

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 31ST DAY OF MARCH 2022

BEFORE

THE HON'BLE MR. JUSTICE K. SOMASHEKAR

CRIMINAL APPEAL No.200003/2016

Between:

Nijamuddin S/o Nabisab Nadaf
Age: 24 Years, Occ: Coolie
R/o Jai Bhavani Nagar, Sindagi
Tq. Sindagi, Dist. Vijayapur

... Appellant

(By Sri Shivanand V. Pattanshetti, Advocate)

And:

The State of Karnataka
R/by Addl. SPP at Kalaburagi Bench
(Through Sindagi P.S.)

... Respondent

(By Sri G.V. Hasilkar, HCGP)

This Criminal Appeal is filed under Section 374(2) of Cr.P.C., praying to set aside the judgment of conviction and order of sentence dated 23.12.2015 passed by the Special Judge and II Addl. Sessions Judge in Special Case No.15/2013 and acquit the appellant/accused.

This appeal coming on for Hearing, this day, the Court delivered the following:

JUDGMENT

This appeal is directed against the judgment of conviction and order of sentence rendered by the trial Court in Special Case No. 15/2013 dated 23.12.2015 whereby held conviction for the offences punishable under Sections 3(1)(x) and 3(1)(xi) of Schedule Caste and Schedule Tribes (Prevention of Atrocities Act), 1989 (for short, 'SC/ST (PoA) Act') and Section 506 of Indian Penal Code, 1860 and whereby held that accused has to undergo rigorous imprisonment for a period of one year and sentenced to pay fine of Rs.1,000/- with default clause for the offence under Section 3(1)(x) of SC/ST (PoA) Act and further sentenced to undergo rigorous imprisonment for a period of five years and sentenced to pay fine of Rs.5,000/- with default clause for the offence under Section 3(1)(xi) of SC/ST (PoA) Act and also sentenced to undergo rigorous imprisonment for a

period of three years for the offence under Section 506 of IPC.

2. Heard the learned counsel Sri Shivanand V. Pattanshetti for the appellant and learned High Court Government Pleader for the respondent/State and perused the materials available on record.

3. The factual matrix of the appeal are as under;

It transpires from the case of the prosecution is that; the complainant-Smt.Laxmi @ Gurubai belongs to schedule caste community and whereas the accused belongs to Muslim community; that on 10.06.2013 at about 10.30 p.m. when the complainant was present by the side of the road, the appellant/accused came towards her and asked her to accompany him to her house to sleep with him, to which the complainant took exception to his statement

and questioned the accused as to why he was talking towards her in that manner, then the accused with an intention to insult her, knowing fully well that she belongs to schedule caste, abused her in a filthy language by held her caste, compelled her to take him to her house or else if she would be facing dire consequences, by saying so, pulled her by holding her Saree and thereby tried to outrage her modesty. In pursuance of the act of the accused and on the filing of complaint, criminal law was set into motion by registering the crime and recorded the FIR as per Ex.P.7 for the offences which reflected therein. Subsequent to registration of the crime, the PW-6 being the investigating officer has taken up the case for investigation; and visited the spot; recorded the statements of witnesses; conducted spot mahazar in the presence of panch witnesses; and after thorough investigation laid the charge-sheet against the

accused before the Court where the case in Crime No.160/2013 has been registered which committed and numbered as Special Case No.15/2013.

4. After filing of the charge sheet, the trial Court heard the learned Special Public Prosecutor and also the learned defence counsel for accused and on *prima facie* materials against the accused framed the charges, whereby the accused did not plead guilty, but claims to be tried. Accordingly, plea of the accused has been recorded separately. Thereafter, the prosecution lead an evidence by examined in all seven witnesses as P.Ws.1 to 7 and got marked Exs.P.1 to 7.

5. Subsequent to closure of the prosecution evidence, the accused has been subjected to examination as contemplated under Section 313 of Cr.P.C., the accused declined the truth of the evidence

of the prosecution adduced so far. Thereafter, accused was called upon to lead defence evidence as contemplated under Section 233 of Cr.P.C. Accused did not lead any evidence on his side but got marked contradictory statements of P.W.3 as Exs.D.1 and 2.

6. Subsequent to closure of evidence of both sides, the trial Court heard the arguments and scrutinized both oral and documentary evidence of P.W.5-Laxmai @ Gurubai, who is the victim and also being the complainant in respect of complaint marked at Ex.P.3, P.W.3-Marewwa, who is none other than the mother-in-law of P.W.5, P.W.2-Mallikarjun Shankreppa, who is an eyewitness and also relatives of P.W.1-Shivanand Babu and their evidence found corroborated with the evidence of P.W.6, being the investigating officer and so also appreciated their evidence by the trial Court and came to conclusion that the prosecution has proved the guilt of the

offences which is incorporated in the operative portions of the impugned judgment. It is this judgment is under challenge on various grounds urged in this appeal.

