranjit Kaur. The prosecution further examined SI Manjit Singh as PW-4, to whom the complainant had made a statement Ex.PA, which was read over and explained to her and on the basis of the same, a formal FIR Ex.PA/2 was recorded by ASI Bhadur Singh. In his cross-examination, he admitted that the occurrence had taken place on 22.05.2005, but the statement was recorded on 24.05.2005.

5. After recording the statement of the prosecution witnesses, the statement of the appellant was recorded under Section 313 Cr.P.C. The appellant stated the case had been falsely planted on him. No occurrence had taken place in the village, rather there was a dispute between Harijans and agriculturists of the village qua Jumlan Malkan land. The said dispute was decided by this Court for partitioning joint land. The members of scheduled caste of the village wanted to take forcible possession of the said land, due to which, he had filed applications before higher authorities against Kiranjit Singh Gehri and Gogi Sarpanch, who had been disturbing peace and tranquility in the village and enquires were also conducted by SDM and DSP Talwandi Sabo. To prove his defence, Bhag Singh was examined as DW-1, who deposed on similar lines. He stated that the dispute regarding the land was going on in the village amongst Harijans and agriculturists for the last about 2-3 years. Jumla Malkan land was given to the land owners after partition, on the orders of the Director Panchayat. A case was filed before this Court against the said orders of the Director. The member of scheduled castes were seeking right of ownership in that land, though they had no such right. Kiranjit Singh Gehri and Jagjit Singh Gogi Sarpanch used to flare up

the sentiments of Harizans of the village and the applications in this regard were filed before the Deputy Commissioner and SDM. The spot was inspected by SDM, DSP and SSP. Even the applications in this regard were produced on record as mark D2 and D3 and copy of the order of this Court was placed on record as mark P-4.

6. I have heard learned counsel for the parties and with their assistance, I have minutely examined the trial Court record.

7. Learned counsel for the appellant vehemently argued that no offence under Section 3(1)(x) of the SC & ST Act is made out against the present appellant. As per the admitted case of the prosecution, the occurrence had not taken place within “public view”. PW-1 Swaranjit Kaur, complainant, herself admitted that no person had gathered at the spot of the occurrence. Since no one was present at the place of occurrence, so it could not be stated that the occurrence had taken place within “public view”. Apart from that, no evidence was led by the prosecution to show that the offence was committed only on the ground that the victim was a member of scheduled caste and the conviction under Section 3 of the SC & ST Act was unsustainable. Apart from that, the complainant had virtually admitted the dispute between the Harijans and agriculturists of the village and there was sufficient evidence on record to show that due to the said enmity, the appellant was falsely involved in a criminal case. The learned counsel further prayed that the impugned judgment is based on misappreciation of evidence and settled canons of law.

8. Countering the arguments raised by learned counsel for the appellant, learned State Counsel submitted that the learned trial Court had taken into consideration the evidence led by both the parties and there is no infirmity in the impugned judgment.

9. Having heard learned counsel for the parties and taking into account the evidence led by the parties, this Court is of the considered view that the learned trial Court had not appreciated the evidence led by the parties in the correct perspective. In the present case, the present appellant was charged under Section 3(1)(x) of the SC & ST Act with the allegations that he had intentionally insulted the complainant, a member of scheduled caste by calling her “chuhriya” and “dhed” and intimidated her. Section 3(1)(x) of the SC & ST Act (Prior to Amendment Act 1 of 2016, Section 4(i) w.e.f. 26.01.2016) reads thus:-

“Section 3. Punishments for offences of atrocities:

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

(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;

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.”

