

(1980) 11 BOM CK 0012

In the Bombay High Court

Case No : Criminal Revision Application No. 520 of 1980

Pandurang Laxman Chaudhary (Dr.)

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-11-1980

Acts Referred:

Penal Code, 1860 (IPC) — Section 448

Protection of Civil Rights Act, 1955 — Section 7(1)

Citation : (1980) 11 BOM CK 0012

Hon'ble Judges : B.J. Rele, J

Bench : Single Bench

Advocate : N.H. Gurshahani and A.A. Irani, for the Appellant; N.V. Damle, Public Prosecutor, for the Respondent

Judgement

B.J. Rele, J.—This Revision Application is preferred against the conviction and sentence of the accused u/s 448 of the Indian Penal Code and u/s 7(1)(d) or the Protection of Civil Rights Act, 1955 passed by the learned Judicial Magistrate, Jalgaon, and confirmed by the Additional Sessions Judge, Jalgaon.

2. The prosecution case is that the complainant Kisan Bodwade is a tenant of the accused occupying premises consisting of two rooms on the ground floor of the building belonging to the accused at Visanji Nagar, area of Jalgaon. The accused resides on the first floor above the said premises of the complainant. The accused has filed proceedings against the complainant in ejectment. The complainant belongs Schedule Caste being Mahar by caste.

3. On 30-1-1979 at about 7.30 a.m. the accused got annoyed by the smoke nuisance coming from the premises of the complainant by reason of the water heater being ignited. He, therefore, rushed down and entered the backside room of the complainant and abused him calling him by the names "Dhedgya Mahardya". The accused also threatened to kill him by hiring goondas if he failed to vacate the premises. The complainant then went to Jilha Peth Police Station and lodged his complaint.

4. On these facts, the accused was charged in the Court of the Judicial Magistrate, Jalgaon, u/s 448 of the Indian Penal Code for criminal trespass u/s 506 of the Indian Penal Code for criminal intimidation and u/s 7(1)(d) of the Protection of Civil Rights Act, 1955. The accused pleaded not guilty to the charge and his case was that when the smoke entered his premises he requested the complainant's son Vilas to see that the smoke was reduced and that he did not utter any abuses or used insulting words derogatory of the caste of the complainant.

5. The trial Court held that the accused trespassed in the house of the complainant and that he insulted the complainant on the ground of untouchability. It was further held that the complainant belongs to Scheduled Caste. The accused was therefore, convicted u/s 448 of the Indian Penal Code and sentenced to pay a fine of Rs. 100/- in default to suffer simple imprisonment for one month. He was also convicted u/s 7(1)(d) of the Protection of Civil Rights Act, 1955 and sentenced to suffer simple imprisonment for one month and to pay a fine of Rs. 100/- in default to suffer simple imprisonment for 15 days. The accused was acquitted of the charge u/s 506 of the Indian Penal Code.

6. Against his conviction and sentence, the accused preferred appeal in the Court of Sessions at Jalgaon. The learned Additional Sessions Judge confirmed the conviction and sentence and dismissed the appeal. The accused has, therefore, preferred this Criminal Revision Application.

7. Mr. Gurshahani, learned Counsel for the accused, has argued that the trial Court having held that "there is one set of witnesses stating certain facts and another set of witnesses deposing to the occurrence in a particular way" should have given the benefit of doubt of the appellant-accused. He has further contended that the lower Appellate Court has nowhere considered the discrepancies in the evidence of the witnesses in regard to the exact words uttered by the accused and this has resulted in failure of justice. He has also contended that the trial Court having discarded evidence of the two independent witnesses on cogent reasoning and the lower Appellate Court also having observed that "I also find that these two witnesses out each other so far as their presence in the town on the date of the incident is concerned" erred in holding that "but the fact that they were present at the house of the complainant at the relevant time cannot be ignored". He has contended that in observing that the names of the two independent witnesses Bansi (P.W. 3) and Ukhardu (P.W. 8) find place in the F.I.R. the lower Appellate Court has failed to consider the F.I.R. was got written from the professional writer Bhaskar Lokhande at the Civil Court at Jalgaon where these two witnesses were present and this also has resulted in failure of justice. He has relied upon the decision of Kanade, J. reported in Laxman Jayaram Shant v. State of Maharashtra, 1980 Bom.C.R. 609, and he has contended that the abuses must in some way or other connected with the preaching or practice of untouchability and there being no evidence or circumstance to that effect the conviction of the accused must be set aside. In

regard to the charge u/s 448 of the Indian Penal Code, Shri Gurshahani has contended that the accused is entitled to be acquitted on this charge also.

