



2026:AHC:17818

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 10956 of 2025

Vishal Tyagi And Another

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Vivek Sharma
Counsel for Respondent(s)	:	G.A.

Court No. - 51

HON'BLE ANIL KUMAR-X, J.

1. Heard Shri Vivek Sharma, learned counsel for the appellants, and Shri K.K. Gupta, learned AGA for the State. None has appeared on behalf of the respondent/informant to oppose the appeal despite notice, as per office report, has been duly served on him.

2. This criminal appeal under Section 14-A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act') has been preferred by the appellants - Vishal Tyagi and Samod Kumar @ Samod Kumr Tyagi with a prayer to allow the appeal and set aside the judgment and order dated 01.10.2025 passed by the Additional District and Sessions Judge/Special Judge (SC/ST Act), Amroha, in S.S.T. No. 462 of 2020 (State vs. Vishal Tyagi and another), arising out of Case Crime No. 08 of 2020, under Sections 504, 506 Part-I IPC and Section 3(1)(da) of the SC/ST Act, Police Station Adampur, District Amroha.

3. By the impugned judgment dated 01.10.2025, the accused Vishal Tyagi and Samod Kumar Tyagi were convicted under Sections 504 and 506

Part-I IPC and acquitted of the charge under Section 3(1)(da) of the SC/ST Act. Instead of sentencing, the learned trial court extended the benefit of probation to the accused persons and directed their release on furnishing a bond in an amount to be determined by the office, with or without surety, before the District Probation Officer for maintaining peace and good behaviour for a period of one year, with a stipulation that in case of default, the question of punishment may be considered. Further, under Section 5 of the Probation of Offenders Act, the accused were directed to pay compensation of ₹25,000/- to the victim/informant.

Factual matrix of case

4. First information report (Ex. Ka-1) was lodged by PW-1 Chhotey Lal, In-charge Principal, Gramodyay Inter College, Gangeswari, District Amroha, at Police Station Adampur. The informant alleged that the accused Vishal Tyagi, Clerk, and Samod Kumar Tyagi, Assistant Teacher, abused him and used caste-based slurs when he asked them to produce the salary slip of the month of November. It was further alleged that other teachers present in the office intervened and took the accused persons out of the office. On the basis of the written report, an FIR in Case Crime No. 008 of 2020 under Sections 504 and 506 IPC was registered against the accused persons. During investigation, PW-6, Circle Officer Satyendra Singh, conducted the investigation and submitted a charge-sheet against the accused persons under Sections 504, 506 IPC and Section 3(1)(da) of the SC/ST Act.

5. The prosecution examined six witnesses to substantiate its case. PW-1 Chhotey Lal stated that he was posted as In-charge Principal of Gramodyay Inter College Gangeswari on 27.11.2019. On the said date,

accused Vishal Tyagi came to his office and requested him to pass the salary bill for the month of December. When PW-1 asked him to place the pay bill of November 2019 first, the accused refused. Thereafter, accused Vishal Tyagi arrived along with his uncle, accused Samod Tyagi, and both started abusing and threatening him. On hearing the commotion, other teachers came to the office and intervened, thereby taking the accused persons out. PW-1 further stated that both accused abused him and used caste-based slurs in the presence of other teachers.

6. PW-2 Mahendra Singh stated that on the alleged date he was teaching in his class and around 2:00 p.m. he heard noises from the Principal's office. He stated that both accused were posted in the same college and that they were not involved in the alleged offence. PW-3 Harendra Singh and PW-4 Suraj Kumar Sharma, who were also teachers in the same institution, denied the prosecution allegations. PW-5 Vivek Kumar, Constable Clerk, proved the chik FIR (Ex. Ka-2) and the relevant GD entry (Ex. Ka-3). PW-6 Circle Officer Satyendra Singh stated that he recorded the statements of the witnesses and submitted the charge-sheet (Ex. Ka-4) before the court.

