



2026:AHC-LKO:20965

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 74 of 2005

Dev Nath Singh

.....Appellant(s)

Versus

The State Of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Vijay Pratap, Baljeet Singh, J.P.
Yadav

Counsel for Respondent(s) : Govt.Advocate

Court No. - 12

HON'BLE MANISH MATHUR, J.

1. Heard Mr. Baljeet Singh, learned counsel for appellant and Mr. Vishwas Saraswat, learned Additional Government Advocate for opposite party/State.

2. Criminal Appeal has been filed against judgment and order dated 09.12.2004 passed by Special/Additional Sessions Judge (SC/ST Act), Bahraich in Sessions Trial No. 484 of 1997 (*State of U.P. v. Dev Narain Singh and another*) arising out of Case Crime No. 78 of 1994 under Sections 323, 504, 506, 452 IPC and 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [here-in-after referred to as '**SC/ST Act**'], convicting appellant under Section 3(1)(x) of SC/ST Act, sentencing him for six months' rigorous imprisonment with a fine of Rs.500/- with a stipulation that in default of payment, he will have to undergo 3 months' additional imprisonment.

3. As per prosecution case, incident is said to have taken place on 18.05.1994 at 10 A.M. when appellant alongwith co-accused Uma Nath Singh are said to have barged into the house of complainant and are said to have inflicted injuries upon complainant and his family members while also humiliating them by making caste related disparaging remarks. An F.I.R. was lodged on same day i.e., 18.05.1994 at about 05.10 P.M. During the course of proceedings,

complainant-Nanku passed away and complaint was proved by the substitute PW1-Smt. Rajrani. Other family member PW2-Smt. Bitana was also examined while PW3-Mansha Ram and PW4-Ram Asrey who were said to have saved family members from appellant and co-accused were declared hostile.

4. Learned counsel for appellant submits that a bare perusal of allegations and charge levelled against appellant indicates that provisions of SC/ST Act are inapplicable since incident allegedly took place inside the house and was not in public view. It is therefore submitted that appellant has been falsely implicated in the charge levelled against him. With regard to aforesaid aspect, learned counsel for appellant has placed reliance on judgment rendered by Hon'ble Supreme Court in ***Kuruppudayar v. State Rep. By The Deputy Superintendent of Police, Lalgudi Trichy and others*** reported in AIR 2025 SC (Criminal) 513.

5. It is also submitted that the injury report did not corroborate allegations levelled against appellant of having inflicted injuries upon the complainant and his family members since no injury was found.

6. Learned counsel has also adverted to the fact that although same allegations had been levelled against appellant and co-accused Uma Nath Singh but conviction has been recorded only against appellant while acquitting co-accused.

7. It is therefore submitted that when the allegations/charges as well as evidence were identical, acquitting one co-accused while convicting other amounts to discrimination and has been deprecated by Hon'ble Supreme Court in ***Yogarani v. State By The Inspector of Police*** reported in AIR 2024 SC 4641 as well as in ***Javed Shukat Ali Qureshi v. State of Gujarat*** reported in AIR 2023 SC 4444.

8. Learned Additional Government Advocate has opposed criminal appeal on the basis that the allegations levelled against appellant were different which were levelled against co-accused Uma Nath Singh. He has also adverted to the First Information Report as well as depositions of PW1 and PW2 Smt. Rajrani and Smt. Bitana respectively to submit that it was in fact the appellant who had called the complainant-Nanku to his farm a day prior on 17.05.1994 and had

engaged his services which resulted in altercation between the parties. He submits that a bare perusal of charges levelled against appellant clearly indicates the aspect that appellant had humiliated complainant by using caste based insults and therefore provisions of SC/ST Act are clearly made out. It is also submitted that a perusal of impugned judgment will make it evident that distinction has been drawn between appellant and co-accused due to which co-accused was acquitted while the appellant has been convicted.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, including Lower Court Record, allegations levelled against appellant and co-accused were with regard to an incident having taken place on 18.05.1994 at about 10 A.M. when the appellant alongwith co-accused Uma Nath Singh were said to have barged into the house of complainant Nanku and attacked him as well as his family members inflicting injuries upon them. Caste based insults were also said to have been uttered by the appellant and co-accused.

10. From the record, it transpires that the complainant-Nanku passed away even prior to have recorded his deposition and allegations were proved by PW1-Smt. Rajrani and PW-2 Bitana. The allegations also indicate that when the complainant and co-accused were attacking the complainant and his family members, hearing ruckus Mansha Ram (PW3) and Ram Asrey (PW4) intervened due to which the complainant and his family members were saved.

11. However, from the record, it appears that aforesaid PW3-Mansha Ram and PW4-Bitana did not support prosecution story and were declared hostile.

12. Conviction has therefore been recorded on the basis of testimony of PW1-Smt. Rajrani and PW2-Smt. Bitana.

13. A perusal of impugned judgment indicates that the injury reports which were brought on record as Ext. Nos.8, 9, 10 & 11 did not support prosecution version since no injury was found on the injured with complaint of only pain being recorded. The Trial Court has thereafter discarded the aspect of injuries being suffered by the complainant and his family members.

