

State of Kerala Vs. Hassan

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Court : Kerala

Decided On : Jun-05-2002

Reported in : 2002(2)ALT(Cri)133

Judge : M.R. Hariharan Nair, J.

Acts : Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(1) and 3(2)

Appeal No. : Crl. A. No. 642 of 1995

Appellant : State of Kerala

Respondent : Hassan

Advocate for Def. : N.A. Muraleedharan, Adv.

Advocate for Pet/Ap. : Government Pleader

Disposition : Appeal dismissed

Judgement :

M.R. Hariharan Nair, J.

1. The State challenges the judgment of acquittal passed in C.C. No. 35 of 1994 by the Sessions Court, Ernakulam.

2. The said case involved offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The prosecution alleged that while trying to maintain law and order at the scene of occurrence, which was in front of the Rayonpuram Post Office at Perumbavoor at about 10.45 A.M. on 8.12.1993, the accused, who does not belong to any Scheduled Caste, intentionally insulted PW1, who was the Assistant Sub Inspector of Police, Perumbavoor shouting and that in consequence of the said statement the complainant Asst. Sub Inspector was humiliated.

4. The accused pleaded not guilty, Eventhough many witnesses were cited, only PWs. 1 and 9 spoke in terms of the prosecution case.' The trial court found that in the absence of better evidence, especially from the MLA, who was allegedly at the spot during the time of occurrence, the prosecution case stood unproved.

5. The learned Government Pleader submitted that there is sufficient corroboration to the evidence of PW1 forthcoming from PW9 though a subordinate of PW1 and that in the circumstances the trial court's judgment is unjustified.

6. On the arguments advanced in the case the points that arise for decision are:

1. Whether there is sufficient evidence to prove the ingredients of offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989? and

2. Whether the acquittal passed in the case is unjustified?

7. Point No. 1: Certain facts are admitted. The occurrence alleged against the accused came at a time when there was a commotion at the scene of occurrence. Two groups of persons were at the scene. One of them was Vallamkadavu Poura Samithi led by PW10, Advocate, as its President and the other Rayonpuram Poura Samithi. PW1 as Asst. Sub Inspector of Police was trying to ensure that a confrontation does not take place between the two groups. Even according to PW1 it was after separating the two groups, who were trying to clash with each other, that the accused made the utterance mentioned above.

8. In cross examination PW1 admitted that there was no clash between the police and the Pura Samithi (Citizens Forum) of which the accused was a Member. He also stated that he did not know whether he was addressed in his capacity as an Asst. Sub Inspector. To a pointed question as to whether the presence of PW1 at the spot is as a member of his caste or as a member of police force, he admitted that his presence there was as a police officer, though he was born in Pulaya Community, which is one of the Scheduled Castes. According to him, he suffered mental pain when he was addressed by his caste name. In further cross examination he conceded that the accused had no prior acquaintance with him and that it is his surmise that the accused might perhaps have had the knowledge of the caste to which PW1 belonged. He also stated that there was no occurrence at the spot to justify any act from the accused which should humiliate a member of the Pulaya community. It was suggested to him during further cross examination made with permission of the Court at the stage after the re-examination that the particular word 'Pulaya nadi' is a term usually referred to as an obscene word. PW1 conceded the said aspect.

9. The term 'Pulaya nadi' does not find a mention in the dictionaries. The learned Government Pleader has failed to give its exact meaning. At the same time, the term 'Pulayadi' is one of the terms mentioned in Malayalam English Dictionary by Prof. M.I. Warner and two others, D.C. Books Edition, 2000, which gives its meaning as 'prostitute'. The Assissi Malayalam - English Dictionary gives the meaning as 'adulterer'. 'Puladimon' hence only indicates adulterer or son of a prostitute. It has no caste implication. This is precisely why PW1 admitted in cross examination that it is used as an obscene word in common parlance. It has little connection with the caste 'Pulaya' especially when it is possible to infer from, the admission of PW1 that there was no need why PW1 should address him with his caste name when there was actually no clash between persons of upper and lower castes or between PW1 and the members of Citizen's Forum or for that matter even between the police force and the Citizen's Forum. Absolutely no motive is given by PW1 as to why he should be insulted by a stranger like the accused with reference to his caste name. The proved circumstances are such that the accused, even if he had used the particular term, had used it as an obscene word and not with reference to the caste of PW1.

10. The Bench decision in Ramachandran v. State of Kerala (1996 (1) KLT 296) is authority for the proposition that one of the ingredients to be proved for establishing the offence under Section 3(2)(v) of the Act is to establish that the offence was committed on the ground that the victim is a member of Scheduled Caste/Scheduled Tribe. Drawing an analogy therefrom in a prosecution under Section 3(1)(x) it has to be established that the humiliation intended is on the ground that the victim is a member of such caste or tribe. Such evidence is wanting in the present case,

11. Reference to the caste name is not one of the ingredients of Section 3(1)(x) invoked by the complainant. This is clear from a reading of Section 3(1)(x) which reads as follows:

'S. 3. Punishments for offences of atrocities :

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

XX XX XX XX (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view.'

The real question to be considered therefore is whether the utterance made by the accused would have been intentionally made to humiliate PW1 as a member of Scheduled Caste. This is the view taken in Binoy v. State of Kerala (2001 (1) KLT 125) also. The circumstances mentioned by PW1 or PW9 do not justify an inference as mentioned above. Viewed from this perspective, the learned trial Judge was right in his conclusion that the accused has not committed the offence in question.

12. Point No. 2: In view of my finding under Point No. 1, the acquittal passed by the learned trial Judge does not warrant any modification.

The appeal is without any merit and it is dismissed.