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Vijender Singh Vs. State

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Court : Delhi

Decided On : Dec-17-2014

Judge : Indermeet Kaur

Appellant : Vijender Singh

Respondent : State

Judgement :

$~ R-32 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on :

11. 12.2014 Judgment delivered on :

17. 12.2014 % + CRL.A. 439/2006 VIJENDER SINGH ..... Appellant Through: Mr. C.L. Gupta with Mr. Akashdeep Verma & Mr. Rahul Ahlawat, Advocates. versus STATE ..... Respondent Through: Mr. Ravi Nayak, APP. SI Mousam Ghani, P.S. Mayur Vihar. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1. This appeal is directed against the impugned judgment and order of sentence dated 19.05.2006 and 26.05.2006 respectively, wherein the appellant had been convicted under Section 3(1)(X) and Section 3(2)(VII) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the said Act). He had been sentenced to undergo RI for a period of one year and to pay a fine of Rs.2000/- and in default of payment of fine to undergo SI for a

period of 15 days for the offence under Section 3(2)(VII) of the Act; no separate sentence had been imposed for the second offence. Benefit of Section 428 Cr.P.C. had been granted to the appellant.

2. Record discloses that on 31.08.1994, an untoward incident had taken place. The complainant Rajender Singh (examined as PW-7) has stated that the accused Vijender Singh, working as a lift operator in the Central Board of Secondary Education (CBSE) office and being a public servant had intentionally insulted and intimidated the complainant working as a mason in the same office and was a member of a scheduled caste; the derogatory words which were used against him were chura and chamar. As noted supra this incident had taken place on 31.8.1994. A complaint to the said effect was lodged on 2.9.1994. This has been proved as Mark X. Thereafter on 23.08.1998, another complaint (Ex.PW6A) was given by the complainant pursuant to which the present FIR was registered.

3. Apart from the complainant who was examined as PW-7, two other public witnesses, namely Karambir Singh and Sanjay were examined as PW-1 and PW-3 respectively. Another public witness, namely Lekh Raj Singh was examined as PW-4 but he did not support the version of the prosecution; he was hostile. The first Investigating Officer SI Vikram Singh was examined as PW-6 and the second Investigating Officer SI Mahinder Singh was examined as PW-2. Addl. DCP Ram Kumar was examined as PW-11. He had arrested the accused vide arrest memo Ex. PW1/C.

4. Statement of the accused was recorded under Section 313 Cr.P.C. He denied all these averments. No evidence was led in defence.

5. On the basis of aforenoted evidence, collated by the prosecution, the accused was convicted and sentenced as aforenoted.

6. Arguments have been heard in detail on behalf of the appellant. The first argument addressed is that under Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as the said Rules), investigation for an offence under the said Act can only be carried out by an officer not below the rank of DSP which is equivalent to an ACP. On

merits, it has been submitted that PW-1 and PW-3 are both associates and friends of the complainant and thus, they do not qualify as public view within the meaning of Section 3(1)(X) of the said Act. Reliance has been placed on a judgment of this Court reported as 2004 (2) JCC1136 Daya Bhatnagar & Ors. v. State, wherein a reference was made to a third Judge of this Court consequent to a difference of opinion on the interpretation of the expression public view as appearing in Section 3(1)(X) of the said Act. Submission is that this judgment has enunciated the meaning of public view to mean that the persons who have viewed the incident must be as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating with him in any way; excluding these persons, others would qualify as public. Submission in this regard being that PW-1 and PW-3 were both friends and close associates of the complainant and their version that the incident had occurred qua the complainant in their presence is thus, of no value. The trial Judge while relying upon their version and convicting the appellant, has, thus, committed an illegality. Next submission of the learned counsel for the appellant is that the judgment of the Apex Court reported as (2008) 12 SCC531Gorige Pentaiah v. State of Andhra Pradesh & Ors. clearly stipulates that the basic ingredients of Section 3(1)(X) of the said Act are that the complainant ought to have alleged that the appellant-accused was not a member of a scheduled caste or a scheduled tribe and the complainant was insulted or intimidated by the accused with an intent to humiliate in a place within public view. Submission being that in the entire complaint filed by the complainant there is not a whisper that the accused was not a member of a scheduled caste or scheduled tribe. In the absence of this necessary ingredient conviction again is faulty. Last submission of the learned counsel for the appellant is that the incident had taken place on 31.8.1994 and the first complaint although filed by the complainant was on 02.09.1994 yet he did not file the same with the police; it was only four years later on 23.8.1998 that he awoke from his slumber and got another complaint registered which shows that this is highly motivated and only to vent out some other grievance such a belated FIR which was registered in the year 1998 could not have been accepted. Attention has also been drawn to the first complaint dated 02.09.1994. It is pointed out that all ingredients necessary for offence under

