

(2012) 02 BOM CK 0107
In the Bombay High Court
Case No : Criminal Appeal No. 229 of 2007

Kuwarlal Patle

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 354

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

Citation : (2012) BomCR(Cri) 193

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : V.R. Mundra, for the Appellant; Rashi Deshpande, Assistant Public
Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

A.P. Bhangale, J

1. The appeal is filed by the appellant against the judgment and order dated 16th June 2007 passed by the Special Judge, Bhandara in Special Case No. 22 of 2006 whereby appellant - accused has been convicted for the offence punishable u/s 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to suffer rigorous imprisonment for four years and to pay a fine of Rs. 7000/-, in default, to suffer simple imprisonment for six months. It was also directed that amount of fine if recovered, an amount of Rs. 5000/- be made over to the prosecutrix as compensation.

2. Appellant - accused is headmaster of "Government Ashram School" at village Kadikasa, District Gondia. Prosecutrix, stated to be 15 years old, was studying in the said Government Ashram School in 8th standard at the relevant time and she was staying at the hostel of the said Government Ashram school. Prosecutrix lodged report with Police Station, Chichgarh alleging that in the month of

September 2005 when she was standing in front of hostel room, accused came near her and asked her as to whether she would come to his room at midnight. According to her, accused asked her to open the door if he did not keep it open. She expressed her displeasure. She reported another incident to the effect that after some days thereafter, accused came to her room and on seeing him, girls ran away and when she too started going, accused stopped her by giving a call; kissed her and went away. It was further stated in the report that on 18.9.2006 accused again approached her and said that his wife was going out of station and whether prosecutrix would come to his place during night. Upon this, she felt sad and left for her village. Accused followed her to the village and inquired as to why prosecutrix had left the hostel without his prior permission. On the next day (Monday), prosecutrix attended school. When she went to bring broom from the office with her friend Santoshi Saunjal, accused held her hand and kissed her. Prosecutrix left for her village after 2 - 4 days. Accused followed her and informed about her absence to her mother. She returned to the school. Her mother also came to the school. In the afternoon prosecutrix narrated about the behaviour of accused to her mother and in her presence, her mother raised protests and told the accused that she would not continue her daughter at the hostel and would shift her to some relative at village Manutola. According to prosecutrix, since then she is residing at the said place with one Uike, her relative.

3. On the basis of oral report (exhibit 10) offences punishable u/s 354 of the Indian Penal Code and u/s 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the "Atrocities Act") came to be registered against the appellant - accused. PW 8 Sangramsingh, SDPO, Deori carried out investigation and in that, he recorded statements of witnesses including the prosecutrix by visiting the Ashram School and collected relevant records from the school. After investigation was over, charge - sheet was filed before the JMFC, Sakoli who committed the case to the Special Court for trial according to law.

4. Charge for the aforesaid offences was framed and it was read over and explained to the accused which he denied and claimed to be tried. Defence of the accused as is extracted from cross-examination of witnesses and his statement recorded u/s 313 Cr. P. C. is that as a Headmaster it was his bounden duty to maintain proper discipline in the School. He had planned an ideal Ashram School, but the shirkers were unhappy due to strict administrative decisions and they had given wrong and false statements. Appellant invited irk of students, staff and was disliked by them. He had blemish less career till his implication in the false case. The prosecutrix had habit to leave school without informing the school authorities. One Chainsingh Madavi, a local politician expected special treatment from the accused which the accused did not give. Hence, he had grievance against the accused and he conspired with Sarpanch of village to fabricate a false case against the accused. Thus, it is defence of the accused that he is falsely implicated.

5. Mr V. R. Mundra, learned counsel for the appellant submitted that the appellant was Head - master of the Ashram School wherein 22 girls were staying and 25 employees also resided in the vicinity and bound to do his duty as Headmaster for maintaining proper discipline in the Ashram School as the boarding school was established for the upliftment of tribals, but the prosecutrix was in the habit of leaving school without his prior permission. He had intimated of his misdemeanor to her mother which was not taken in right spirit by the prosecutrix and the local politician Chainsingh Madavi of the overbearing nature who expected special treatment from the accused, but was denied. The accused was thus falsely implicated by the local politician who had axe to grind against the accused and he conspired with Sarpanch, mother of the prosecutrix and the prosecutrix was made to lodge false accusations against the accused. Learned counsel for the appellant submitted that according to the prosecution, the alleged incidents occurred in September 2005; on 18.9.2006 and thereabout. However, though the distance between the Ashram School and Chichgarh Police Station is hardly 10 kms, report was made to police on 12.10.2006 at about 18.00 hours and there is no plausible explanation for this delay in lodging the FIR of the alleged incidents of outraging modesty in the month of September 2005 - 06.

6. The only point to determine is, whether the prosecution has established the guilt of the appellant/accused beyond every shadow of doubt. It is argued that there is tendency on the part of some persons belonging to SC/ST to conspire to settle personal scores with the rivals by lodging false, artificially manipulated reports of such crime under the Special Act, so that they can settle personal vendetta and also get the compensation and, therefore, precaution is always necessary while appreciating the testimony of the prosecutrix and her relative or friend. The precaution that no innocent shall be convicted under the stringent provision of the Act should be considered with this aspect. It is true that there is no incident corroborating to the story told by prosecutrix (P. W. 3). Her statements are prima facie said to be corroborated by First Information Report, but the FIR (exhibit 10) is highly belated. Prosecutrix has lodged FIR after many months of the alleged incidents and such long period is sufficient to concoct a criminal matter against anyone. There is no explanation coming on record, muchless satisfactory, for delay in lodging the FIR.

