

(2010) 03 BOM CK 0180

In the Bombay High Court

Case No : Criminal Appeal No. 62 of 1998

Kailas Wadekar, Subhash Wadekar, Subabai @ Subhadra
Wadekar and Balu Wadekar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(3), 428, 431
Penal Code, 1860 (IPC) — Section 323, 34, 354, 452, 506(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 7

Citation : (2010) CriLJ 2752

Hon'ble Judges : P.R. Borkar, J

Bench : Single Bench

Advocate : V.V. Tamke, holding for . and N.D. Kendre, for the Appellant; B.R. Khokale, Assistant Public Prosecutor, for the Respondent

Judgement

P.R. Borkar, J.—This is an appeal preferred by the four accused persons who are convicted by the Additional Sessions Judge, Ahmednagar, in Sessions Case No. 222 of 1994, decided on 05.02.1998, whereby the Sessions Judge convicted the appellants of offences punishable under Sections 452, 354, 323, 506(2) all read with Section 34 of the Indian Penal Code (for short "I.P.C.") and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs. 100/- for offences punishable under Sections 452 & 506(2) both r/w 34 of the I.P.C. Each of the appellant is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 100/- for offence punishable u/s 354 r/w 34 of the I.P.C. For offence punishable u/s 323 r/w 34 of the I.P.C. each of the appellant is sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs. 100/-. The accused/appellants are also convicted of offence punishable under Sections 3(1)(iii)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") and sentenced to suffer rigorous

imprisonment for one year and to pay fine of Rs. 100/-.

2. Brief facts giving rise to this appeal may be stated as below:

P.W.4 - victim was from "Hindu (Bhil)" community, resident of village Chichondi, Tal. & Dist. Ahmednagar. She was residing with her father, handicapped brother and lunatic sister. P.W.4-victim was about 25 years of age, when the incident took place on 13.05.1994. She had illicit relations with P.W.9-Vikram. From P.W.9-Vikram, P.W.4-victim had given birth to a daughter and was also pregnant for second time. The marriage of P.W.9-Vikram was being arranged and members of his family were against the relationship between P.W.4-victim and P.W.9-Vikram. On 13.05.1994 at about 5.00 p.m. when P.W.4-victim was at her house, at that time the four appellants went to her house and asked why she kept illicit relations with P.W.9-Vikram and started beating her with hands and kicks. At that time appellant Nos. 1 and 4 held her hands. Appellant No. 3-Subabai removed her Saree. Appellant No. 2-Subhash removed knot of Peticot of the victim and thereafter appellant No. 3-Subabai torn her blouse and brassiere and made P.W.4-victim naked. Thereafter, appellant Nos.3-Subabai and appellant No. 4-Balu paraded P.W.4-victim in naked condition on the road of the village. At that time all four appellants were beating and abusing P.W.4-victim. They brought P.W.4-victim before the shop of Sarpanch P.W.3-Shankar Pawar. At that time one Thombare was also present there. P.W.4-victim was abused filthily by the appellants. At that time P.W.9-Vikram came there. He was having a lungi, which he threw on the person of P.W.4-victim and thereafter the appellants went away. Thereafter, P.W.9-Vikram brought Saree, blouse, peticot and gave it to P.W.4-victim, who wore them on the road itself. At about 8.40 p.m. the complaint was given at Taluka Police Station, Nagar. After this complaint was recorded P.S.I. Ugale took over investigation. Place of offence shown to him by P.W.4-victim. Panchanama was drawn. After lodging the complaint, P.W.4-victim had been sent to Medical Officer and P.W.8-Dr. Ashok Ingale examined P.W.4-Victim. He issued Medical Certificate. After recording statements of various witnesses, charge-sheet was sent.

3. In all 10 witnesses were examined and on the basis of said evidence, the learned Additional Sessions Judge, passed the order of conviction and sentence. It is this order, which is challenged in this appeal.