Section 3(1)(X) of the said Act are missing. On no count can the conviction be maintained.

7. Arguments have been refuted. On the question of investigation it is stated that until and unless a prejudice has been suffered by the appellant, he cannot complain of the investigation having been carried out by an officer below the rank stipulated in the Act; reliance has been placed on provisions of Section 465 Cr.P.C. to advance this submission. On the second count, it is pointed out that PW-1 and PW-3 were only colleagues of the complainant and both of them in their statements have, in fact, admitted that they were known both to the complainant and to the accused; neither of them had any special relationship with the complainant and as such they do not qualify as friends of the complainant; their evidence was rightly relied upon by the trial Judge to convict the appellant. Further submission being that the FIR, when it is initially registered is not required to be an encyclopaedia of all facts and the complainant in his testimony has clearly stated that he being a member of scheduled caste had been intimidated and insulted by the accused. It was for the accused to put forward a defence that he was also a member of a scheduled caste; he had nowhere, even in cross-examination of the witnesses of the prosecution or at any other stage ever put forward the defence that he is not a member of the General category. He being a member of a General category and the complainant being a member of a scheduled caste and he having been abused by the appellant in public view clearly points to his guilt for the offence for which he has been convicted.

8. Arguments have been heard and record has been perused.

9. Rule 7 of the said Rules stipulates that the Investigating Officer be below the rank of Deputy Superintendent of Police for an investigation of an offence under this Act. He shall be appointed by the State Government/Director General of Police/ Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it alongwith right lines within the shortest possible time. PW-2 SI Mahinder Singh has on oath deposed that on 2.2.1999 he was marked the investigation of this case and he had recorded the statement of the complainant. Thereafter, the

investigation was marked to another Investigating Officer. PW-2 was not cross-examined. The second Investigating Officer ASI Vikram Singh was examined as PW-6. He had also recorded the statement of certain witnesses. He was crossexamined but not a single question was put to this witness that he was not authorised to carry out the investigation. Sh. Ram Kumar, Additional DCP was examined as PW-11. Investigation of this case was marked to him on 4.5.1999. This was pursuant to the orders of the DCP, East District, proved as Ex.PW-11/A. He collected the certificate (Ex.PW7/A) of the complainant evidencing the fact that he was a member of the scheduled caste; he also arrested the accused vide arrest memo Ex.PW11/C. A suggestion had been given to him that he had not carried out the investigation fairly. No suggestion has been given to him that the investigation (prior to his taking over) was not authorised by law.

10. Section 465 Cr.P.C. clearly stipulates that no finding or order of sentence passed by a court of competent jurisdiction shall be reversed in appeal on account of any irregularity, error or omission in the proceedings during trial unless a failure of justice has been occasioned. It is not the case of the appellant that he has suffered any failure of justice on account of investigation being carried out prior to PW-11 by PW-2 or by PW-6. Apart from the fact that no such suggestion has been given to this witness, this argument had also not been propelled before that Court.
11 The Apex Court time and again has held that irregularity in the investigation by an officer below the rank as stipulated will not affect the finding at the appellate stage. In (2009) 3 SCC789Ashabai Machindra Adhagale v. State of Maharashtra & Ors., the observations made by the Apex Court in this context read as follows:

17. So far as the scope for investigation is concerned it is relevant to note that Sub-section (2) of Section 156 of the Code provides that no proceedings of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under the section to investigate.