Findings of Trial Court

7. The learned trial court observed that the informant PW-1 supported the prosecution case during examination-in-chief but resiled from his statement during cross-examination. The remaining witnesses also turned hostile. Relying upon settled principles of law, the trial court held that the testimony of a hostile witness cannot be discarded in toto and that the portion of testimony supporting the prosecution case can be relied upon. The learned trial court placed reliance upon the judgment of the Supreme

Court in **Vinod Kumar vs. State of Punjab** reported in **(2015) 3 SCC 220**, wherein it was held that undue delay in cross-examination may result in witnesses turning hostile due to influence or intimidation, and in such circumstances, their testimony cannot be outrightly discarded.

8. The learned trial court further relied upon the judgment in **State of U.P. vs. Ramesh Prasad & Ors., AIR 1996 SC 2766**, wherein the Hon'ble Supreme Court held that when hostile witnesses have corroborated the prosecution version during investigation and such fact is deposed by the Investigating Officer, their testimony cannot be discarded merely on account of their denial during trial.

9. On the basis of the aforesaid judgments of the Supreme Court, the learned trial court concluded that although PW-1 turned hostile during cross-examination, he had supported the prosecution version in his examination-in-chief, and therefore, his testimony could not be disbelieved. The learned trial court further observed that staff members working in the same institution are susceptible to influence over time. The corroboration by the Investigating Officer regarding the statements of witnesses during investigation was treated as a supporting circumstance. The learned trial court also observed that there was no reason to disbelieve the Investigating Officer, a gazetted officer, who had no motive to falsely implicate the accused persons. Accordingly, the learned trial court held that the prosecution had proved its case beyond reasonable doubt for offences under Sections 504 and 506 IPC. However, the accused were acquitted under Section 3(1)(da) of the SC/ST Act on the ground that the alleged occurrence arose out of a dispute between the Principal and staff members and it could not be inferred that the offence

was committed on account of the informant's caste. The benefit of probation was extended in lieu of sentence.

Arguments on behalf of appellants

10. Learned counsel for the appellants submitted that the FIR was lodged after a delay of nine days and the prosecution failed to satisfactorily explain the same. It was further argued that the site plan was prepared by S.I. Dharmendra Kumar on 29.01.2020 but was not proved during trial, which casts serious doubt on the prosecution case. It was contended that PW-1 did not support the prosecution version during cross-examination and that PW-2, PW-3 PW-4 were declared hostile and did not corroborate the prosecution story. Learned counsel submitted that reliance upon hostile witnesses without independent corroboration is contrary to settled principles of law. While it is true that testimony of a hostile witness cannot be discarded entirely, its credibility must be tested in light of surrounding circumstances. Reliance was placed upon **Ram Swaroop vs. State of Rajasthan, AIR 2004 SC 2243**, wherein the Supreme Court held that accepting the testimony of a hostile witness without satisfactory corroboration is impermissible. It was argued that reliance upon the examination-in-chief of PW-1 alone, without corroboration, is perverse and illegal, rendering the impugned judgment unsustainable.

Arguments on behalf of State

11. Per contra, learned AGA Shri K.K. Gupta submitted that it is well settled that the testimony of a hostile witness is not to be discarded in its entirety and that the prosecution is entitled to rely upon those portions of testimony which support its case. It was contended that the statement of

PW-1 sufficiently establishes the occurrence dated 27.12.2019 and that there was no reason for the Principal to falsely implicate his staff members. PW-1 supported the prosecution case during investigation and independent witnesses also corroborated the prosecution version before the Investigating Officer. PW-6, the Investigating Officer, categorically stated that all witnesses corroborated the FIR during investigation, which itself constitutes corroborative evidence. As regards the site plan, it was submitted that although it was not proved, there is no dispute regarding the place of occurrence. Therefore, the findings recorded by the learned trial court do not suffer from any infirmity and the conviction does not warrant interference.

Conclusion

12. I have considered the submissions advanced by learned counsel for the parties and perused the entire record including the impugned judgment.

13. It is evident that all prosecution witnesses turned hostile during trial. P.W.-1 though supported prosecution during examination in chief, but turned hostile in his cross examination. Relying solely upon his examination-in-chief, learned Trial Court concluded that prosecution story stands proved. It is true that there is no legal prohibition against convicting an accused on the basis of testimony of a hostile witness, but it cannot be accepted blindly. In **Neeraj Dutta vs State (Govt. of N.C.T. of Delhi)**, AIR Online 2022 SC 1160, Hon'ble Supreme Court held that merely because a witness is declared hostile, his entire testimony does not become useless. If the part of his evidence is supported by other facts or reliable evidence on record, it can still be considered by the Court.