4. In this case, the conviction under Atrocities Act is challenged on various grounds. Firstly, Adv. Shri Tamke for the appellants argued that in this case the investigation is carried out by the P.S.I., which ought to have been carried out by a person of the rank of Dy. Superintendent of Police or above. I may refer to Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, which lays down that when offence is committed under the said Act, the investigation shall be carried out by the Police Officer, not below the rank of Dy. Superintendent of Police. This Court has held in *Asiskhan Pathan v. State of Maharashtra* 2006 ALL M.R. (Cri) 796 and *Uttamlal Yema v. State of Maharashtra* 2006 ALL M.R. (Cri) 1015 that the investigation carried out by the Police Officer

of lesser rank is vitiated. Another reason on which the order of conviction under the Atrocities Act is assailed is that no caste certificate of the victim is produced on record. It is true that including P.W.4-victim most of the witnesses have stated in their evidence that P.W.4-Victim was of "Bhil" community. In-fact, the reason for the incident given is that P.W.4-victim was of lower caste than the caste of P.W.9-Vikram. However, when the prosecution is under special Act and when Section 3 of the Atrocities Act discloses as ingredients of offence punishable u/s 3 that it should be committed in respect of the member of the Scheduled Castes or Scheduled Tribes by a person who is not member of the Schedules Castes or Scheduled Tribes, there should have been attempt to produce caste certificate on record. So, in the circumstances of the case, mainly on authorities cited above, the conviction of the appellants u/s 3(i)(iii)(xi) of the Atrocities Act will have to be set aside and accordingly it is set aside.

5. That takes me to the remaining offences under the I.P.C. Neither absence of caste certificate nor investigation by the P.S.I. would affect the trial and conviction of the appellants, for offences under Indian Penal Code.

6. In this case there is evidence of P.W.4-victim at Exh.15. She stated as per her complaint which is narrated above. Only thing which gives some scope for argument for the learned advocate for the appellants is that initially when P.W.4-victim went to the police station along with P.W. 9-Vikram, she had not told police regarding parading her nude through the village. She explained that he had not told so, because the accused were relatives of P.W.9-Vikram and after police had come to village, they obtained another complaint, in which she narrated the whole incident. Though most of the witnesses have turned hostile, we get some corroboration even from the word of the hostile witnesses.

7. P.W.9-Vikram has supported the prosecution case to some extent. He stated at Exh.27 that he had illicit relation with the victim. He accepted P.W.4-victim as his wife. He also accepted that P.W.4-victim had daughter from him and she had been pregnant for second time when the incident had occurred. He also admitted that no marriage was solemnized between him and P.W.4-victim. But, he did not support the actual incident.

8. P.W.2-Narendra Kalamkar has proved the spot panchanama at Exh.12. He is from Maratha community. He stated that the panchanama was drawn in front of house of P.W.4-victim. Though he was hesitant, he, however, stated that he heard from the villagers that P.W.4-victim was stripped and paraded naked in the village. At the time of panchanama P.W.4-victim was accompanied by the police and she had shown the entire area from her house to the place in front of shop of P.W.3-Shankar Pawar, on Beed-Ahmednagar road. The panch was following the police and the police seized clothes in torn condition, produced by P.W.4-victim. There were also bangle pieces lying in front of house of P.W. 4-victim. He identified article Nos. 1 to 5, which were also identified by P.W.4-victim as her torn clothes and pieces of bangles. Absolutely, there is no reason to disbelieve panchanama Exh.12, proved by the witness. It corroborates the case of P.W.4-

victim.

