
(2015) 03 BOM CK 0122

In the Bombay High Court

Case No : Criminal Appeal No. 472 of 2012

Dnyaneshwar Maroti Bembde and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3 (1) (x)

Citation : (2015) ALLMR(Cri) 3417 : (2015) 2 BomCR(Cri) 488 : (2015) CriLJ 3106

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : A.V. Patil Indrale, for the Appellant; R.P. Phatke, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.V. Nalawade, J.—The appeal is filed against judgment and order of Special Case (Attro.) No. 11/2011(New) [Special Case (Attro.) No. 4/2010 (Old)] which was pending in Court of Special Judge, Ahmedpur, District Latur. The appellants are convicted and sentenced for offence punishable under sections 3 (1) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as "Special Act" for short) and also for offence punishable under sections 323 read with 34 of Indian Penal Code (hereinafter referred to as "IPC" for short). The sentence of rigorous imprisonment of six months is given and fine is also imposed. Both the sides are heard.

2. The complainant was working as Circle Agricultural Officer at Kingaon, Tahsil Ahmedpur, District Latur at the relevant time. Accused Nos. 1 and 2 were working as Agricultural Assistants and accused No. 3 had retired from the same office. It is the cases of complainant accused No. 1 to 3/appellants were constantly harassing him with the intention that he should not ask them to do

any work.

3. In the complaint, complainant had mentioned two instances in which he was harassed. According to him, the first incident took place on 21.12.1999 at about 4.30 p.m. when he was taking tea in a hotel of one Mahajan from Ahmedpur. According to him, accused Nos. 1 to 3 came there, picked up quarrel and asked him as to why he had given report against them to superior officer. According to him, they gave threats of life to him on that occasion and pushed him during quarrel.

4. It is the case of complainant that on 25.12.2009 at about 5.30 p.m. he was present near bridge constructed on Lendi river near Ahmedpur and he was having talk with farmers like Sanjay Kamble, Deepak Kamble and others. According to him, accused Nos. 1 to 3 came there from Ahmedpur side in a car and they picked up quarrel with him. According to him, all the accused gave abuses to him by taking the name of his caste which is a scheduled caste and uttered following words against him. [Mahargya, Dhedgya you are Mahar of Barshi and you have become arrogant after coming to here]. It is the case of complainant that in the incident in question he was manhandled by all the accused and threats of life were given to him. According to him, when this incident was taking place, other witnesses like Digamber Gaikwad, Ashok Lamture and Nabilal Shaikh also came there and they rescued him.

5. It is the case of complainant that due to the aforesaid incident, he was disturbed and he wanted to give report to superior officer first. According to him, he did not give report to police immediately. According to him, he waited also with the hope that accused may improve their conduct, but then he realized that they were passing threats to him and they were not improving their conduct. When the incident took place on 25.12.2009, the report to police came to be given on 1.1.2010.

6. The complainant belongs to Mahar caste. Accused No. 1 belongs to Yellam caste, accused No. 2 belongs to Lamani community and accused No. 3 belongs to Sonar caste. Accused are not from scheduled castes or scheduled tribes. Before police, complainant produced his caste certificate. One Sub Divisional Officer, the officer appointed for the Special Act, made investigation of the case and filed chargesheet for the aforesaid offences and also for offences punishable under sections 504, 506 of I.P.C. The Trial Court has held the appellants guilty for aforesaid offences only.

7. Complainant Anil (PW 1) has given evidence on the first incident dated 21.12.2009. He has deposed that at the relevant time, he was present in the office with his colleagues like Kande, Gundwad and others. According to him, Kande, Assistant Agricultural Officer had made complaint against accused No. 1 and so, he called accused No. 1 on phone to his office. He has deposed that accused No. 2 also came with accused No. 1 and he noticed that accused No. 1 was in drunken condition. According to the complainant, in his presence, accused

No. 1 quarreled with Kande and when he tried to convince accused No. 1 to behave well, accused No. 1 started quarreling with him. According to him, accused No. 1 then assaulted him with fist blows and kicks. He has deposed that one farmer by name Shri. Deshmukh, who was present in the office, intervened in the incident and separated the quarrel. He has deposed that he reported the incident to Taluka Agricultural Officer Shri. Patil and Shri. Patil advised him to give written report about the incident.