7. Whereas, learned counsel for the appellant has taken me through the evidence of P.W.2, who is an eyewitness relating to the incident narrated by the complainant-P.W.5 as per Ex.P.3, but her evidence runs contrary to averments of allegations made by her against the accused by abusing in a filthy language by held her caste and thereby wounded her feelings. P.W.4, who is the scribe relating to complaint marked at Ex.P.3 has been subjected to examination on the part of the prosecution and his evidence also runs contrary to the evidence of P.W.5, who is a victim and further contrary to the evidence of P.W.3-Marewwa, who is none other than the mother-in-law of P.W.5, and further contradictory to the evidence of P.W.6,

being the investigating officer who investigated the case and drew the mahazar as per Ex.P.1 in the presence of P.W.1 being secured as a panch witness. But all these evidence has not been properly appreciated by the trial Court. Therefore, in this appeal it requires re-appreciation of entire material evidence, if not, the accused would be the sufferer and there shall be some substantial miscarriage of justice would cause to him. Whereas, on perusal of the prosecution evidence, absolutely there is no material evidence regarding intentional insult or even extending criminal intimidation with humiliating the complainant- P.W.5 in respect of allegations made in her complaint marked at Ex.P.3 and thereby wounded her feelings, and also criminal force has been used by her wherein, victim has come under category of schedule caste with intention to disrespect and also outrage her modesty as accused, but the trial Court

did not appreciate the evidence in a proper prospective for the offence under Section 506 of the Indian Penal Code as well as offence under section special enactment of SC/ST (PoA) Act, 1989. Therefore, in this appeal it requires intervention and also re-appreciation of the entire evidence. However, there is a lot of inconsistencies inbetween the evidence of P.W.2, 4, 3, and 5 and their evidence is contradictory to the evidence of P.W.6 being investigating officer and P.W.7, who received the complaint and recorded the FIR as per Ex.P.7, based upon which, criminal law was set into motion. The filing of a complaint and the manner in which the investigation conducted by the responsible investigating officer and delay in filing of complaint and so also receipt of complaint as well as conduct for investigation and to conduct spot panchanama at Ex.P.1, but, the trial Court has not been properly

appreciated, therefore it requires greater care to evaluating the evidence insofar as the offences under the special enactment of SC/ST (PoA) Act, 1989. If the evidence facilitated by the prosecution and the cross-examination stood on the part of the defence side and it must be adequate evidence to prove the guilt of the accused with all beyond reasonable doubt. Though the prosecution did not facilitate the worthwhile evidence and even subjected to examination in all P.Ws.1 to 7 and P.W.2 being the eyewitness and P.W.4 being the scribe of complaint at Ex.P.3, but their evidence has been contrary to evidence of P.W.3 Marewwa and so also the evidence of P.W.5, who is the complainant and further contradictory of the evidence of P.W.6 being the investigating officer. Therefore, if not intervened, certainly the accused would be sufferer and also there shall be some substantial miscarriage of justice would

arise on the accused who is the gravamen of the accusation. On all these premises the counsel for the appellant/accused emphatically submits and also contended to consider the grounds urged in this appeal and also consider the inconsistency and contradiction in the evidence of prosecution, and setting aside the judgment of conviction and order of sentence rendered by the trial Court in Special Case No.15/2013 for the offences incorporated in the operative portion of the order, and to acquit the accused.

8. Per contra learned High Court Government Pleader for the State has taken me through the evidence of P.W.5-Laxmi @ Gurubai who is the complainant that she was residing in the house of accused on a rental basis for a period of 2-3 years and the same has been elicited in her evidence and they had vacated the house after quarreling with the

accused. No doubt there was a suggestion made to this witness and P.W.2, who is an eyewitness and P.W.3, who is none other than the mother-in-law of P.W.5, but her husband did not pay the rent and it cannot be the ground that the entire case of the prosecution has been thrown out by held as the prosecution has not proved the guilt of the accused beyond all reasonable doubt.

9. P.W.2-Mallikarjun is the eyewitness to the incident and P.W.4-Santosh Gurupada Pujari, who is the scribe of complainant at Ex.P.3 whereby they have subjected to examination on the part of the prosecution, but the complaint at Ex.P.3 made by P.W.5 reveals that complainant's family and family members of the accused are known to each other but this factual aspect has been cogently and convincingly proved by the prosecution by examining P.W.2-Mallikarjun who is an eyewitness to the incident

narrated in the complaint filed by P.W.5 as per Ex.P.3, it is enough evidence for the prosecution to prove the guilt.