8. Mr. Damle has vehemently tried to support the conviction. He has submitted that even if the evidence of the two independent witnesses, the evidence of the complainant and his wife, daughter and daughter-in-law clearly shows that the accused uttered insulting words touching untouchability and that, therefore, the conviction should be sustained.

9. There is considerable force in the arguments advanced by Shri Gurshahani.

10. On behalf of the prosecution 9 witnesses were examined. Out of them Susheelabai (P.W. 1) is the wife of Kisan (P.W. 2), the complainant in this case. Pratibha (P.W. 7) is the daughter of the complainant Kisan and Laxmibai (P.W. 4) is the daughter-in-law of the complainant. The two independent witnesses Bansi (P.W. 3) and Ukhardu (P.W. 8) were also examined.

11. In regard to the independent witnesses Bansi (P.W. 3) and Ukhardu (P.W. 8), the lower Appellate Court has observed "I also find that these two witnesses out each other so far as their presence in the town on the date of the incident is concerned". But curiously the lower Appellate Court proceeds further to state "But the fact that they were present at the house of the complainant at the relevant time cannot be ignored". The trial Court on the other hand has observed "the evidence as regards these details given by P.W. 3 Bansi, P.W. 8 Ukhardu and P.W. 1 Susheelabai is so much full of contradictions as made out in their cross-examination, that I have absolutely no doubt whatsoever left in my mind that they were not at all present at the time of the incident and that they are purely got up witnesses". Further, the lower Appellate Court seems to have been impressed by the fact that the names of these two witnesses appear in Exhibit 10. But the lower Appellate Court has not considered the fact that the complaint Ex. 10 was got written by one Bhaskar Lokhande, who was a professional writer aware of the Court proceedings. The lower Appellate Court has not considered the evidence of these two witnesses that they were present in the Civil Court at Jalgaon where the complainant got the complaint written. The lower Appellate Court, therefore, has without taking this aspect of the matter into consideration chosen to rely upon the evidence of these two witnesses only on the ground that "the cross-examination of Bansi and Ukhardu do not discard their testimony so far as the incident is concerned."

12. The lower Appellate Court was clearly in error in accepting their evidence without taking into consideration the circumstances in this case stated above and which were taken into consideration by the trial Court in discarding their testimony.

13. In regard to the evidence of the other four witnesses the complainant Kisan (P.W. 2), his wife Sushilabai (P.W. 10), his daughter-Pratibha (P.W. 7) and his daughter-in-law Laxmibai (P.W. 4) all these witnesses are interested witnesses and as such their evidence will have to be closely scrutinised. I find on reading

the judgment of the trial Court and the lower Appellate Court that the evidence of these witnesses is discrepant. The trial Court has in considering the evidence of Sushilabai (P.W. 1) stated that she has merely referred to the insulting words as those over her caste i.e. Mahar but she has not stated these actual words while the lower Appellate Court has sought corroboration to the evidence of the complainant who has deposed that the appellant stated to the complainant, "Salya, Mhardya Dhedgya, Tu Majlas Kay " while Sushilabai has deposed that the appellant abused her husband saying "Salya, Bhosdihya, Madarchoda". Laxmibai (P.W. 4) and Pratibha (P.W. 7) have deposed that appellant hurled abuses as "Salya Bhosdihya Madarchoda" and also stating " "Dhedgya" I will murder you through goondas".