8. The complainant (PW 1) has then deposed that from the office, he went to a hotel from Ahmedpur to have a cup of tea. He has deposed that accused Nos. 1 and 2 came there also and quarreled with him. He has deposed that accused No. 1 tried to give blow of stone on his head, but the aforesaid farmer Shri. Deshmukh snatched the stone from the hand of accused No. 1 and saved him. He has deposed that, in that incident, accused abused him by taking the name of his caste. The specific abuses allegedly given on that day are not mentioned by PW 1 in his evidence. He has deposed that Kande and some farmers witnessed the incident. He has given evidence that accused No. 1 had become angry with him as he had given report to superior officer.

9. The F.I.R., Exh. 34, is duly proved in the evidence of PW 1. In the F.I.R., there is no mention of incident, which took place in the office on 21.12.2009. There is only mention of the incident which took place in the hotel. Further, in the F.I.R., there is no mention that any abuses were given to the complainant by taking the name of his caste by accused No. 1 in the hotel.

10. PW 1 has admitted that he did not give written report to his superior officer in respect of the aforesaid incident. There are also aforesaid omissions in respect of aforesaid incident in which abuses were given by taking the name of his caste. The F.I.R. at Exh. 34 is written F.I.R. given by the complainant to police. No explanation is given about the omissions. Witness Kande (PW 9) is examined by the prosecution to give evidence on incident dated 21.12.2009. He has given evidence in respect of the incident which allegedly took place in the office. He has given evidence that after the incident of office, they went to a hotel to have tea. He has not given evidence that abuses were given by taking the name of caste of complainant by accused No. 1. This witness is cross examined by Assistant Public Prosecutor. He was declared hostile.

11. There are aforesaid circumstances in respect of the incidents dated 21.12.2009. Evidence is given on two specific incidents of that day. As there was no charge framed in respect of both these incidents and as there is no record like report given to superior officer in respect of incidents dated 21.12.2009, this circumstance need not be considered against the accused. From the aforesaid nature of evidence, it can be said that the things are exaggerated by PW 1 in respect of alleged incident dated 21.12.2009 by adding the allegation that accused No. 1 gave abuses to him by taking the name of his caste.

12. On 25.12.2009 it was Christmas holiday for the office of complainant.

Complainant has deposed that due to the instruction of superior officer, he was doing supervision at village Lendge and Vairag. He has deposed that after doing the work, at the relevant time, he was returning to Ahmedpur and he stopped near the bridge. He has deposed that he was having talk with Deepak Kamble and Sanjay Kamble and other farmers near the bridge and the bridge is situated adjacent to Ahmedpur. He has deposed that accused Nos. 1 to 3 came there in Maruti 800 car from Ahmedpur side and they picked up quarrel with him. He has deposed that during quarrel, accused No. 1 gave abuses to him by uttering following words, [Mahar of Barshi you have become arrogant after coming here]. Thus, according to the complainant (PW 1) in the incident dated 25.12.2009 accused No. 1 gave him abuses by taking the name of his caste, which is a scheduled caste. He has deposed that accused again gave abuses as . He has given evidence that during incident, accused No. 1 held his shirt and started giving beating to him. He has deposed that aforesaid farmers rescued him.

13. Complainant (PW 1) has deposed that he informed about the incident dated 25.12.2009 to his superior officer, but the superior officer advised him not to do anything and he promised to make some inquiry. He has deposed that he sent a mediator to accused and asked them to come to him for discussion, but accused sent a message of threat to him. He has deposed that after 2-3 days of the incident dated 25.12.2009, when he was proceeding to Dhalegaon, the accused No. 1 shouted at him and gave abuses as . He has given evidence that due to this conduct of accused, he gave report to police.

