IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30TH DAY OF MAY, 2011

BEFORE:

THE HON'BLE MR. JUSTICE A.S. PACHHAPURE

CRIMINAL APPEAL No.2623 OF 2009

BETWEEN:

State by Deputy Superintendent
of Police,
Bellary Rural Sub-Division,
Bellary. ... APPELLANT/S

[By Sri. Vinayak S.Kulkarni, Adv.]

AND:

1. Vanemma,
W/o. Hemantha Kumar,
48 years,

2. Mallikarjuna,
S/o. Hemantha Kumar,
20 years,

3. Chittibabu,
S/o. Hemantha Kumar,
18 years, ... RESPONDENT/S

All are r/o. near
Korrammanahalla,
Siruguppa Taluk,
Bellary District.

[By Sri. Gode Nagaraj, Adv.]

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This Crl.A. is filed u/Section 378(1) and (3) Cr.P.C. praying to grant leave to the appellant to appeal against the Judgment and Order of acquittal dated 20th January 2009 passed in Spl. Case No.33/2003 for the offence punishable under Sections 323, 354, 504 r/w. Section 34 IPC and u/S. 3(1)(X) and (XI) of Scheduled Caste and Scheduled Tribe [Prevention of Atrocities] Act, 1989; set aside the aforesaid Judgment and Order of acquittal by allowing the appeal and to convict and sentence the accused respondent of the offences with which they have been charged-sheeted in accordance with law.

This Crl.A. coming on for Admission, this day the Court delivered the following:

JUDGMENT

Though the matter is posted for admission, with the consent of both side, it is taken up for final disposal.

2. The State has preferred this appeal, challenging the acquittal of the respondents for the charge under Sections 323, 354, 504 r/w. 34 IPC and under Sections 3(1)(X) and (XI) of the Scheduled Caste and Schedule Tribes [Prevention of Atrocities] Act of 1999 [hereinafter called as the "Act of 1999", on a trial held by the Special Judge, Bellary.

3. Sans unnecessary details, the prosecution version unfolded during the trial is as under:

The prosecution claims that on 14.11.2002 at about 10.30 p.m., the respondents, who are the accused before the trial Court, abused P.W.1-Gangamma, in vulgar language, referring to her caste with an intention to lower down her dignity in the public view, for the reasons that she removed the hay-stock of the respondents from the disputed site. In these circumstances, on the next day, in the morning at 9.30 a.m., P.W.1 approached the Police and lodged her complaint for the said offence.

4. After the investigation, a charge-sheet came to be filed and during the trial, the prosecution examined P.Ws.1 to 10 and in their evidence got marked the document Exs.P1 to 7 and M.O.1. The statements of the accused were recorded under Section 313 Cr.P.C. and the accused took the defence of total denial. The trial Court after hearing and on appreciation of the materials on record, acquitted the respondents for the charges leveled against them and aggrieved by the acquittal, the State has preferred this appeal.

5. I have heard the learned Government Pleader for the appellant and the learned counsel for the respondents.

6. The point that arise for my consideration is;

> Whether the appellant has made out any grounds to warrant interference in the Order of acquittal of the respondents for the charges framed?

7. It is the contention of the learned Government Pleader that P.W.1 is the person, against whom the respondents/accused used filthy language with an intention to lower down her dignity and also during the quarrel, torn her blouse-M.O.1 and thereby outraged the modesty of P.W.1 in the public view. Therefore, he states that the evidence of P.Ws.1 and 2 could have been accepted by the trial Court to award conviction.

8. Per contra, the learned counsel for the respondents has supported the Judgment and Order of acquittal.

9. It is well-established principle of law that in an appeal against acquittal, the appellate Court will be slow in interfering with the Order of acquittal and even if a second view is possible, the one accepted by the trial Court cannot be disturbed. To consider the evidence of the prosecution in the context of this principle, it is relevant to note that P.Ws.1 and 2 are none-else than the mother and daughter respectively, against whom the filthy language is said to have been used by the accused and the blouse of P.W.1 is said to have been torn by the accused in the public view.

10. P.Ws.3 to 5 are the independent eye-witnesses and all these witnesses have turned hostile to the prosecution. Except marking the statement as contradiction, there is nothing to consider the evidence of P.Ws.3 to 5.

11. P.Ws.1 and 2 are the persons interested. There was a dispute pertaining to the site between P.W.1 and the respondents. This fact has been admitted by P.W.1 in her cross-examination and even the trial Court has also observed existence of enmity between the parties prior to the incident and

so far as the words used by the respondents, there is no specification as to which accused used the defamatory words mentioned in the complaint-Ex.P1 or as stated by P.Ws.1 and 2 in their evidence. It is not that all the accused used the defamatory words against the complainant. So, when there is no specific allegation against any particular accused, the general allegation that the accused used the defamatory words itself is not sufficient to accept the version of the prosecution witnesses. Though this aspect has not been considered by the trial Court, it is abundantly clear from the material placed on record that both P.Ws.1 and 2 state that the accused abused them in filthy language. There are as many as 4 accused i.e., the respondents herein and the scrutiny of the evidence of P.Ws.1 and 2 does not reveal specification of any particular accused as the person, who used the defamatory words.

12. When there is interested version and the allegations are vague and general, it is necessary for the prosecution to corroborate the evidence of the interested witnesses by some independent

witnesses. Though the prosecution examined P.Ws.3 to 5, these witnesses have turned hostile to the prosecution and therefore, there is no material on record to show that there were any persons present at the time when the alleged incident is said to have taken place. In the circumstances, the provisions of Section 3(1)(X) and (XI) of the Act of 1999 do not apply to the case on hand as the humiliation or insult is not in the public view. On this aspect of the matter, the learned counsel for the respondents has placed reliance on the decision of the High Court of Rajasthan, reported in 2001 Cri.L.J. 3910 [State of Rajasthan Vs. Dipti Ram], wherein the Court taking into consideration the time of the quarrel, there were no other person/s present and held that the provisions of Section 3(X) of the Act of 1999 does not apply.

13. So, when the existing enmity has been admitted by of P.Ws.1 and 2 and proved, it is difficult to accept the interested version of these witnesses. Their interested version lacks corroboration by any independent evidence. In that view of the matter and in the context of the

principle referred to supra, I am of the opinion that there is no merit in this appeal. Hence, it is accordingly dismissed.

Sd/-
JUDGE

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