

(2013) 08 BOM CK 0099
In the Bombay High Court
Case No : Criminal Appeal No. 96 of 2013

Mohanbhai Delkar

APPELLANT

Vs

Lalit Babu Patel, Union Territory Dadra Nagar Haveli Silvassa
and State of Maharashtra

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

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

Citation : (2013) ALLMR(Cri) 4354

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : S.V. Marwadi, for the Appellant; Balkrishna Joshi, Advocate for Respondent No. 1, Mr. D.A. Nalawade, Advocate for Respondent No. 2 and Mr. Y.S. Shinde, APP for Respondent No. 3-State, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—This is an appeal against the acquittal. The respondent was charged for commission of offence u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act) 1989. The trial went on after framing of charge. Prosecution has examined 5 witnesses. The witness no. 1 is the eye witness.

2. Victim is PW-3. The version of PW-3 is evident to be hearsay. Entire case rests on the testimony of PW-1 Sitaram Gavali.

3. After appreciation of evidence and considering the law, the learned Special Judge acquitted the accused.

4. Learned Special Judge held that the act of using abusive words referable to the caste of the accused resulting into insult, if any, was committed by the accused, where the complainant was not personally present at place where the abusive words were allegedly uttered.

5. The judgment is challenged urging that abuses even in absence would constitute commission of offence.

6. This Court had a second look on Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, It would be useful to quote the relevant text which reads as follows:-

3(1)(x)-intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

7. It is apparent on a plain reading of the text which is quoted that the contemplation of clause (x) of Section 3(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, that the insult or intimidation has to be on the face of the victim "viva voce" and in public view. If the abusive words over caste etc, are uttered behind back it could be anything but may not be the offence defined u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989,

8. Therefore the observations and findings recorded by the learned trial Judge that since the incident of alleged act of insult had not taken place in presence of the complainant, it would be too far stretching to envelope within clause (x) of Section 3(1) the utterances done in absence of the victim.

9. Such utterances may exhibit a feeling of contempt in the mind of the person who has become vocal. It may reflect his mind, notions and feelings, harbouring contempt and discourtesy, but would not render such person, ipso facto an offender, qua the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

10. In so far as the fact finding is concerned, it is not shown that the findings recorded by the Magistrate are perverse. Therefore second opinion of the evidence cannot be resorted before appellate court in an appeal against acquittal sheer by for asking.

11. In so far as the aspect of worthiness of testimony of PW-1 is concerned, the finding recorded by Special Judge is neither open for re-appreciation by appellate court for taking recourse to second opinion of same evidence.

12. Once, the point of view resorted to by the learned trial Judge is seen to be a possible view and thereupon the learned trial Judge declined to order conviction such a judgment, is not open for substitution by any other point of view or finding so long the findings are not shown to be perverse. No such submission has come forward.

13. In the given situation, the judgment of acquittal based on the interpretation of Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, does not call for interference. In the situation, application and appeal do not have any merit and are dismissed.