10. P.W.3-Marewwa and P.W.5-Laxmi @ Gurubai are also material witnesses and that they have stated in their evidence specifically that the accused was abusing P.W.5 and wounded feelings by held her caste as the complainant comes under category schedule caste. In fact, the relationship of landlord and tenant in between the accused and P.W.5 and also her husband has been elicited in the cross-examination of P.W.2-Mallikarjun being an eyewitness to the incident. But the accused was visiting to the Jaibheem Nagar at the relevant point of time and it cannot be exaggeration or a strange things to say that there was no necessity for this accused to go from his house situated in Jai Bheem Nagar at Sindagi.

11. P.W.3-Marrewwa, who is none other than the mother-in-law of P.W.5, who is victim and they have stated in their evidence categorically and believing the evidence of those witnesses coupled with the evidence of P.W.6 being the investigating officer who investigated the case and laid the charge-sheet by conducting the spot panchanama at Ex.P.1 and the same has been conducted by him in the presence of P.W.1 Shivanand Babu and P.W.7 being an investigating officer in part who received the complaint at Ex.P.3 and recording an FIR as per Ex.P.7 and their evidence are suffice to hold that the prosecution has proved the case against the accused. However, the contradictory statements of P.W.3 at Exs.D1 and 2, it cannot come to the assistance of the accused, and the entire case of the prosecution cannot be brushed aside, mere because there shall be

contradictory statements of P.W.3, being mother-in-law of P.W.5-Laxmi @ Gurubai.

12. Whereas, the prosecution has subjected to examination of those material witnesses to prove the guilt of the accused wherein at Ex.P.3 has narrated in her complaint and the allegation made against the accused and whereby the complainant has not suppressed the fact that she along with her husband were residing in the house of father of the accused as a tenant and that they have later on vacated the house about one month prior to the incident and thereby P.W.5 had acquainted with the accused, but P.W.5 who is the victim has specifically and categorically stated in her evidence that about 2 years back at around 10.00 p.m. her husband had gone for attending nature call and she was waiting for him by present outside of her house. By the time the accused came and asked her to accompany with him saying as

to sleep with him which led a heat of exchange of words in between them. But P.W.5 categorically deposed in her evidence that the accused who caught hold her saree and tried to drag her but on seeing the incident P.W.2, intervened and pacified the quarrel. This theory has been stated and also narrated in a complaint made by P.W.5. These are all the evidence has been facilitated by the prosecution to prove the guilt against the accused and her evidence found corroborated with the evidence of P.W.2, being the eyewitness to the incident and the evidence of P.W.6, investigating officer who conducted spot mahazar at Ex.P.1 in the presence of panch witnesses. These are all the evidence has been appreciated by the trial Court and rightly rendered the conviction judgment. Therefore, in this appeal it cannot be arise for intervention of the impugned judgment of conviction and order of sentence rendered by the trial Court. On

these premises the learned High Court Government Pleader for State seeks for dismissal of the appeal being devoid of merits.

13. It is in this context of the contention made by the learned counsel for the appellant, it is relevant to refer the evidence of P.W.6 being the investigating officer who taken up the case for investigation and whereby he has investigated the case by conducting the spot panchanama as per Ex.P.1 in the presence of P.W.1, but this witness being a relative of P.W.5, who is the victim has shown the scene of crime. The material evidence has not been forthcoming on the part of the prosecution that the accused has committed the offence and proved against guilt. However, the accused was not a stranger and also known person to the family of the complainant, and they are well acquainted to each other but it requires to prove the allegation made in a complaint at Ex.P.3

and so also incident has been narrated in her complaint being committed by the accused on 10.06.2010 at around 10.30 p.m. at the public road near the house of the complainant-P.W.5 situated at Jai Bheem Nagar at Sindagi stating that the accused called her for cohabitation and when she refused for the same, accused used criminal force against her by pulling her saree with an intention to outrage her modesty by criminal force and also abused her by held her caste.

14. At a cursory glance of evidence of P.W.1 and the evidence of P.W.5-Laxmi as in her examination-in-chief and also in the cross-examination portion the contents made in her complaint at Ex.P.3 but the ingredients of the offence under section 506 of the Indian Penal Code, 1860 and the offences under the Special enactment of the SC/ST(PoA) Act, 1989 and her evidence runs contrary

to the evidence of PW.3-Marewwa though they were well acquainted with the identity of the accused unless there shall be some positive evidence on the part of the prosecution it cannot be held that the prosecution has proved the guilt of the accused beyond all reasonable doubt. However, the accused was facing up of trial whereby P.W.5-Laxmi and her husband residing in a rented house belongs father of the accused and there was some differences arose in between them. But the entire case has been revolving around the evidence of P.W.5-Laxmi who is the victim and an author of the complaint at Ex.P.3 and P.W.3 who is none other than the mother-in-law of her. But P.W.2-Mallikarjun is an eyewitness to the incident. But P.W.4 who is the scribe of the complaint at Ex.P.3, but at a cursory glance of the evidence of these material witnesses, a prudent man can said that there is inconsistencies and also contradictions in their

evidence relating to an offence, for which levelled against the accused.