10. To attract the said offence, the requisite ingredients are that the offender should not be a member of scheduled caste or scheduled tribe and he intentionally insults or intimidates with intent to humiliate a member of scheduled caste or scheduled tribe and it should be in any place within public view. In the light of the said rival contentions and the language enshrined in the said provision, it is to be seen whether any *prima facie* case is made out against the appellant for the commission of the offence for which he was charged. A perusal of the allegations levelled in the FIR as well as deposition of PW-1 before the Court indicate that except abusing the

complainant with her caste name, there is no allegation that the appellant with a view to intentionally insult or intimidate or humiliate the complainant, abused her and that too in a place within the public view. The law is well settled that to attract the offence punishable Section 3(1)(x) of the SC & ST Act, the *mens rea* is the essential ingredient. The utterances made in the name of caste should be with an intention to humiliate or intimidate the persons belonging to scheduled caste or scheduled tribe in a place within public view. If in the course of a quarrel or due to some other grouse, the accused abused the complainant by using the caste name, the said act by itself does not automatically attract the offence Section 3(1)(x) of the SC & ST Act. The manner, in which the utterances were made, must be with an intention to humiliate or intimidate the persons belonging to the scheduled caste or scheduled tribe in the public view. Further, looking to the aims and objects of the SC & ST Act, the expression “public view” as enshrined in Section 3(1)(x) of the SC & ST, has to be interpreted to mean that the public persons present (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In the case in hand, if all the facts as mentioned by the complainant in her deposition as PW-1 are accepted to be correct in their entirety, the same cannot establish the commission of the offence under Section 3(1)(x) of the SC & ST Act against the present appellant.

11. In the present case, as per the complainant, while she was returning at about 08.00 PM on 22.05.2005, the present appellant had abused her using caste related words and she disclosed the said incident to her husband Baljit Singh on returning her house. Even though, the complainant had ample opportunity to report the matter to the police, still the report was lodged at about 7:30 PM on 24.05.2005, after a delay of about two days and

even in the FIR, Ex.PA/2, there is no explanation for the said delay. Even during the course of trial, the prosecution did not lead any evidence to indicate the sufficient reasons for reporting the matter so late. Thus, the lodging of the complaint after an unexplained and inordinate delay of two days is also a strong circumstance, which shows an amount of doubt with regard to the commission of offence, more so, when the witnesses of the prosecution could not properly explain the same even till the conclusion of the trial.

12. Apart from that, this Court finds sufficient force in the argument raised by the learned counsel for the appellant that there was a dispute relating to land between the members of the scheduled caste and the agriculturists of the village. The prosecution examined the complainant Swaranjit Kaur as PW-1. Even she was subjected to cross-examination and she was evasive in her replies, while she was cross-examined by the defence counsel. She expressed ignorance as to how much land of panchayat was under their possession in village Bhagwanpura. She did not know as to since when the dispute regarding land was going on in the village. She did not know about the dispute of panchayat land in the village. She did not know if SDM and Deputy Commissioner visited their village for settling the panchayat dispute. However, PW-3 DSP Jaspal, who had investigated the present case, admitted in his cross-examination that a dispute between Harijans and agriculturists of village Bhagwanpura was going on since long. Even the SDM had been visiting the spot in connection with that dispute. Apart from that, the appellant examined DW-1 Bhag Singh son of Hargopal Singh to show that a dispute with regard to Jumla mushtarka malkan land was going on between the members of scheduled caste and agriculturists of the village. Even the matter was contested up-to this Court and the appellant

also produced on record the copy of the order passed by this Court as mark D4 in this regard. Moreover, Bhag Singh, DW-1, was cross-examined at length and his testimony appears to be credible. The law is well settled that the deposition of a defence witness cannot be discarded or disbelieved only on the ground that he was supporting the case of the accused. Every defence witness has to be treated at par with a prosecution witness and if the deposition of a defence witness is found to be creditworthy, the same can always be believed and relied upon by the courts.

13. In view of the above discussion, it can be safely concluded that the learned trial Court did not appreciate the evidence led by the prosecution in the correct perspective and passed the impugned judgment by overlooking the settled canons of law.

14. As a consequence, the present appeal succeeds and the judgment of conviction and order of sentence dated 07.11.2006 passed by the learned Special Court, Bathinda are set aside. The appellant is ordered to be acquitted. The bail bonds of the appellant stand discharged and he may be released forthwith from the custody, if not on bail and if not required in any other case. Pending application(s), if any, is also disposed of.

15. Case property, if any, be dealt with, and, destroyed, after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back forthwith.

07.06.2023
mks

(N.S.SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO