

(2010) 12 P&H CK 0461

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal S-1573-SB of 2002

Vijay Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Dec. 9, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Penal Code, 1860 (IPC) - Section 506
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3, 3(1), 4

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Final Decision: Allowed

Judgement

T.P.S. Mann, J.

This appeal is directed against the judgment and order dated 16/18.9.2002 passed by Additional Sessions Judge, Fatehabad-cum-Judge, Special Court under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereby the Appellant was convicted u/s 3(1)(x) of the Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 2,000/-, and in default of payment of fine, to undergo further imprisonment for 11/2 months.

2. According to the prosecution, on 1.11.1997 at 1.30 p.m., the Appellant, who was working on the post of Special Assistant in Canara Bank, G.T. Road, Fatehabad went to the complainant, who was working as a Clerk in the same bank and without any provocation, started teasing him. At that time, the complainant was talking to the Branch Manager. The Appellant intervened and started uttering derogatory words against the caste of the complainant. One S.K. Yadav, an employee of the bank, tried to intervene but the Appellant threatened to kill him also. The Appellant, thereafter, manhandled the complainant and left the bank. The complainant drafted an

application mentioning the above-stated facts and submitted it to police on the basis of which FIR No. 572 dated 1.11.1997 under Sections 3 and 4 of the Act and Section 506 IPC was registered at Police Station City, Fatehabad against the Appellant.

3. During investigation of the case, the police took into possession certificate regarding the complainant belonging to a scheduled caste. Copy of attendance register was also taken into possession. Statements of the witnesses were recorded and rough site plan of the place of occurrence prepared. The Appellant was arrested.

4. Upon completion of investigation and presentation of challan, followed by its commitment, the Appellant was charged u/s 3(1)(x) of the Act, to which he pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution had examined as many as five witnesses. Jitender Kumar, complainant of the case appeared as PW1. Doddappa Gadagi, Manager, Canara Bank, a Crl. Appeal S-1573-SB of 2002 -3-witness of the occurrence, appeared as PW2. Rajiv Kumar, son of Nand Lal, another witness of the occurrence appeared as PW3. Charanjit Singh, DSP, Investigating Officer of the case, appeared as PW4. Baljit Singh, SI, who had registered formal FIR Ex.PA/1 and prepared report u/s 173 Cr.P.C., appeared as PW5. After that, the prosecution evidence was closed by the learned Public Prosecutor.

6. When examined u/s 313 Cr.P.C., the accused pleaded that there were 4/5 unions of the Canara Bank which included Indian Bank Employees Association and Bank Employees Federation of India. Indian Bank Employees Association was connected with Communist Party of India, whereas Bank Employees Federation of India was connected with Communist Party of Marxist. He was member of Canara Bank Staff Union which was affiliated with Bank Employees Federation of India. In 1990-91 Jitender Kumar was posted in Canara Bank, Sirsa and he was also posted there. Their relations were cordial with each other. He never remarked adversely against the caste of Jitender Kumar at Sirsa. He even attended the marriage party of Jitender Kumar at Sirsa in Kumbhar Dharamshala besides taking dinner there alongwith other family members of Jitender Kumar. He moved applications on 21.4.1997, 10.5.1997 and 31.7.1997 against the behaviour of Jitender Kumar to the higher authorities at Chandigarh, i.e.D.G.M., Chandigarh. He was falsely implicated in this case due to strained relations between two unions of Canara Bank. However, no evidence was led by the accused in his defence.

7. After hearing learned Counsel for the parties and going through the evidence, the trial Court accepted the prosecution case and convicted and sentenced the Appellant, as stated above.

8. I have heard learned Counsel for the parties and with their able assistance, minutely scanned the evidence.

9. In the FIR, complainant Jitender Kumar had stated that at about 1.30 p.m. when he was talking with the Branch Manager, the Appellant intervened and uttered remarks which were derogatory to his caste. Even while appearing as PW1, Jitender Kumar stated that the incident occurred when he was talking with the Branch Manager. In examination-in-chief, PW2 Doddappa Gadagi, Branch Manager stated that when he was talking with the complainant at about 1/1.30 p.m., the Appellant came there and started abusing the complainant in the name of his caste. In cross-examination, he stated that he was present with the complainant for about ten minutes earlier to the occurrence while standing at the seat of the complainant. He further stated that no altercation took place between the Appellant and the complainant in his cabin. However, PW3 Rajiv Kumar, who, according to the prosecution, was present in the bank premises in connection with his account and had witnessed the occurrence, deposed that the Manager was sitting in the cabin when the altercation was going on between the Appellant and the complainant and he had arrived there just to intervene. He further stated that when the Manager arrived at the place of altercation, the Appellant left the spot.

