

(2017) 03 BOM CK 0157
In the Bombay High Court
Case No : 82 of 2001

SMT.USHA PANDURANG TANPURE

APPELLANT

Vs

THE STATE OF MAHARASHTRA

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#) - Examination of witnesses by police
[Indian Penal Code, 1860](#), [Section 506](#),
[Section 504](#) - Punishment f

Citation : (2017) 03 BOM CK 0157

Hon'ble Judges : A. M. Badar

Bench : SINGLE BENCH

Advocate : Pracheta Rathod, Arun Rajput, Anjali Patil, A.A.Takalkar

Final Decision : Allowed

Judgement

1. By this appeal, the appellant / original accused is challenging the judgment and order dated 15th January 2001 passed by the learned Additional Sessions Judge, Pune, in Special Case No. 8 of 1998 thereby convicting the appellant / accused of the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and sentencing her to suffer simple imprisonment for 6 months apart from payment of fine of Rs.500/, in default, to undergo further simple imprisonment for fifteen days. The appellant / accused was, however, acquitted of the offence punishable under Section 504 of the IPC.

2. Heard Ms.Pracheta Rathod, the learned advocate appearing for the appellant / accused. She argued that evidence of prosecution witnesses is totally inconsistent and they are disclosing different places of incident. Though Informant PW1 Mahadeo Gaikwad has stated that the incident took place at the door of the Accounts Branch of the office, other witness PW2 Manohar Gaikwad examined by the prosecution is stating that the incident took place at the

platform of the verandah of the office. The learned advocate for the appellant / accused further argued that there is variance in the evidence of prosecution witnesses regarding alleged casteist abuses. In submission of the learned advocate for the appellant / accused, the evidence of prosecution witnesses demonstrate that there was motive for false implication of the appellant / accused because of her complaint to the Executive Engineer against the Police SubInspector of the local police station. She relied on version of PW4 Rajan Shah, Executive Engineer to buttress this contention. It is further argued that there is inordinate delay in lodging the FIR apart from deliberate delay in recording statements of prosecution witnesses. Reliance is also placed on the fact that initially no offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was registered, but subsequently, it was added to the case diary of the crime in question. For this purpose, evidence of PW6 Manish Ajinkya, Deputy Superintendent of Police, is relied by the learned advocate appearing for the appellant / accused. The learned advocate for the appellant drew my attention to court questions to several prosecution witnesses by the learned trial court and argued that serious prejudice is caused to the appellant / accused as the learned court has assumed the role of the prosecutor.

3. The learned APP opposed the appeal and supported the impugned judgment and order of conviction by arguing that evidence of prosecution witnesses is consistent in material particulars, and therefore, the offence alleged against the appellant / accused is made out by the prosecution.

4. I have carefully considered rival submissions and also perused the record and proceedings including depositions of prosecution witnesses, so also documentary evidence placed on record.

5. The charge against the appellant / accused is for the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This section reads thus :

"3. Punishments for offences of atrocities

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,

(i)

(ii)....

(iii)....

(iv)....

(v).....

(vi).....

(vii)....

(viii)....

(ix)....

(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; shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

Perusal of this section shows that intentional insult or intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view is made punishable with imprisonment for a term which shall not be less than six months and which can extend up to five years with fine. Intentional insult or intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe within a public view is essential ingredient of this offence and the same is required to be proved by adducing clear and cogent evidence on this aspect by the prosecution. Let us, therefore, examine evidence of the prosecution in order to ascertain whether the prosecution is successful in bringing home the guilt to the accused.

6. Some undisputed facts which are emerging on record are to the effect that informant PW1 Mahadeo Gaikwad and the appellant / accused Usha Tanpure are both employees of Neera Devdhar Project Division, Sangvi, in Pune district. Informant PW1 Mahadeo Gaikwad and appellant / accused Ushal Tanpure were working as peon with the said office. It is not disputed by the defence that PW1 Mahadeo Gaikwad is belonging to the Scheduled Caste - Mange. With this, let us now examine what PW1 Mahadeo Gaikwad says about the incident in question.

7. It is in evidence of PW1 Mahadeo Gaikwad that 10th April 1998 was a holiday, but still he along with other employees were called to the office on that day. Therefore, he himself, D.T.Gaikwad Senior Clerk, PW3 Maruti Kale Senior Clerk and PW2 Manohar Gaikwad - Junior Clerk came to the office and they were present in the office, when at about 10.00 a.m., the appellant / accused came in the office wearing a night gown. PW1 Mahadeo Gaikwad further deposed that he then questioned the appellant / accused as to why she came in the office wearing a night gown when Executive Engineer PW4 Rajan Shah was to visit the office on that day. Upon that, as per evidence of PW1 Mahadeo Gaikwad, following were the utterances of the appellant / accused to him

" Me maji aai ghalayla ale. Tu kay maje shete upatnar. Ja re mangdya sarkarne ghanitle kide kashe bharti kele"

If translated freely in English language, this utterances are to the effect that -

"I came to office to get my mother fucked. Are you going to uproot my pubic hair. Go away Mangdya. How the government has recruited the germs from the dirt."