Thus, the first argument of the learned counsel for the appellant is rejected.

12. The complainant had been examined as PW-7. His version has been perused. He deposed that on 31.8.1994 he was posted in CBSE. At about 4.30 PM he was

on the 4th floor of the building in the Maintenance Labour room. Karambir Singh, Lekh Raj Singh, Sanjay and Parveen were also present when the appellant came there and he spoke to those persons. Thereafter, he uttered the following abuse upon him:

Tu chure chamar teri himmat hamare beech baithne ki kaise hui or aaj ke baad nahin bathega.

The accused also slapped him. He was shunted out from the room. Further version of PW-7 was that the appellant knew the caste of the complainant who is a Jatav; he had perused his caste certificate Ex.PW7A. The brotherin-law of the complainant, S.K. Sharma was posted as an Assistant Engineer in the same office; the complainant recited his woes to him but he was rebuked by him. The appellant was of Sharma caste; he used to humiliate the complainant even on earlier occasions. He lodged his complaint with the CBSE officers on 01.09.1994 and to the Chairman of the CBSE on 2.9.1994 and thereafter with the police station. His statement before the police was recorded as Ex.PW6/A. In his cross-examination, he admitted that he also made his complaint against Sh. S.K. Sharma, brother-in-law of appellant. He denied the suggestion that this was a false complaint. He admitted that he was working under S.K. Sharma.

13. The first complaint made by the complainant dated 2.9.1994 is Mark X. The same has been perused. In this complaint it has been alleged that the appellant for the last two months have been fighting with him and used to call him chura and chamar; this used to disturb him mentally; appellants brother-in-law S.K. Sharma was working as an Assistant Engineer in the same office. Even on his complaint, he was rebuked by S.K. Sharma. Relevant would be it to note that in the complaint dated 2.9.1994 there is not a whisper of the incident of 31.8.1994. There is no mention that any such incident had in fact taken place on 31.8.1994. Thereafter even as per the version of prosecution the complainant slept over the matter and he awoke from slumber after four years when he got registered another complaint dated 23.08.1998 wherein he stated that on 31.8.1994 an untoward incident had taken place qua the complainant; the appellant had rebuked him and used casteist slurs in the presence of other public persons, namely, Karambir, Sanjay and Lekh

Raj.

14. PW-1 Karambir Singh Rana has deposed about the incident of 31.8.1994 on the same lines as the complainant. He deposed that on 31.8.1994 at 4.30 PM the appellant had a quarrel with the complainant; he had beaten him and uttered objectionable words. In his cross-examination, he had admitted that he had also made a complaint against S.K. Sharma as he was harassing him; he had no special relations with the complainant; he stated that he was friendly with both the complainant and the appellant; he had no reason to depose falsely.

15. The second public witness examined by the prosecution was PW-3 Sanjay. PW-3 Sanjay deposed that on 31.8.1994 at 4.30 PM while he was present along with Lekhraj, Vijender and Rajender in the room, words Tu chure chamar teri himmat hamare beech baithne ki kaise hui or aaj ke baad nahin bathega.

were uttered by the appellant qua the complainant. In his cross-examination, he denied that the accused has been falsely implicated in the case as he is relative of S.K. Sharma and PW-3 had a grievance against S.K. Sharma under whom he was working.

16. On the aforenoted testimonies, relevant would be it to note that for the first time the Investigating Officer had recorded the statement of Karambir under Section 161 Cr.P.C. on 22.5.1999. The Statement of Sanjay under Section 161 Cr.P.C. was recorded by the Investigating Officer on 26.5.1999. Both these witnesses were thus examined after almost five years of the incident.