14. In F.I.R. at Exh. 34, the specific last incident of abuses which allegedly took place when the complainant was proceeding to Dhalegaon is not mentioned. In any case, no charge was framed in respect of this incident against the appellants. Though the complainant has deposed that he had given written report to his superior officer in respect of incident dated 25.12.2009, no such report is produced and no superior officer is examined to prove that even orally this incident was informed to superior officer.

15. In substantive evidence, complainant (PW 1) has stated that the incident dated 25.12.2009 was witnessed by Deepak Kamble, Sanjay Kamble and other farmers which according to him, were with him near the bridge. He has not taken the names of other witnesses like Ashok Lamture (PW 2) and Digambar Gaikwad (PW 4).

16. Sanjay Kamble (PW 5) has given evidence that on that day, he and Deepak Kamble were proceeding to Andhori from Ahmedpur on motorcycle and at the relevant time, they were standing in front of Dhaba situated near Waki river and that was at about 6.00 p.m. Their evidence does not show that they had given call to complainant to stop him at the spot, though the complainant has given such evidence. He has given evidence that accused Nos. 1 to 3 came there in a jeep and then exchange of words started between the accused and the complainant. He has given evidence that all the accused gave abuses to the complainant in following words [Mahargya, Dhedgya how you are working as

Circle Officer]. He has given evidence that witnesses Ashok Lamture and Digamber Gaikwad came there and separated the quarrel.

17. When the complainant (PW 1) has given evidence against accused No. 1, Sanjay Kamble (PW 5) has given evidence as against all the three accused by saying that they all gave abuses by taking the name of caste of complainant. The words uttered by them are also different. Evidence of PW 1 does not show that Ashok Lamture and Digambar Gaikwad were present on the spot, though PW 5 has stated that they had come there and they had witnessed the incident.

18. Ashok (PW 2) has given evidence that he and Digamber (PW 4) were going to Dhaba from Shahuraje D.Ed. college and at Lendi bridge when they saw the complainant, Sanjay, Deepak and the crowd, they stopped there. He has deposed that they saw that accused were quarreling with complainant and they were giving abuses to complainant in following words [you Mahar of Barshi don't tell us words of wisdom]. Thus, according to Ashok also, all the three accused gave abuses, though he has given different words uttered by them.

19. Digamber (PW 4) has deposed that he and Ashok were proceeding to Dhaba from D.Ed. college and they stopped at the place of incident as they saw complainant, Sanjay and Deepak. He has deposed that in his presence, accused No. 1 gave abuses to complainant as [Mahargya, Dhedgya, Mahar of Barshi you have become arrogant and offensive]. When Ashok (PW 2) has given evidence that all the accused gave abuses, Digamber (PW 4) says that only accused No. 1 gave abuses. Both of them have given different words used by accused persons.

20. Both Ashok and Digamber have stated in their evidence that accused had come there in a jeep. Complainant (PW 1) has, however, stated that they had come in Maruti 800 vehicle. The evidence of complainant shows that they reached there, when the incident was going on. Attempt is made to show that after the arrival of these persons, the incident in question took place. Complainant has not taken the names of witnesses like Ashok and Digamber to show their presence and due to this single circumstance, their evidence cannot be given much weight. Further, there are aforesaid discrepancies in their evidence.

21. Sanjay (PW 5) has admitted that he is resident of Andhori, which is at the distance of 16 k.m. from Ahmedpur. He has given reason to be there that for purchasing fertilizers and seeds he has gone towards that side. It was month of December and it was not the time for purchasing seeds and fertilizers for this region. This region depends on rain for agricultural purpose.

22. Digamber (PW 4) and Ashok (PW 2) are from Ahmedpur. The reason given by them to be there is that they had gone to D.Ed. college situated on that side, does not appear to be probable in nature. The relative of Ashok is studying in different college situated on opposite side. It was holiday and naturally college was closed. Digamber does not know as to why he was proceeding with Ashok. Thus, there was no reason for them to go to that side.

