

G. Ramappa and Another Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Feb-13-2015

Judge : R.B. Budihal

Appeal No. : Criminal Appeal No. 451 of 2010

Appellant : G. Ramappa and Another

Respondent : The State Of Karnataka

Judgement :

(Prayer: This Crl.A. Filed Is Filed Under Section 374(2) Cr.P.C Praying To Set Aside Conviction And Sentence Dated 15.4.2010 Passed By The Special Judge, Davangere In Spl.C Sc/St No.4/2007 - Convicting The Appellants/Accused For The Offence Punishable Under Section 3(1)(X) Of Sc/St (Pa) Act 1989 Read With Section 34 Of IPC.)

1. This appeal is preferred by the appellants/accused Nos.1 and 2 being aggrieved by the judgment and order dated 15.04.2010 passed by the Prl.District and Sessions Judge and Spl.Judge at Davangere in Spl.C.SC/ST.No.4/2007.
2. The appellants challenged the judgment and order of conviction of the Spl.Court on the grounds urged in the appeal memorandum at Sl.No.1 to 19.
3. Heard the arguments of the learned counsel appearing for the appellants/accused Nos.1 and 2 and also the learned High Court Government

Pleader appearing for the respondent-State.

4. Learned counsel for the appellants has submitted that though the case was registered against the accused persons for the alleged offences under Sections 297, 295 and 506 read with Section 34 of IPC and also under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. But the Spl.Court acquitted the accused persons for the offences punishable under Sections 297, 295 and 506 (ii) read with Section 34 of IPC and convicted them for the offence punishable under Section 3(1)(x) of SC/ST (POA) Act read with Section 34 of IPC.

5. Learned counsel has submitted that the judgment of acquittal with regard to the offences under the provisions of IPC became final as the respondent-State has not preferred any appeal. With regard to the offence under the provisions of SC/ST (POA) Act, as per the complaint Ex.P-1, no abusive words touching the caste of the complainant were mentioned in the complaint, only bald and vague allegations are made. He has also submitted as per the prosecution, PWs-1, 3 and 7 are the eye- witnesses to the incident. The other witnesses PWs-2, 4, 5 and 6 have not supported the case of the prosecution. The names of the eye-witnesses were not mentioned in the complaint and there is a delay of two days in recording the statement of the said eye- witnesses by the Investigating Officer. Learned counsel has also submitted that the delay in recording the statement of the eye-witnesses has not at been considered by the Trial Court and wrongly convicted the accused persons. Even looking to the oral evidence of PWs-1, 3 and 7, the evidence is not worth believable and there are inconsistencies and contradictions in their evidence. Learned counsel has submitted that prosecution has not proved its case beyond all reasonable doubt. Hence, submitted to allow the appeal and to acquit the accused persons.

6. Per contra, learned High Court Government Pleader during the course of his arguments submitted that PW-6 has not been cross- examined by the accused persons. Eye-witnesses have supported the case of the prosecution. It is also his contention that complaint or the FIR is not the encyclopedia to contain each and every detail and it is only during the course of the trial, the prosecution can explain

its case with supporting material. He has submitted that the materials placed on record i.e., both oral and documentary evidence have been properly appreciated by the Court below and rightly convicted the accused persons. No illegality has been committed by the Trial Court. Hence, submitted to dismiss the appeal.

7. I have perused the oral evidence of PWs-1 to 8, documents Ex.P-1 to P-7, judgment and order passed by the Court below and also the grounds urged in the appeal memorandum.

8. PW-1/Satish is the complainant of this case, who filed the complaint dated 14.12.2006, marked as per Ex.P-1, alleging that he belongs to dalit community. Gajendra S/o Mariyappa A.K expired on 09.10.2006 and A.K.Halappa S/o A.K.Siddappa has expired on 21.11.2006, the funeral was conducted in the karab land belonging to the Government, which was on the right side of Tunga Nala. The said area was used as burial ground since 30 years. When the complainant went to said place to perform the funeral of his father, at that time accused along with their family members Manjunath Patil S/o G.Ramappa, Chandrashekar Patil S/o G.Ramappa, Chandramma W/o G.Ramappa, obstructed them. Then complainant told them to get their land measured and to ascertain the boundaries. Even then, ignoring the same on 13.12.2006 at about 2.00 p.m. the accused persons with their family members, destroyed the tomb of the complainant's father and the place therein by using JCB machine. At that time, the complainant and the colony people, had been there to attend collie work for their livelihood. After coming to know that tomb of the father of the complainant was destroyed, he along with colony people went to the said place; the accused abused them in filthy language by taking the name of the caste and posed life threat. Hence, they have sought protection from the police so also requested the police that the said graveyard area may be given to them by taking legal action against the accused persons.