17. This Court also notes that the first complaint of the complainant mark X dated 2.9.1994 addressed to the concerned police officer, nowhere speaks of the incident of 31.8.1994. It was a general statement wherein it was stated that the accused used to harass him and call him names chura and chamar. The incident of 31.8.1994 was completely missing in the complaint dated 2.9.1994.

18. The FIR was registered on a complaint dated 23.08.1999; this complaint was lodged after a gap of four years from the date of the incident. Such an inordinate delay in lodging of the FIR is wholly unexplained and brings to mind suspicion of

embellishment. 19 This Court in MANU/DE/2959/2012 Manmohan Singh v. The State (G.N.C.T. of Delhi) had in this context observed:

13. In the case of "Mehraj Singh (L/Nk.) v.State of U.P. (1994) 5 SCC188 the Supreme Court has held : XXXX XXXX XXXX

12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story...."

14. Earliest reporting of the occurrence with all its vivid detail gives an assurance regarding truth of its version. Deliberate delay in lodging the complaint/FIR is always fatal. It appears that the IO was deliberately marking time with a view to give a particular shape to the case. All the circumstances lead to one and only one conclusion that this dying declaration is not a genuine document and no sanctity can be attached to it.

20. Record also substantiates largely the submission of the learned counsel for the appellant that the complainant PW-7, PW-1 and PW-3 who were the alleged public witnesses were all hand in glove and had the same interest; their interest was to vent their grudges against S.K. Sharma, who was working as an Assistant Engineer in the same office and was in the senior capacity qua all the afore-noted persons i.e. PW7, PW-1 and PW-3. All of them had stated in their depositions that they were being harassed by S.K. Sharma; complaints made by PW-7 repeatedly to S.K. Sharma met the same fate; he rebuked the complainant and told him to leave the office or otherwise he would be thrown out of his job. It is an admitted fact that the appellant is brother-in-law of S.K. Sharma. PW-1 and PW-3 have also admitted that they had filed complaints against S.K. Sharma as he was harassing

them. Thus, all efforts made by PW-7, PW-1 and PW-3 to accost their boss S.K. Sharma with any kind of complaint against Virender Singh/appellant met with a closed door; they were never heard; this was for the reason that S.K. Sharma was the brother-in-law of the appellant. 21 In this background, the arguments of learned counsel for the appellant that the so-called independent witnesses brought forward by the prosecution were interested witnesses, is a submission which cannot be ignored. They were associates of the complainant and all of them had a common goal and this is spelt out from their testimony. Their goal and aim was to get even with S.K. Sharma and this probably had led them to make accusations against his brother-in-law i.e. the appellant Vijender Singh.

22. This Court is fortified by this conclusion also for the reason that the incident having occurred on 31.8.1994, Karambir Singh and Sanjay had given their statements to the Investigating Officer after 5 years i.e. on 22.5.1999 and 26.5.1999. The first complaint made by PW-7 on 2.9.1994 also did not mention the incident of 31.8.1994. It seems that the complainant had lost touch with the matter and had almost given it up and when again for some reason, which is again wholly unexplained, after an inordinate and unjustifiable delay, he lodged a complaint dated 23.08.1999. He again set the law in motion after 4 years and the FIR came to be registered. This could be nothing but for a motivated reason. This Court is constrained to draw this conclusion as otherwise why the complainant did not pursue his complaint has not been explained or answered.

23. All these evidences collated, both oral and documentary, persuade this Court to give benefit of doubt to the appellant. It cannot be said that the charges under Section 3(1)(X) and Section 3(2)(VII) of the said Act have been proved beyond reasonable doubt against the appellant. Giving benefit of doubt to the appellant, the appeal is allowed. The appellant is acquitted. His bail bond stands cancelled. Surety discharged.

24. Appeal stands disposed of in the above terms. INDERMEET KAUR, J DECEMBER17 2014/srb

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