14. With regard to aspect of applicability of SC/ST Act, Hon'ble Supreme Court in **Karuppudayar** (supra) has clearly held that disparaging caste based utterances made by the accused to the complainant/victim should be in public view. The aspect of public view has thereafter been discussed and a distinction was drawn between 'public place' and 'public view' and it was held that for ingredients of SC/ST Act to be applicable, the place where such utterances have been made should be in public view i.e., the place should be open where the members of public can witness or hear the utterances made by the accused to the victim. It has been further held that where the offence takes place within four corners of wall where members of public are not present, it cannot be said that such an act has taken place within public view and therefore provisions of SC/ST Act would be inapplicable. Relevant portions of judgment are as follows:-

*"10. The term "any place within public view" initially came up for consideration before this Court in the case of **Swaran Singh and others v. State through Standing Counsel and another** reported in (2008) 8 SCC 435. This Court in the case of **Hitesh Verma v. State of Uttarakhand and another** reported in (2020) 10 SCC 710 referred to **Swaran Singh** (supra) and reiterated the legal position as under:*

*"14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as **Swaran Singh v. State** [**Swaran Singh v. State, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527**] . The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view (sic) [Ed. : This sentence appears to be*

contrary to what is stated below in the extract from **Swaran Singh**, (2008) 8 SCC 435, at p. 736d-e, and in the application of this principle in para 15, below:"Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view."]. The Court held as under : (SCC pp. 443-44, para 28)

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."(emphasis in original)"

11. It could thus be seen that, to be a place 'within public view', the place should be open where the members of the public can witness or hear the utterance made by the accused to the victim. If the alleged offence takes place within the four corners of the wall where members of the public are not present, then it cannot be said that it has taken place at a place within public view."

15. In her deposition, PW1-Smt. Rajrani has stated that the appellant-Dev Nath Singh alongwith Uma Nath Singh came to their house searching for Nanku and after entering the house started assaulting the family members. The same aspect has thereafter been deposed by PW2-Smt. Bitana who also stated that assault and disparaging remarks took place after the appellant and co-accused entered the house.

16. Applying the principles indicated in the judgment of **Karupudayar** (supra) the incident has therefore taken place within four walls of the house of the complainant where no member of any public was present. Therefore, it is held that since the aforesaid alleged utterances were neither in a public place nor within public view, provisions of SC/ST Act imputed against appellant would be inapplicable.

17. From the record, it transpires that although allegations against appellant indicate attacking complainant and his family members and inflicting injuries upon them, same was not corroborated by the injury reports and were also discarded by the Trial Court.

18. The impugned judgment also indicates the aspect that co-accused Uma Nath Singh was acquitted of charges levelled against him whereas appellant has been convicted on the same charges and same evidence. The only distinction recorded by the Trial Court between the appellant and co-accused was that it was the appellant who had called the complainant-Nanku for some work a day prior to 18.05.1994 and as a result of this, incident took place. From the record, it transpires that allegations against appellant have been made with regard to an incident which took place on 18.05.1994. There are no allegations or charge levelled against appellant of any incident taking place a day prior thereto on 17.05.1994. Thus, it is quite evident that the distinction drawn by the Trial Court was against

the charge, allegations levelled and evidence against the appellant and co-accused. In such circumstances, the distinction drawn by the Trial Court between appellant and co-accused Uma Nath Singh is not borne out from record.

19. With regard to aforesaid aspect, Hon'ble Supreme Court in **Javed Shaukat Ali Qureshi** (supra) has held as follows:-

"15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination."

20. The same analogy has also been drawn in **Yogarani** (supra) in the following manner:-

*"10. The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In the case of **Javed Shaukat Ali Qureshi v State of Gujarat** reported in 2023 INSC 829, this court has held that:*

"15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination."

In the case on hand, allegations against the appellant being the same as made against Accused No.3 & 4, the Courts below could not have convicted the Appellant while acquitting the other two."

21. Upon applicability of aforesaid judgments in the present facts and circumstances, it is evident that appellant has been convicted while acquitting the co-accused on the same allegations and testimony of

same witnesses being PW1 and PW2 while PW3 and PW4 were declared hostile.

22. As has already been discussed above, distinction drawn by the Trial Court between the appellant and co-accused was against material on record and the finding with regard to same is perverse.

23. In view of discussion made here-in-above, it thus being evident that conviction of appellant under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 not being made out, impugned judgment and order dated 09.12.2004 passed in Sessions Trial No. 484 of 1997 (*State of U.P. v. Dev Narain Singh and another*) convicting the appellant under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby set aside.

24. The appeal therefore stands **allowed**.

25. The appellant is on bail and he need not surrender. His bail bonds are cancelled and sureties discharged.

26. Appellant is directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A of the Code of Criminal Procedure, 1973, corresponds to Section 481 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

27. Let a copy of this judgment and original be transmitted to the Trial Court concerned forthwith for necessary information and compliance.

March 24, 2026
lakshman

(Manish Mathur,J.)