9. As per the averments in the complaint, it is only stated by the complainant that after coming to know that accused persons destroyed the tomb of the father of the complainant in the graveyard and when they went to the spot accused persons abused them in filthy language by taking the name of the caste. Except this, he has not mentioned specifically, what are the abusive words used. But in his oral

evidence in the examination in chief, he has stated that the accused persons abused them as 'madiga sulemakkala. He has further deposed that at 5.p.m when the complainant and the people of the village went and asked the accused persons that why they have done so, at that time accused No.1 and his sons abused them as sulemakkale, kathe makkale, madiga sulemagane. So, this is an improvement during the course of trial, about which words, there was no mention in the complaint.

10. PW-3/Theerthappa, who is said to be an eye-witness to the incident, deposed his evidence in his examination in chief that the funeral of the dead body of the father of the complainant was buried in the graveyard nearby tunga nala at Kuruva Village about 2 years back he has seen the accused persons cultivating the said area by using JCB machine. Himself, one Ningappa, Haleshappa, Ravi have seen the same. At that time they told the accused persons not to destroy the said area, for that, the accused told that it belongs to them and told us to do whatever we want. Even complainant was also present with them at that time. Then complainant told the accused that funeral was done and even one month is also not completed and asked them not to destroy and at that time accused persons abused the complainant/Satish as madiga and asked him why he is burying the dead body at the said place and in that connection complainant has given the complaint. Though this person claims to be an eye-witness, regarding the incident and abusive words said to have been used by the accused persons as per the evidence of PW-1/Comlpainat, they are not consistent to each other, so far as the abusive words are concerned.

11. PW-7/Ningapp is also one of the eye- witness to the incident as per the case of the prosecution. In his evidence in examination in chief, he deposed that about three years back the accused by using the JCB machine destroyed the area where the dead bodies were buried. It was at 2.30 p.m., at that time himself Thirthappa and Haleshappa were present complainant also came there. About 20 days back the dead body of the father of the complainant was also buried at the said place and the complainant asked the accused persons and at that time there was quarrel between the complainant and the accused persons and the accused persons abused the complainant in filthy language, but he has not stated about

what are the abusive words.

12. Looking to the evidence of complainant as well as said eye-witnesses, the prosecution has not specifically made out a case as to what are the abusive words used by the accused persons to the complainant. In the absence of such material produced, it is difficult for the Court to accept the contention of the prosecution that the accused have committed the offence punishable under the provisions of Section 3(1)(x) of the SC/ST POA Act.

13. As per the FIR, the said incident took place on 13.12.2006 but the complaint was lodged on 14.12.2006 at 20.00 hrs and FIR was received by the concerned Magistrate on 15.12.2006 at 11.a.m as per the endorsement on the FIR/Ex.P-5. The statement of said eye-witness was recorded on 16.12.2006 as per the evidence of PW-8, who is the Investigating Officer. So there is three days delay in recording the evidence of eye-witness, which is also not satisfactorily explained by the prosecution. Even otherwise also perusing the oral evidence of the eye-witnesses, it is not consistent and cogent.

14. As per the story of prosecution, when they went to the said place after hearing the news that accused persons destroyed the tomb of the father of complainant in the graveyard, they went to the said place and when they asked the accused persons, why they have done so, then accused persons abused them in filthy language by taking the name of the caste of the complainant and thereby committed the offence even under the provisions of SC/ST POA Act. But perusing the judgment and order of the Trial Court, accused have been acquitted for the alleged offences under Sections 297, 295, 506 (ii) read with Section 34 IPC.

15. As submitted by both sides, State has not preferred any appeal challenging the order of acquittal passed by the Trial Court.

16. For committing the offence even under the provisions of SC/ST POA Act, the main base for prosecution case is committing the offences under Section 297, 295 read with Section 34 of IPC i.e., destroying the tomb of the father of complaint in the graveyard, but when the prosecution was not able to prove the said offences, the accused persons have been acquitted for the said offences. It is difficult for the

Court to accept the contention of the prosecution that accused persons committed the offence even under Section 3(1)(x) SC/ST POA Act, in the absence of satisfactory and worth believable materials. These aspects were not at all properly considered by the Trial Court and wrongly proceeded to convict the accused persons for the offence punishable under Section 3(1)(x) of SC/ST POA Act. The judgment and order of conviction is not sustainable in law. The prosecution has failed to prove the said offence beyond all reasonable doubt.

17. Hence, appeal is allowed. The judgment and order dated 15.04.2010 passed by the Prl.District and Sessions Judge and Spl.Judge at Davangere in Spl.Case SC/ST No.4/2007 is hereby set-aside and the appellants/accused persons are acquitted of the said offence.

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