14. The lower Appellate Court has observed that the incident took place on 30th January, 1979, while the statement of the witnesses was recorded in July, 1979 i.e. about seven months thereafter. This fact alone should have been found sufficient by the lower Appellate Court to discard their testimony. The very long delay in recording the statement has resulted in this that no reliance should have been placed upon the evidence of any of these four interested witnesses in as much as the probability of the witnesses not remembering the exact words used as also the probability of the witness being tutored cannot be lost sight of. In fact, as observed by the lower Appellate Court Pratibha (P.W. 7) has admitted in her cross-examination that on the date of the recording of her evidence her mother Sushilabai was present in Court and before entering the witness box, her statement before the police was read over to her by some policeman in the morning. This important aspect of the matter has been disposed of by the trial Court by stating:

"The mere fact that the memory of the witness has been impressed by reference to her earlier statement will not render the testimony of that witness entrusted worthy."

Witness Pratibha in all probability was tutored cannot be ignored. For this reason also the evidence of these four interested witnesses should not have been accepted. The lower Appellate Court was in error in accepting the evidence of these four witnesses. The result is that the conviction of the appellant as confirmed by the lower Appellate Court must be set aside.

15. There is also another reason why the conviction of the appellant cannot be sustained and that is that the appellant has examined himself and three other witnesses Digambar Chaudhary (D. W. 2), a tenant of the brother of the accused living just two blocks away, Nandlal Upadhyaya (D. W. 3), another neighbour and Murlidhar Gandhi (D.W. 4) occupying one room in the block belonging to the appellant. All these witnesses have stated on oath that they merely saw the accused Dr. Chaudhary asking the members of Kisan Bodwade's house to reduce the smoke.

16. The evidence led by the defence was discarded by the trial Court on the

ground that their evidence is negative. The trial Court has also considered the background of prior litigation between the appellant and the complainant in regard to the eviction proceedings and has discarded their evidence on the ground "thus it appears that the accused has been frustrated in his endeavour to start his medical practice in the block occupied by Sushilabai Bodwade only because of the continued obstinate behaviour of the complainant in not vacating the block". The trial Court then proceeded to state :

"Under these circumstances one will not be surprised if a person goes to the extent of entering upon the premises of others and uttering abusive and insulting words to give vent to his anger. In my opinion, therefore, looking to the facts of the case the version given out by the complainant and his family members shall have to be accepted as true."

This finding of the trial Court is against the evidence on record and deserves to be set aside.

17. In the view that I have taken, it is not necessary for me to consider the decision of Kanade, J. referred by Shri Gurshahani. As already stated above, the prosecution evidence in regard to the appellant uttering the insulting words is discrepant and cannot be relied upon. The appellant, is therefore, entitled to be acquitted.

18. In regard to the charge of criminal trespass, the lower Appellate Court has held that :-

"The appellant rushing down to the ground floor seeing the smoke covering his portion speaks in volume about his motive."

The lower Appellate Court disbelieved the evidence of the appellant and his witnesses Digamber Chaudhary (D.W. 2) and Nandlal Upadhyaya (D.W. 3). The entire evidence that has been discussed by the lower Appellate Court is in regard to the offence under the Protection of Civil Rights Act, but the lower Appellate Court has not discussed anything about the charge u/s 448 of the Indian Penal Code. The trial Court also having observed that the complainant and the members of his family belong to scheduled caste and the accused being frustrated in his endeavour to start his medical practice in the block occupied by Bodwade only because of the continued constitute behaviour of the complainant in not vacating the block was proceeded to stated "Under these circumstances one will not be surprised if a person goes to the extent of entering upon the premises of others and uttering abusive and insulting words to give vent to his anger". This entering upon the premise s has prompted the learned Judge to convict the accused on the ground that the entry clearly caused great annoyance and insult to the complainant and hence the appellant is guilty of committing the offence of trespass. The appellant had been to the premises only to stop the smoke nuisance and the idea with which he went to the premises was for that primary purpose. Therefore, it must be held that the prosecution has failed to bring home the charge u/s 448 of the Indian Penal Code against the appellant.

In the result, I pass the following order :

ORDER

Rule absolute. The conviction and sentence passed against the accused u/s 448 of the Indian Penal Code as also u/s 7(1)(d) of the Protection of Civil Rights Act, 1955, set aside. The accused is acquitted of the above charges. Bail Bond to stand cancelled.