15. It is relevant to refer Section 134 of the Indian Evidence Act, 1872. Merit of the statement is important. It is the well-known principle of law that reliance can be based on the solitary statement of a witness if the Court concludes that the said statement is the true and correct version of the case of the prosecution. It has been extensively addressed in the judgment of ***Raja vs State***, reported in **(1997) 2 Crimes 175 (Del)**.

16. Quality of Witness - It is the quality of the evidence and not the quantity of the evidence which is required to be judged by the Court to place credence on the statement. It has been extensively addressed in the judgment of ***State of Uttar Pradesh v. Kishanpal***, 2008 (8) JT 650.

17. Whereas, in the instant case in all P.Ws.1 to 7 have been subjected to examination to prove the guilt of the accused. But the evidence of P.W.3 found inconsistency and contradiction to each other whereby P.W.3 has been subjected to examination and contradictory statement of that witness marked as Ex.D.1 and 2 and clouds of doubt has been arisen. Therefore, it is relevant to state that plurality of witnesses - In the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence which is important, as there is no requirement in law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle, that evidence must be weighed and not counted. The test is whether the evidence has a ring of trust, is cogent, credible and trustworthy or otherwise. The legal system has emphasized value provided by each

witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act, 1872. This has been extensively addressed by the Hon'ble Supreme Court of India in the case of ***Laxmibai (Dead) through LRs & Another vs Bhagwantbuva (Dead) through LRs & Others***, reported in ***AIR 2013 SC 1204***.

18. At a cursory glance of the entire evidence of the prosecution and mainly the evidence of P.W.3 and P.W.5 does not inspire confidence relating to an offence, but creates some doubt in the mind of the court. When doubt arise in the mind of the Court, the benefit of the doubt is to be confined to the accused alone. It was extensively addressed in the case of ***Sharad Birdhichand Sarda vs. the State of Maharashtra*** reported in ***(1984) 4 SCC 116***,

wherein the Hon'ble Supreme Court has extensively addressed the issue of circumstantial evidence and also benefit of the doubt in detail.

19. In para 163, the Hon'ble Supreme Court held as under:

"We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of the doubt. In Kali Ram v. State of Himachal Pradesh,(1) this Court made the following observations:

Another golden thread that runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the

accused should be adopted This principle has special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

20. In the instant case, the prosecution has been subjected to examination in all P.Ws.1 to 7 and also got marked Exs.P.1 to 7 and whereby the allegation made against the accused and whereby re-appreciation of evidence of P.Ws.3 and 5 and their evidence has been runs contrary to each other. Therefore, carefully scrutinizing the evidence and determining the facts relating to the offences lugged against the accused, in the instant case the ingredients relating to the offences charged against the accused have not been proved by the prosecution by facilitating the worthwhile evidence such as positive, corroborative and acceptable evidence to beyond reasonable doubt. Therefore, in this appeal it requires for intervention by re-appreciation of the

evidence and also re-visiting the impugned judgment of conviction and order of sentence rendered by the trial court, if not intervened certainly the accused who is gravamen of the accusation would be the sufferer and also there shall be some substantial miscarriage of justice to the accused. However, the domain vested with the prosecution has to prove the guilt of the accused by facilitating cogent, corroborative and consistent evidence and probablise that accused has committed the alleged offences. But, in the instant case the prosecution has miserably failed to prove the guilt of the accused by proven the ingredients of each of the offences and the same is required in this appeal for re-appreciation and accordingly intervened by assigning reasons and findings and opined that the accused deserving for acquittal. Accordingly, I have to proceed to pass the following:

ORDER

The appeal preferred by the appellant/accused under Section 374(2) of Cr.P.C. is hereby allowed.

Consequently, the judgment of conviction and order of sentence rendered by the Special Judge and II Addl. Sessions Judge, Vijayapura in Special Case No.15/2013 dated 23.12.2015 rendered by the is set aside. Consequent upon setting aside of the aforesaid judgment, the appellant/accused is hereby acquitted for the offences under Sections 3(1)(x) and 3(1)(xi) of SC/ST (PoA) Act, 1989 and also for the offence under Section 506 of Indian Penal Code, 1860 for which he held charge.

Bail bonds, if any executed by the appellant/accused shall stand cancelled.

Fine amount, if any deposited by the appellant/accused, same shall be returned to him with due identification in accordance with law.

**SD/-
JUDGE**

BL