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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRA-AS-281-2019 (O&M)****Date of decision: 01.08.2023**

Savitri Devi

...Appellant

VS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. D.K.Sharma, Advocate for
Mr. S.S.Kamboj, Advocate
For the appellant.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)

Present appeal has been filed by the appellant, who is a victim of crime and is aggrieved by the impugned judgment dated 06.09.2019 passed by learned Judge Special Court Barnala, whereby accused persons (respondents herein) have been acquitted in case FIR No.05 dated 08.01.2015 registered under Sections 452, 448,323, read with Section 149, Section 148 of the IPC and Sections 3 (i) (x) and 3 (i) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short SC and ST Act).

2. Brief facts of the case are that complainant/victim Savitri Devi filed an application Ex PB before the DIG Patiala to the effect that she has purchased house which is adjoining to the house of accused/respondent Dhian Singh. He (Dhian Singh) was having an evil eye on her house and lodged an FIR dated 21.09.2008 against her husband and others under section 452 IPC etc. and when her husband was in the jail, then accused persons on 23.09.2008 came to her house and took forcible possession and also beaten to her and thrown her and family out of house. She approached the local police but police did not take any action against the accused person. She also moved an another application to DIG Patiala dated 10.10.2018 and her application was sent to SSP and then SP (D) for enquiry. SP (D) vide its report dated 26.11.2008 found the allegations to be

dated 07.05.2015 held that petitioner is owner of house. SP (D) vide order dated 06.01.2015 directed the SHO to register the FIR and FIR No. 5 dated 08.01.2015 under section 451,323,448,427,147 and 149 IPC was registered. On 17.01.2008 section 451 IPC was subtracted and section 452,406 IPC and section 3 and 4 of SC and ST Act were added.

2.1 Further investigation was carried out by DSP Palvinder Singh and accused Hardev Singh Bhathal was found innocent and kept in column No.2. Challan was presented under sections 452,406, 323, 448, 427, 147 read with Section 149 IPC and section 3 and 4 of the SC and ST Act. Charges were framed against the accused under section 452,323, 448,148,149 IPC and section 3(1) (V) and section 3 (1) (X) of SC and ST Act. To prove the charge against the accused, prosecution examined 11 witnesses and exhibited certain documents. Defense did not examine any witness but placed on record certain documents as exhibits and marks.

3. Learned counsel for the appellant submits that learned trial court vide impugned judgment acquitted the accused person *inter alia* on the grounds that prosecution has failed to prove that the accused had demolished the house of complainant. It was held that no reliance could be placed on the statement of PW7 Labh Singh as he is having property dispute with the accused. It was held that only self serving statement of the complainant cannot prove the case. It was further held that in calandra filed by the accused Dhian Singh under section 107/151 Cr.P.C against the husband of the appellant, caste of the husband of the complainant has been mentioned as Pandit. Therefore, he is not SC and therefore prosecution could not prove the case. He submits that judgment passed by learned trial Court is illegal and hence liable to be set aside.

4. Arguments heard.

5. Order dated 06.09.2019, passed by learned Judge, Special Court, Barnala assailed herein, is premised, *inter alia*, on the following reasoning:

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20. The demarcation of a spot is to be conducted by fixing 3 pucca points in accordance with norms prescribed in Chapter 1M of High Court Orders and Rules Volume-I. In the present case the demarcation

report is Ex.PW8/A is on the file. The local commissioner has mentioned the report that both the parties were present but the presence sheet shows that Dhain Singh and Gurmeet Kaur were not present and the column in the report for marking their presence is lying vacant. Therefore the report about the presence of all the parties at the spot at time of demarcation is false. The perusal of report Ex.PW8/A further shows that fact that no pucca points were fixed by the Quanango. Therefore, the report of demarcation Ex.PW8/A is not in accordance with the norms prescribed in Chapter I-M of High Court Rules and Orders Volume-I and as per instruction of the Financial Commissioner. Further Bhushan Kumar Field Quanango PW8 has stated in his cross examination that no statement was recorded by the investigating officer under section 161 Cr.P.C at his instance. Therefore, no reliance can be placed on the demarcation report relied by the prosecution.

21. Therefore, the prosecution has miserably failed to prove beyond reasonable doubt that accused have demolished the house of Savitri Devi complainant in Khasra no. 71//14/2/1/3 as alleged by the complainant Savitri Devi. Further no reliance can be placed on the statement of Labh Singh PW7 because Labh Singh has a dispute with the present accused and the same is proved on the file by the judgment Ex.D24. The perusal of Ex.D24 shows that Labh Singh son of Nihal Singh filed a criminal complaint case (No. 473 of 14.11.2004) against Dhian Singh and his wife Gurmeet Kaur for their prosecution under-section 499 and 500 IPC, which was dismissed by the Court of Shri Balwinder Kumar, the then learned Judicial, A-1 Magistrate Ist Class, Barnala on 12.10.2010 vide judgment Ex.D24.

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22. Further there is only self serving statement of Savitri Devi PW1 which cannot be believed. Therefore, it cannot be said that the accused have trespassed into the house of complainant Savitri Devi on 23.09.2008 and demolished the house of Savitri Devi. Therefore, offence under-sections 452, 448, 427 of the Indian Penal Code and section 3 (i) (v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 is not proved against the accused. Therefore, point no.1 is held against the prosecution.

