

State Vs. Sudhakar Naik

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Court : Mumbai Goa

Decided On : Sep-24-2012

Judge : A.P. Lavande

Appeal No. : Criminal Appeal No.65 of 2010

Appellant : State

Respondent : Sudhakar Naik

Judgement :

Oral Judgment:

Heard Mr. D. Lawande, learned Additional Public Prosecutor for the appellant and Mr. Arun Bras De Sa, learned Advocate for respondent.

2. By this appeal, the appellant takes exception to the judgment and order dated 10.3.2010 passed by Special Judge, South Goa Margao in Special Case no. 1/SC/ST/2009, acquitting the respondent/accused for the offence punishable under Section 3(1)(x) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act , 1989 ("the Act' for short").

3. Briefly, the prosecution case is as under:-

On 24.1.2008 between 9.00 to 10.30 am in front of house of first informant PW1 Ashok Korgaonkar situated at Housing Board, Gogal, Margao, the accused

intentionally insulted with intent to humiliate him being a member of scheduled caste in public view by saying “the profession of mechanic was not meant for the complainant, being chamhar (shoemaker) and that he should wear a garland of chappals and shoes on his body and sit outside his residence”.

PW1 Ashok Korgakar approached Margao Police Station and lodged NC report Exh.13 against Shri Sudhakar Naik and his wife and all the residents of housing board colony for insulting him on caste. According to PW1 Ashok the NC was not properly recorded as per his say and actually it was the accused who had insulted him on the basis of caste by saying “the profession of mechanic was not meant for the complainant, being chamhar (shoemaker) and that he should wear a garland of chappals and shoes on his body and sit outside his residence”. According to PW1 Ashok Korgaonkar, he showed NC report to his wife who knew English and she informed that NC report was not properly recorded. Therefore on the next day i.e. 25.1.2008 he again approached Margao Police Station with a typed report (Exh.12). Pursuant to the said first information report, the investigation was taken up by PW7 DYSP Umesh Gaonkar who investigated the crime and filed the chargesheet against accused for the offence punishable under Section 3(1)(x) of the Act.

4. The accused pleaded not guilty to the charge. The prosecution examined seven witnesses to prove the charge against the accused. The witnesses are PW1 Ashok Korgaonkar the first informant, PW2 Ajay Bhandodkar, the tempo driver who claimed to be an eye witness, PW3 Vasco Figueiredo, the Executive Magistrate who had issued caste certificate to the first informant, PW4 Sharad Korgaonkar, wife of the accused who also claimed to be eye witness. PW5 Suresh Naik, mechanic working for the first informant. PW6 Police Inspector Santosh Dessai who had recorded the first information report and PW7 Deputy Superintendent of Police Umesh Gaonkar, the Investigating officer.

5. Learned Special Judge upon appreciation of the evidence held that the offence under Section 3(1)(x) of the Act was not proved against the accused and consequently acquitted the accused for the offence for which he was charged. Special Judge disbelieved the version of the first informant PW1 Ashok

Korgaonkar on the ground that in the NC report Exh. 13 which was lodged in the morning of 24.1.2008 the first informant himself made allegations against Damu Naik and wife of Sudhakar Naik and in the said NC report it was only mentioned that the accused had abused him in filthy words. The exact words uttered by accused were not mentioned in the typed first information report Exh.12 which was lodged on 25.1.2008 in respect of the incident which occurred in the morning. Even in the first information report there was no statement that the first informant was insulted on the basis of caste by the accused in the morning of 24.1.2008. The allegation was that after he returned from the police station, the accused had insulted him on the basis of caste. The Special Judge also did not place reliance upon the evidence of PW4 Sharad Korgaonkar, wife of the first informant and PW2 Ajay Bandodkar, the tempo driver, who claimed to be eye witnesses on the ground that their statements were recorded on 27.5.2008 i.e almost after a period of four months.

6. Having heard Mr. D. Lawande, learned Additional Public Prosecution and Mr. Arun De Sa, learned Advocate for the accused and having perused the record, I am of the considered opinion that the reasons given by learned Special Judge for acquitting the accused for the offence for which he was charged cannot be said to be perverse warranting interference in the appeal against acquittal.

7. In my view, the evidence led by the prosecution is full of infirmities inasmuch as it is difficult to believe that the police officer upon being approached by the first informant in the morning of 24.1.2008 would not record the report as per the version of first informant. Moreover, according to the first informant, the incident had occurred in the morning session which is contrary even to the first information report Exh. 12 lodged by the first informant PW1 Ashok Korgaonkar. Perusal of the first information report discloses that there is absolutely no reference of any utterance by the accused on the basis caste qua the first informant on the morning of 24.1.2008. According to the first information report it was only when the accused came from the police station after NC was recorded that the accused gave him bad words on the basis of caste. There is absolutely no consistency in the version of prosecution story.

8. It is well settled that the interference in the appeal against an order of acquittal passed by the trial Court is warranted only if findings given by the trial Court are totally perverse. By no stretch of imagination it can be said that the findings given by Special Judge are not borne out from the evidence on record or are perverse. In my opinion the view taken by learned Special Judge is the probable view and therefore having regard to the settled law, no interference is warranted with the judgment and order of acquittal passed by the Special Judge.

9. In the result therefore, the appeal is liable to be dismissed and is hereby dismissed. The bail bond executed by the respondent stands discharged.

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