
(2010) 04 AHC CK 0026
In the Allahabad High Court
Case No : Criminal Revision No. 2136 of 2001

Binda Prasad, Karya Nirikshak Railway	APPELLANT
Vs	
Om Prakash (Khalasi) and Another	RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 401(3)
Penal Code, 1860 (IPC) — Section 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2011) 1 ACR 461

Hon'ble Judges : N.A. Moonis, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.A. Moonis, J.—Heard the learned Counsel for the revisionist, the learned A.G.A. for State and perused the record.

2. This revision is pending since 2000 and has not yet been admitted, therefore, at the time of admission stage this revision is being decided finally.

3. This revision has been preferred against the judgment and order dated 29.5.2001, passed by Shri Brijendra Singh Yadav, Special Judge, S. C. and S. T. Act, Banda in Special Trial No. 57 of 1997, under Sections 504 and 506, I.P.C. read with Section 3(i)(x), S.C./S.T. Act, P. S. G.R.P., Banda, whereby the opposite party No. 1 Om Prakash (Khalasi) has been acquitted from the aforesaid charges. The present revision has been preferred by the complainant of the aforesaid case.

4. The prosecution case in nutshell is that the F.I.R. was lodged by the revisionist on 13.4.1995 at about 3.30 p.m. against the opposite party No. 1 with the allegation that he had arrived at the office of railway station and started abusing and threatening him of dire consequences, as he wanted to make some alterations in the attendance register. On account of which the opposite party No. 1 had made abusive language, he had also tried to assault while using abusive

language. The F.I.R. was registered as Ex. Ka-1 by constable Ram Gopal and was entered in G. D. at serial No. 13, which was exhibited as Ka-5. After the registration of F.I.R. Shri Chandra Mani Pandey, the S.O. concerned entrusted with the case who recorded the statement of the witnesses, thereafter the charge-sheet was submitted under Sections 504 and 506, I.P.C. read with Section 3(i)(x), S.C./S.T. Act, which was marked as Ex. Ka-2. The case was committed to the Special Judge, Banda where the opposite party No. 1 had denied the charges and claimed to be tried. In support of his case the prosecution has examined himself as P.W. 1 and P.W. 2 Mobeen Ahmad. P.W. 3 Mahadev, P.W. 4 Chandra Mani Pandey and P.W. 5 Siddiq Ahmad as witnesses of fact.

5. In the statement u/s 313, Code of Criminal Procedure the accused has totally denied the incident and has stated that neither he has threatened the complainant, nor he has used any abusive language and he has been implicated falsely due to enmity.

6. The opposite party No. 1 was the Secretary of the Union and he had made complaint against the complainant and on that account a false case has been registered against him. The statement of the complainant was recorded as D.W. 1 and according to his statement it is admitted that the F.I.R. was lodged at 18.30 whereas the incident of the said date is alleged to have taken place at 3.30 p.m. Thus, the F.I.R. is highly belated of which there is no plausible explanation given. The factum of marpit and using abusive language is also not proved from his statement. The statement of the other eye-witness namely P.W. 2 Mobeen Ahmad and P.W. 3 Mahadev who did not support the prosecution case and they have declared as hostile, therefore, the prosecution story was disbelieved by the trial court.

7. The court below has also found that the Investigating Officer who has submitted charge-sheet has not mentioned about the preparing of site plan, and there was various lacuna in his investigation, therefore, it was not found trustworthy. Aggrieved on the decision and only on the basis of evidence collected by the Investigating Officer the same opinion was recorded by the court below with regard to the P.W. 5 Siddiq Ahmad as they are witness of fact, and on their deposition case cannot be said to be proved. In these circumstances the lower trial court has found that eyewitnesses who have turned hostile and there is contradictory statement of P.W. 1 with regard to the factum of incident, therefore, the prosecution has failed to prove its case, therefore, the accused opposite party was acquitted from the charges under Sections 504 and 506, I.P.C. read with Section 3(i)(x), S.C./S.T. Act.

8. The learned Counsel for the revisionist has strenuously contended that the court below has not considered the statement of the complainant as well as witnesses in the correct perspective, therefore, the impugned judgment and order is liable to be set aside, inspite of the witnesses in the charge-sheet of oral evidence of the witness the court below had discredited and acquitted the

opposite party.

9. On the other hand, the learned A.G.A. has contended that, after giving thoughtful consideration to the facts and circumstances of the case, the court below has rightly passed the order in acquitting the accused as the prosecution has failed to prove its case under Sections 504 and 506, I.P.C. read with Section 3(i)(x). S.C./S.T. Act against the opposite party No. 1, therefore, there is no illegality in the order passed by the court below.

10. Considering the submissions made by the learned Counsels for the parties and after going through the entire material on record, I find no illegality in the order passed by the court below. The present revision has been preferred by a private person, no Government appeal has been preferred by the State. The order has been passed after considering the entire circumstances, I am of the view, that the finding of acquittal recorded by the court below cannot be converted into conviction by this Court in revisional jurisdiction. In this regard Section 401(3), Code of Criminal Procedure, lays down that nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. In view of specific provisions contained in Section 401(3), Code of Criminal Procedure. this Court cannot convert the acquittal of accused opposite party into conviction. On this point, reference may be made to the case of Shingara Singh v. State of Haryana, 2003 ACC 79: 2004 (1) ACR 393 (SC), in which Hon"ble Apex Court, has held that criminal revision preferred by the private party against an order of acquittal cannot result into conviction of the accused.

11. This revision has no force and is it hereby dismissed. The order dated 29.5.2001 in Special Trial No. 57 of 1997, under Sections 504 and 506, I.P.C. read with Section 3(1)(x). S.C./S.T. Act, P. S. G. R. P., district Banda, passed by the court below is affirmed.