Point no.2

23. This court has already held under point no. 1 that it is not proved on the file beyond reasonable doubt that accused enter the house of Savitri Devi and demolished the same. Therefore, it cannot be held that accused formed and unlawful assembly on 23.09.2008 and in prosecution of common object of the said assembly they caused injuries to Savitri Devi. Moreover, though Savitri Devi PW1 has stated that she received injuries in the occurrence but no medical examination has been produced on the file. Therefore, the offence under-sections 148 and 323 of the IPC is not proved. Therefore, point no.2 is also held against the prosecution.

Point no.3

24. Savitri Devi complainant stepped into witness box as &S BarnaW1 and she stated the same facts as stated by her in her statement Ex.PA 21 recorded by the police on 31.10.2008, but when she was cross examined she admitted that it was not recorded in her statement Ex.PA that the accused had uttered derogatory words "Chuhra Chammar" against her caste. She further admitted in her cross examination that it is not so recorded in her application Ex.PB that the accused uttered the derogatory words against her caste. She admitted that it was not recorded in her statement recorded by the DSP that accused called derogatory words "Chuhra Chamar" against her caste.

25. *The prosecution has got examined Labh Singh. Labh Singh has stepped into witness box as PW7 but he has not stated anywhere in his statement that accused uttered any derogatory words against the caste of complainant. The statement of Savitri Devi PW1 recorded in the Court also demolishes the case of prosecution because Savitri Devi PW1 has admitted in her cross examination that words "Chuhra Chamar" not mentioned in her statement Ex.PA made to the police and her application Ex.PB as well as her statement recorded by the DSP. If these documents have not been containing anything regarding derogatory words used by the accused, then it cannot be believed that accused used the same against the caste of complainant. It seems that litigation was pending between Savitri Devi and the accused and therefore Savitri Devi in order to put pressure on the accused, has invented the story of using of derogatory words by the accused against her caste.*

26. *Further Savitri Devi complainant is married with Budh Ram. A calendra under-sections 107/151 of the Code of Criminal Procedure was filed against Budh Ram which is Ex.D17 on the file. The same was filed by the police of City Barnala vide DDR no14 dated 13.01.2007 before the SDM, Barnala. The perusal of the said calendra shows that caste of Budh Ram is mentioned as "Pandit" in the said calendra. The said case was got registered under-sections 107/151 Cr.PC by Dhian Singh against Savitri Devi wife of Budh Ram and Budh Ram caste "Pandit" residence of Handalya Road, Barnala. These documents Ex.D17 also shows that caste of Budh Ram as "Pandit". In those proceedings Budh Ram furnished his personal bonds and surety bonds and in the said bail bonds/surety bonds he has mentioned his caste as "Passi" Therefore, it is not proved on the file that complainant Savitri Devi belongs to Schedule Caste category, though a certificate has been got produced on the file but the same cannot be taken into consideration as discussed above. One thing is very strange in this case. The statement of complainant PW1 was partly recorded on 22.09.2016 and then it was deferred in examination in chief as the complainant wanted to produce certificate of caste alongwith documents. Complainant again stepped into witness box on 06.07.2018 and produced her certificate of her caste which has been issued by the Sub Divisional Magistrate, Barabanki, Uttar Pradesh. It may be true that the complainant Savitri Devi might be belonging to Schedule Caste category, but when she was married to Budh Ram who belongs to "Pandit" caste, it cannot be said that she anymore remained a Schedule Caste. Therefore, firstly it is not proved on the file that complainant Savitri Devi belongs to Schedule Caste category and secondly, that the accused have uttered any derogatory words against her caste Therefore, point no.3 is also held against the prosecution.*

27. *No other point has been urged nor pressed before the Court.*

28. *Thus in view of the referred evidence and discussion made above, this court is of the considered opinion that the prosecution has failed to prove its case against the accused beyond reasonable doubt. The points of determination formulated above, are therefore, decided against the prosecution. All the five accused namely Dhian Singh, Gurmeet Kaur, Avtar Singh, Jagtar Singh and Harnek Singh are hereby acquitted of the charges framed against them by giving them benefit of doubt."*

6. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law. Perusal of the judgment reflects that learned Sessions Court having gone through the evidence rightly observed that other than self-serving statement

PW-7 who was examined by the prosecution in his cross-examination clearly admitted that there was a previous dispute between him and the accused as was also proved by way of documentary evidence Ex. D-24 being a judgment arising out of the dispute, as aforesaid.

7. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair¹**, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

8. In **Anil Kumar Gupta vs. State of U.P.²**, it was held as under:

“This Court held that “the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions.

(emphasis supplied)

11. This Court following the decision in *Ramesh Babulal Doshi*, further observed that ‘there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappraising the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.’”

¹2002(4) RCR (Criminal) 750 SC

²2001(2) RCR(Criminal) 292 SC

9. In the instant case, I am also of the opinion as is rightly observed by learned Sessions Court that Labh Singh, being interested witness, his testimony against the accused cannot be given any credence, same being doubtful. There is thus no room for interference in the aforesaid valid reasons recorded by learned Court below, with which I am in agreement. The appeal sans merit and the same is hereby dismissed.
10. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

01.08.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No