7. Prosecutrix (P. W. 1) in her evidence has deposed that when she had gone to the office along with her friend Santoshi, accused held her hand and Santoshi was standing at the door outside. P. W. 5 Santoshi, however, states that since prosecutrix had not returned for quite some time, she was asked to check and on reaching near the office, she noticed that accused was kissing prosecutrix. Thus, neither the evidence of prosecutrix nor the evidence of P. W. 5 Santoshi can be believed since it is contrary to each other.

As regards alleged incident of accused going in the room of prosecutrix, P. W. 1 Anusuya has stated that when accused arrived, all the girls ran away and she also started running away. It is not understood as to why the girls residing in

that particular hostel room would start running away on seeing headmaster of their school coming to their hostel room. The girls were not obviously at an unexpected and undesired place from where they should flee on seeing their headmaster. This appears to be unnatural and it appears to be a concocted incident tried to be set up by the prosecution.

As regards the alleged incident of 18.9.2006 asking prosecutrix to come at his residence in the night time since his wife was going out of station, also appears to be a made up and make believe story. There is no mention of such incident in the evidence of prosecutrix. Apart from this, evidence as regards alleged command by headmaster asking the prosecutrix to come to his room in the night time is also vague and unbelievable considering reasonable doubt arising regarding credibility of main prosecution witness.

8. On perusal of the evidence of prosecutrix, it is revealed that she used to leave the hostel for her native village without obtaining prior permission from the headmaster and it was accused (headmaster) who had to follow and inquire with her and it is only on inquiry with the prosecutrix and on making complaint to her mother that the prosecutrix used to return. On one occasion she had made night halt at her relative's place instead of going to native village. Moreover, it has not come in the evidence of P. W. 1 Anusuya that at any time she had complained about the alleged misconduct of accused to her mother whenever she had left the hostel for her native place. Her mother P. W. 2 Banwasabai also does not depose in her evidence about such disclosure by P. W. 1 Anusuya to her during her stay in the native village. In her cross-examination, P. W. 1 Anusuya admits, "It is true to suggest that I did not disclose the utterances of the accused to my mother before leaving the hostel". If this material vital admission is taken into consideration, it falsifies the statement of prosecutrix that her mother followed her to the hostel and upon her disclosure, mother had groused the accused and expressed to the accused that she was shifting her daughter (prosecutrix) to some relative's place.

9. From the evidence of prosecutrix, it is emerged that she was not interested to live at the hostel and was all the while interested either to live at her native place or at the place of her certain relation. Prosecutrix admits in her evidence that several persons were with her when she had lodged the police report. In view of this fact coupled with the contradictions and omissions occurring in the oral evidence of prosecution witnesses, plea of the accused that some jealous people were hatching conspiracy against him, appears to be probable and cannot be overlooked to be brushed aside, particularly when FIR in the case was much delayed and delay remained unexplained.

10. There is no reliable and clinching evidence on record to record conviction u/s 354 of the Indian Penal Code. Further, both Sections 354 IPC and Section 3(1) (xi) of the Atrocities Act are applied in the present case to relate alleged outraging of modesty. Hence, implicating the appellant accused under both the provisions for same offence is not correct. Be that as it may, I have already

concluded that there is no adequate evidence available on record to say that offence u/s 354 IPC is proved. I have also discussed evidence hereinabove with reference to offence punishable u/s 3(1)(xi) of the Atrocities Act. So far as the charge u/s 3(1)(xi) is concerned, the Act is stringent in punishment, because it is touching the atrocities being caused on the people belonging to scheduled caste and scheduled tribes. No doubt, it is an enactment to weed out the instances of the atrocities being inflicted on the mind and body of a particular sect of people. At the same time, one must keep prudent caution in mind that there may be scope for false implication due to previous enmity already prevalent on some other ground. In such cases, therefore, the Court must cautiously, carefully and thoroughly examine evidence before fixing the criminal liability, particularly, if due to long gap of time between the date of alleged incident and FIR, there was scope for false implication and where a minimum stern sentence has been prescribed under the Act. In Ramdas and Others Vs. State of Maharashtra, , the Apex Court has held that merely because the victim happened to be a girl belonging to a scheduled caste does not attract the provisions of the Atrocities Act. There is no material available on record to indicate that accused assaulted or used force to prosecutrix belonging to a scheduled tribe with intent to dishonour or outrage her modesty so as to hold that offence punishable u/s 3(1)(xi) of the Atrocities Act is proved. Viewed from any angle, therefore, impugned judgment and order of conviction and sentence cannot be sustained and it will have to be set aside by allowing the appeal since it is basic principle of Criminal Jurisprudence that a guilty may escape, but an innocent person shall never suffer ignominy of conviction.

11. In the result, impugned judgment and order is set aside. Appeal is allowed and the appellant - accused is acquitted of the offences with which he was charged. Fine amount if paid, be refunded to the appellant. Bail Bonds shall stand cancelled.