9. P.W.3-Shankar Pawar, the Sarpanch of the village though turned hostile, has given certain indications, which conclusively proved that the incident as alleged must have happened. Thus, in this statement he stated that at about 5 to 6 p.m. in the evening he was at his utensil shop with Kailash Thombare. At that time 100-200 people came from the village towards his shop. The cousin brother of P.W.9-Vikram had brought P.W.4-victim. Some cloth was wrapped around her and her hairs were scattered. She was not in her normal clothes. The crowd of 100 persons was accompanied with them. P.W.4-victim told him that she was assaulted by appellant Nos. 1 to 4 and then P.W.4-victim went towards her house. The witness also said that P.W.4-victim was from Bhil community. She was about 25 years of age. P.W.9-Vikram was nephew of appellant No. 3-Subabai and cousin brother of appellant Nos. 1 and 2. P.W.9-Vikram had illicit relations with P.W.4-victim and they were living like husband and wife. P.W.4-victim had given birth to a daughter and was pregnant for second time from P.W.9-Vikram. This witness was declared hostile and was confronted with portions marked "A" & "B" by the prosecution. It was suggested to this witness by defence that when the victim had come before his shop, she was in intoxication and to that effect the defence has contradicted this witness to police statement marked "C". From evidence of this witness it is clear that P.W.4-victim was not in normal clothes and on whose body some cloth was wrapped. Nearly 100 persons were there. P.W.4-victim had complained against the appellants. It may be noted that the appellants appeared to be powerful persons in the village, in as much as almost all eye-witnesses examined have turned hostile including those who were from Bhil community and one Mohammedan lady P.W.7-Rashida. P.W.5-Sarubai was of Bhil community. She said that the daughter of P.W.4-victim had told her that her mother (P.W.4-victim) was paraded naked in the street by the appellants. She was also confronted with portion marked "A" & "B" from her statement before police. Same case is with P.W.7-Rashida.

10. P.W.8-Dr. Ashok Ingale examined at Exh.25 proved medical certificate Exh.26. He stated that there were two contusions on the person of the victim.

11. After going through evidence of P.W.4-victim, I am convinced that she was telling truth and the conviction of the appellants for various offences under the I.P.C. was fully justified. In this case the Trial Court awarded fine of Rs. 100/- for each of the various offence and awarded Rs. 2000/- as compensation to the victim. In my opinion, the compensation is grossly inadequate considering that a lady was paraded naked on the village road on broad day light. So, dishonour of a woman should have been taken seriously by the Additional Sessions Judge. It is unfortunate that the State did not feel proper to file appeal for enhancement of punishment in such case. It is also unfortunate that the Investigation Officer did not collect caste certificate of P.W.4-victim or that of the accused, when he had registered offence under the Atrocities Act.

12. It may be argued that the appellants were not previously convicted. They

were mainly enraged because of illicit relations, which P.W.4-victim wanted to continue with P.W.9-Vikram, even after his marriage was to be arranged with another girl. Still the act of the appellants was not justifiable. It was an outrageous act. It is unfortunate that such act happened in progressive State like ours. In the circumstances, in order to do justice I wish to resort to provisions of Section 357(3) of the Cr.P.C. and award some more compensation to P.W.4-victim.

13. In the result, I pass following order:

(i) The Criminal Appeal is partly allowed.

(ii) The appellants are acquitted of offence punishable u/s 3(1)(iii)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentence awarded for the said offence is hereby quashed and set aside.

(iii) The conviction and sentence of imprisonment awarded to the appellants for the offences punishable under the Indian Penal Code are hereby confirmed. However, part of the order regarding fine is set aside and each of the appellant is directed to pay compensation of Rs. 5000/- (Rupees Five Thousand Only) to P.W.4-victim as compensation for the wrong done to her u/s 357(3) of Cr.P.C.

(iv) The appellants are directed to surrender to their bails for undergoing remaining term of substantive sentence of imprisonment and also deposit the amount of compensation within four weeks from today. In case the amount of compensation is not deposited within stipulated time, action u/s 431 of Cr.P.C. be taken against the appellants for recovery of the compensation amount.

(v) At the oral request of learned advocate for the appellants, leave is granted to adjust the amount of fine already paid towards compensation and the appellants shall deposit remaining amount.

(vi) After the amount of compensation is deposited/recovered from the appellants, the same may be paid to P.W.4-victim.

(vii) The appellants are entitled to set off u/s 428 of Cr.P.C. for the period for which they were under detention.

14. The Criminal Appeal is accordingly disposed of.