23. The evidence of PW Nos. 2, 4 and 5 shows that they all knew complainant for years from prior to the date of incident. PW 4 is the District President of a political party like Republican Party of India. He has avoided to admit that he has stated before police that complainant is his friend. Against him 10 criminal cases were pending at the relevant time. Sanjay (PW 5) was President of Tahsil of the same political party. Against him also one criminal case was pending. Ashok (PW 2) was the President of aforesaid Taluka of same political party for the few years in the past. The case that all the witnesses are from the same political party, they knew the complainant for many years, but they came to the spot due to coincidence, does not appear to be probable in nature. If as per the case of complainant, there were other farmers and crowd had gathered there and there was Dhaba of one Munna, hardly at the distance of 100 fts. from that place and there were other buildings, these witnesses ought to have been examined by the prosecution. The aforesaid discrepancies in the evidence of three witnesses and the other circumstances are material as the delay of more than six days was caused in giving the F.I.R. Further, there is no record like report or the evidence on report of any superior officer of complainant in respect of incident dated 25.12.2009 which could have been given immediately, atleast on 26.12.2009.

24. The learned counsel for the appellant placed reliance on some reported cases like judgment delivered in Criminal Appeal No. 531/1994 [Surtan Singh s/o. Jawahar Singh Vs. State of Rajasthan] dated 9.10.2012 of Rajasthan High Court. The effect of delay when no plausible explanation is given is discussed by the High Court. There cannot be dispute over this proposition. The case reported as Mathura Yadav @ Mathura Mahato and Others Vs. State of Bihar, is cited. In this case, the effect of glaring inconsistencies in the evidence of so called eye witnesses is discussed. The facts and circumstances of each and every cases are always different. In the present case, the relevant material in respect of discrepancies is already discussed by this Court. They do create doubt about the entire case of prosecution. In the case reported as Bhimappa Jinnappa Naganur Vs. State of Karnataka, and Ram Kumar Pandey Vs. State of Madhya Pradesh, the effect of non mention of eye witnesses in the F.I.R. is discussed. There cannot be any dispute over this proposition. In the present case, the complainant has not stated in his substantive evidence that witness Ashok and Digamber were present on the spot and this Court has considered this circumstance.

25. Reliance was placed on the cases reported as Ashok Kumar Chaudhary and Others Vs. State of Bihar, , Ramesh Baburao Devaskar and Others Vs. State of Maharashtra, and Ramaiah Vs. State of Karnataka, . In these cases, the effect of delay caused in F.I.R. is discussed. The proposition is that when there is delay, the evidence needs close scrutiny. This Court has closely scrutinized the entire evidence in the present case. This Court has no hesitation to hold that the delay is not properly explained and due to the aforesaid discrepancies discussed, it does not look probable that incident had taken place on the day and at the spot described by the complainant. The aforesaid circumstances and the delay show that the case of the prosecution is highly doubtful in nature. There is clear

possibility of false implication. Further, virtually there is no substantive evidence given by the complainant against the accused Nos. 2 and 3 and in spite of all these circumstances, the Trial Court has convicted the appellant Nos. 2 and 3 also. It can be said that the Trial Court has not properly appreciated the evidence. There is no independent evidence in support of the version of the complainant. There is possibility that there was dispute of different nature, but the complainant has exaggerated the things. It needs to be observed that though this Court is acquitting all the appellants by giving them benefit of doubt, it will be open to their department to take appropriate action against the aforesaid employees, if it has received the complaint against them in respect of aforesaid incident.

26. In the result, the appeal is allowed. The judgment and order of trial Court convicting the appellants is quashed and set aside. The appellants stand acquitted of the offences for which charge was framed and they were tried. The bail bonds of the appellants stand cancelled. Fine amount, if any, is to be returned to them.