Therefore, there is no legal prohibition against convicting an accused on the basis of testimony of a hostile witness, provided it is corroborated by other trustworthy evidence. Similarly in **Ram Swaroop** (supra), the Hon'ble Supreme Court held that conviction cannot be based upon the testimony of a hostile witness in the absence of reliable corroboration. Hence, approach of Trial Court in placing reliance upon uncorroborated testimony of P.W.-1 is untenable.

14. Similarly, learned trial court committed a manifest error in placing reliance upon the statement of the Investigating Officer to the effect that the witnesses had supported the prosecution version during the course of investigation. The Hon'ble Supreme Court has consistently held that the statement of an Investigating Officer regarding what a witness stated under Section 161 Cr.P.C. cannot be treated as substantive evidence. Unless the witness himself is confronted with his previous statement in accordance with Section 145 of the Evidence Act, such statements cannot be used either for corroboration or contradiction. Mere deposition of the Investigating Officer does not cure this defect. In the case of **V.K. Mishra vs. State of Uttarakhand (2015) 9 SCC 588**, it has been held by Hon'ble Supreme Court that previous statements under Section 161 Cr.P.C. can be used only after due confrontation of the witness and not otherwise. It has further been reiterated that the Investigating Officer's testimony cannot substitute such confrontation.

15. In the present case, PW-1 was never confronted with his alleged statement recorded under Section 161 Cr.P.C. Learned Trial Court has further observed that Investigating Officer, in his deposition, stated that witnesses of fact had supported prosecution case during investigation.

Such an approach is contrary to settled principles governing appreciation of evidence. Testimony of Investigating Officer is not substantive evidence; it is only corroborative in nature. In the present case, testimony of eyewitnesses and victim constitutes substantive evidence. Law mandates that corroboration is required to support substantive evidence and not that substantive evidence is to be proved by seeking support from corroborative evidence. Oral testimony of witnesses may be corroborated or contradicted by testimony of Investigating Officer, but testimony of Investigating Officer cannot be treated as primary evidence to establish truthfulness of oral evidence.

16. It will be relevant to refer to the judgment of **Renuka Prasad v. State (2025 INSC 657)** where it was confronted with similar issue, i.e. witnesses turning hostile but Investigating Officer deposing before Court that witnesses have supported prosecution version during investigation. Supreme Court herein held that conviction cannot be sustained merely on suspicion or on statements recorded during investigation. In that case, the trial court had acquitted the accused in a murder case because most prosecution witnesses turned hostile and the alleged eyewitness failed to identify the accused. However, the High Court reversed the acquittal and convicted the accused mainly by relying on the testimony of the Investigating Officer, who stated that witnesses had supported the prosecution case during investigation under Section 161 Cr.P.C. The Supreme Court set aside the High Court judgment and restored the acquittal, holding that statements under Section 161 Cr.P.C. are not substantive evidence and cannot be used to convict unless the witness affirms them in court.

17. Therefore, the corroboration drawn from the testimony of the Investigating Officer is not permissible in law. Reliance placed by the learned trial court on such inadmissible material makes the finding legally unsustainable. In view of the above settled legal position, the approach adopted by the learned trial court in convicting the appellants solely on the basis of partial testimony of a hostile witness, without lawful corroboration and without confronting the witness with his previous statement, is clearly erroneous. The findings recorded by the learned trial court are therefore perverse, contrary to law, and unsustainable in the eyes of law, and the impugned judgment warrants interference by this Court.

18. Accordingly, the impugned judgment and order dated 01.10.2025 passed by the Additional District and Sessions Judge/Special Judge (SC/ST Act), Amroha, in S.S.T. No. 462 of 2020 (State vs. Vishal Tyagi and another), arising out of Case Crime No. 08 of 2020, under Sections 504, 506 Part-I IPC and Section 3(1)(da) of the SC/ST Act is hereby set aside, and this criminal appeal is **allowed**.

(Anil Kumar-X,J.)

January 27, 2026
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