

(1998) 11 BOM CK 0042

In the Bombay High Court

Case No : Criminal Appeal No. 179 of 1997

Ashabai Ganeshrao Khote and another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 3, 59

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1), 6

Citation : (2000) 5 BomCR 113 : (2000) BomCR(Cri) 113 : (1999) 2 MhLj 36

Hon'ble Judges : V.K. Barde, J

Bench : Single Bench

Advocate : S.K. Barlota, for the Appellant; P.B. Varale, Assistant Public
Prosecutor, for the Respondent

Judgement

V.K. Barde, J.—Heard Shri S.K. Barlota, learned Counsel for the appellant and Shri P.B. Varale, learned A.P.P. for respondent-State.

2. The appellants are convicted in Special Case No. 13/95 by the Special Judge, Beed, on 9-5-1997 for offence punishable u/s 3(1)(x) read with section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred in short as the "Act") and each of them is sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs. 200/- in default of payment of fine, further rigorous imprisonment for one month.

3. The prosecution case is as follows:----

Ankush Dasharath Karke had gone to Yamai temple from his village Jategaon with his wife, parents and children to offer a saree and tube light to the deity because his mother had vowed that she would offer saree and tube light to the deity on the son Ankush getting employment. The day was 16-1-1995 an annual fair day at Yamai temple. Ashabai, the accused No. 1 and her son Ravindra, the accused No. 2, were in the temple. They happened to be Pujari of the temple.

When the saree was offered, Ashabai put aside the saree. She was asked why the saree was not being put on the deity, she told that as the saree was given by the person of Mahar Mang community, it cannot be put on the deity. Then the complainant gave the tube light and said that at least the tube light be fixed on the temple, but then Ravindra, accused No. 2, threw aside the tube light and said that the person from Mahar Mang community have become arrogant and they ought to be looked at. Thus, the two accused insulted the informant Ankush. Sandipan Sopan Karke, Sudhakar Sonawane, Ram Wakte and many other persons were then present. He accordingly lodged the report at Talwada Police Station. The crime was registered and after investigation, both the accused were chargesheeted before the Special Judge.

4. The learned Special Judge framed charge against both the accused for the said offences. The accused pleaded not guilty. The learned Special Judge, after recording evidence of the prosecution witnesses, statements of the accused u/s 313 of Criminal Procedure Code and after hearing the arguments, convicted the accused and sentenced them as mentioned above.

5. The learned Counsel for the appellants has taken me through the entire evidence on record and has specifically pointed out the omissions and contradictions in the deposition of Ankush - the informant which is at Exhibit 14 and in the deposition of his wife Mangala which is at Exhibit 16 and has contended that this entire case is coming up because of the rivalry between the trustees. There is no independent witness to support the prosecution case.

6. On going through the deposition of Ankush, it does appear that on 16-1-1995 at about 5 p.m., he had gone to the temple along with his family members to offer saree and tube light and it also appears that both things were not accepted at temple by the accused who were then in the temple as Pujari. It also appears that the accused uttered certain insulting words while refusing saree and the tube light. The learned A.P.P. has argued that if we read the words uttered by the accused, ^egkjk ekaxkps yksd tkLr ektysr R;kaP;kdMs igkos ykxsy**it is very clear that as the complainant belongs to Matang community and the accused belong to Maratha community, such words were used in the temple which was in the view of the public with an intention to humiliate the complainant and his family members. The offence is established and the conviction is correctly recorded.

7. In this respect, specific wording of section 3 of the Act has to be considered. Sub-section (1) of section 3 opens with the following words :---

"Whoever, not being a member of scheduled caste or a scheduled tribe ----

(1) forces a member of a scheduled caste or a scheduled tribe to drink or eat any inedible or obnoxious substance....."

So this section contemplates that the prosecution must establish that the accused was not member of scheduled caste or scheduled tribe and the person

aggrieved was the member of scheduled caste or scheduled tribe. This is the important ingredient to establish the offence under this section and there must be specific evidence with respect to both these aspects. Here the prosecution witness Ankush in his deposition at Exhibit 14 has stated that the accused belong to Maratha community while he belongs to Matang community. The learned A.P.P. Shri Varale has argued that this statement made by the witness is not challenged in the cross-examination and, therefore, the accused have accepted that the accused belong to Maratha community and the complainant belongs to Matang community, which is a scheduled caste community.

8. It is true that in the cross-examination, the statement made by the witness Ankush is not challenged. However, to prove the caste of the accused as well as to prove the caste of the complainant, some specific evidence is required than a mere statement of witness. The prosecution ought to have brought on record the caste certificates of both the parties to prove that the accused did not belong to scheduled caste or scheduled tribe and further to prove that the aggrieved person belongs to scheduled caste or scheduled tribe. The prosecution has failed to do so. The Investigating Officer whose deposition is at Exhibit 6 is also not stating anything about the evidence collected to make out this specific case. In such circumstances, merely because the statements made by Ankush in examination-in-chief are not challenged in the cross-examination, it cannot be said that the accused admitted those statements or that the prosecution has proved beyond reasonable doubt the two important ingredients required under law to be proved.

9. The learned Special Judge has recorded the statements of the accused u/s 313 of Criminal Procedure Code. Lengthy questions are put to the accused which practice must be deprecated because the provisions of section 313 of Criminal Procedure Code clearly indicate that any circumstance appearing against the accused must specifically be put to the accused to obtain his explanation and to give him chance of defence. So each and every circumstance appearing against the accused is required to be put to the accused separately in small questions understandable to the accused. The questions which are running into more than 15 to 20 lines containing various aspects of deposition of the witness cannot be called a proper examination of the accused u/s 313 of Criminal Procedure Code. So in this matter, the statements of the accused recorded u/s 313 of Criminal Procedure Code are not satisfactory.

10. Besides that the accused were nowhere made aware about the statement made by Ankush that he belongs to Matang community and that the accused belong to Maratha community. When the accused were not given chance to explain these two important circumstances on which the learned Special Judge has relied upon to convict the accused, the conviction cannot be sustained. It was necessary to put to the accused that Ankush stated that he belongs to Matang community and say of the accused ought to have been obtained on this aspect and then separately ought to have been put to the accused that Ankush

stated that accused belong to Maratha community and that the said community does not belong to scheduled caste or scheduled tribe, ought to have been put to the accused and opportunity ought to have been given to the accused to explain the situation. Thus, even for the sake of arguments, it is accepted that witness Ankush stated about his caste and caste of the accused and that statement was not challenged by the accused in the cross-examination, the circumstance remains that the accused were not given proper opportunity at the time of recording their statements u/s 313 of Criminal Procedure Code and, therefore, the conviction and sentence cannot be upheld.

11. Hence, the appeal is allowed. The order of conviction and sentence recorded by the Special Judge, Beed, in Special Case No. 13/95 is set aside. Both the accused are acquitted of the offence punishable u/s 3(1)(x) read with section 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Fine, if paid, be refunded to the accused.

12. Appeal Allowed.