10. From the above evidence, it stands established that when altercation was going on between the complainant and the Appellant, PW2 Doddappa Gadagi was in his cabin and when he reached the place of altercation, the Appellant had left the spot. Therefore, PW2 Doddappa Gadagi had no occasion to be a witness of the actual occurrence in which derogatory words said to have been used by the Appellant against the caste of the complainant.

11. It appears that PW2 Doddappa Gadagi had his own reasons to depose against the Appellant. In his cross-examination, he admitted that he had an altercation with the Appellant prior to the occurrence and even earlier there used to remain some altercation between them. He also admitted that the Appellant had filed a written application against him to the D.G.M., Chandigarh levelling allegations against him of harassment. He had also appeared as a witness in one rent case at Sirsa against the Appellant. Therefore, no implicit reliance can be placed upon the testimony of PW2 Doddappa Gadagi to hold that in his presence the Appellant had used derogatory words against the caste of the complainant.

12. PW3 Rajiv Kumar claimed that he was also an eye witness to the occurrence as he had come to the bank premises on 1.11.1997 at about 1.30 p.m. in connection with his account. In cross-examination, Crl. Appeal S-1573-SB of 2002 -6-he stated that he had only gone to the bank to see his account and there was no specific work on that day. He then stated that he went to the bank to get his limit prepared regarding his account. During further cross-examination, he stated that he stayed in the bank upto 2.00 p.m. and had not got done anything on that day nor he asked the officials to prepare the limit of his account or to check his accounts. According to him, he visited the Police Station after 8/10 days of the occurrence when his statement was recorded and the police obtained his signatures thereon. In the

statement of PW2 Doddappa Gadagi, it has come that the day of the occurrence was Saturday. According to PW3 Rajiv Kumar, on Monday which came after the occurrence he had again visited the bank and even on that day he did not get prepared any limit or withdrew any cash. In view of the above, the presence of PW3 Rajiv Kumar in the bank premises on 1.11.1997 was highly doubtful. In the written complaint Ex.PA submitted to the police, the complainant had not stated anywhere about the presence of Rajiv Kumar at the time of the occurrence. Only towards the end of the said complaint, list of eye witnesses was given in which the name of Rajiv Kumar was mentioned at serial No. 2. In the said complaint, the complainant had stated about the presence of S.K. Yadav, an employee of the bank, at the time of the occurrence, who when tried to intervene was threatened by the Appellant. Said S.K. Yadav was cited as a witness but was given up by the prosecution as unnecessary.

13. In view of the above, there is no corroboration to the testimony of PW1 Jitender Kumar that he was abused by the Appellant in the name of his caste. The testimony of PW1 Jitender Kumar even otherwise, does not inspire confidence. According to him, he had produced the application Ex.PA in the Police Station on the same day at 1.45/2.00 p.m. and remained in the Police Station for about 5 to 10 minutes. However, a bare look at the FIR Ex.PA/1 would show that the same was registered at 6.15 p.m. on 1.11.1997. As per the endorsement made on FIR Ex.PA/1, the Ilaqa Magistrate had received the same at 10.25 p.m. on 1.11.1997. Possibility cannot be ruled out that even the FIR came into existence at about 10.00 p.m. on 1.11.1997 and the same was ante timed as if the same had been recorded at 6.15 p.m.

14. Neither in the complaint Ex.PA nor while appearing as PW1 complainant Jitender Kumar ever stated that the Appellant was aware of the fact that he belonged to a scheduled caste. Mere fact that the Appellant and the complainant had been working in the same branch or that the Appellant had allegedly abused the complainant by uttering derogatory remarks against the caste of the complainant is not sufficient to make him liable for the offence u/s 3(1)(x) of the Act.

15. According to the Appellant, he and the complainant remained posted at Sirsa where he never passed derogatory remarks against the caste of the complainant. He also stated that he attended the marriage party of the complainant at Sirsa besides taking dinner there alongwith other family members of the complainant. He had moved applications on 21.4.1997, 10.5.1997 and 31.7.1997 against the behaviour of the complainant to the higher authorities and, therefore, falsely implicated in the caste. In his cross-examination, PW1 Jitender Kumar admitted that during his posting at Sirsa, the Appellant did not remark adversely against his caste and also did not misbehave with him in any manner. He did not deny that the Appellant had written thrice against his behaviour to the higher authorities, i.e. D.G.M., Chandigarh.

16. It appears that after the relations between the Appellant and the complainant became sour on account of their belonging to different employees' union that the

complainant came up with the present case against the Appellant.

17. In view of the above, it would not be safe to sustain the impugned judgment of conviction and sentence. The appeal is, therefore, accepted, impugned judgment of conviction and sentence is set aside and the Appellant is acquitted of the charge against him. He is on bail. His bail bonds shall stand discharged. The amount of fine, if already paid by him, be refunded.