8. According to PW1 Mahadeo Gaikwad at the time of these utterances by the appellant / accused, PW2 Manohar Gaikwad and PW3 Maruti Kale were present and this incident took place not at the verandah of the office but at the door of

the Accounts Branch. PW1 Mahadeo Gaikwad has stated that a clerk named Kulkarni (DW1 Sudhir Kulkarni) was sitting in the Typing branch at the time of the incident in question.

9. PW1 Mahadeo Gaikwad further deposed that he had given written complaint about this incident to Executive Engineer PW4 Rajan Shah but the Executive Engineer had asked him to wait for two days and as no action was taken by the Executive Engineer, he lodged the report of the incident on 12th April 1998. In crossexamination, this witness has accepted the fact that employees named Kale and Gaikwad came near the door hearing their talks and other employees Mr. and Mrs.Kulkarni came there subsequently.

10. The FIR lodged by this witness on 12th April 1998 is at Exhibit 10 and on the basis of this FIR, it is seen that initially Crime No.3007 of 1998 punishable under Section 7(1)(d) of Protection of Civil Rights Act so also under Sections 504 and 506 of the IPC came to be registered against the appellant / accused. Provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, were not invoked at the time of registration of the FIR on 12th April 1998.

11. Considering the fact that parties involved in the instant case are coemployees working in the same office and keeping in mind nature of the crime in question, one will have to put on record that it is very easy to make allegations in respect of such offence and once made, it is very difficult to dislodge them. Hence, the court is required to test veracity of averments made in such offence by close scrutiny of the evidence of the prosecution and possible arena of such scrutiny can be other evidence adduced by the prosecution on record. With this, let us examine whether version of the informant PW1 Mahadeo Gaikwad is truthful and trustworthy and whether the same is gaining corroboration from other evidence on record. One will have to also ascertain whether PW1 Mahadeo Gaikwad is a witness of truth in order to base conviction.

12. PW1 Mahadeo Gaikwad has not disclosed that at the time of the incident, there was quarrel between him and the appellant / accused. Tone and tenor of his evidence goes to show that he just questioned the appellant / accused as to why she came in the office wearing a night gown and thereupon the appellant / accused used abusive words and made utterances in order to insult him in order to humiliate him, a member of the Scheduled Caste, within the public place. PW1 Mahadeo Gaikwad has not disclosed any overt act on his part in the incident. As against this, if we consider evidence of PW2 Manohar Gaikwad, who was undisputedly present on the spot even as per version of PW1 Mahadeo Gaikwad, then, it reveals that infact at the time of the incident, PW1 Mahadeo Gaikwad and the appellant / accused Usha were quarreling with each other. In chiefexamination itself, PW2 Manohar Gaikwad has deposed that PW1 Mahadeo Gaikwad and the appellant / accused Usha were quarreling and abusing each other at the time of the incident in question. PW3 Maruti Kale another coemployee of the office and eyewitness to the incident has also deposed that at the time of the incident, the appellant / accused Usha and PW1 Mahadeo

Gaikwad were engaged in hot talks. This witness deposed that, therefore, he intervened and advised both of them not to quarrel. It is, thus, clear that the incident in question took place not in a mode and manner as disclosed by PW1 Mahadeo Gaikwad. Infact, it has an origin in the quarrel erupted between him and the appellant / accused. One will have to keep in mind that eruption of quarrel gives a motive to quarreling parties to falsely implicate each other by adding embellishments to their version. Enmity is a double edged weapon and in such cases the court is required to adopt the strict scrutiny and closest circumspection while appreciating the evidence.

13. At this stage it is necessary to quote the other motive to implicate the appellant / accused falsely in the crime in question is reflected from the admissions given by PW4 Rajan Shah, Executive Engineer of the Irrigation Department. This witness has candidly accepted the fact that the appellant / accused had approached him and made complaint against local Police SubInspector named Ashok Jagdale about sexual harassment to her by said Ashok Jagdale. Evidence of PW4 Rajan Shah, Executive Engineer, shows that thereupon, he had sought explanation of P.S.I. Ashok Jagdale and also asked said Ashok Jagdale not to visit the house of the staff member without seeking his permission. This fact assumes importance in the wake of initial registration of the crime under Section 7(d) of the Protection of Civil Rights Act and then subsequently adding Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to the case diary of the crime in question.

14. On this factual backdrop let us further see what PW2 Manohar Gaikwad says about the actual utterances attributed to the appellant / accused and the place of the incident. As per his version, the incident in question took place when the appellant / accused was sitting on the platform of the verandah of the office. This witness stated that when PW1 Mahadeo Gaikwad questioned her, they both started quarreling and abusing each other. In that process, as per evidence of PW2 Manohar Gaikwad following were the utterances of the appellant / accused :

"Me maji aai ghalayla ale. Koun maje shate upatnar ahe. Mangdyachi bharti koni keli."

This witness has also confirmed the fact that the appellant / accused had on earlier occasion made complaint of her sexual harassment by local P.S.I. named Jagdale to PW4 Rajan Shah, Executive Engineer.

15. It is seen from the evidence of PW2 Manohar Gaikwad that utterances attributing to the caste of PW1 Mahadeo Gaikwad disclosed by this witness are not the same or similar as are disclosed by PW1 Mahadeo Gaikwad. The place of the incident as stated by this witness is also totally different.

16. So far as version of PW3 Maruti Kale is concerned, the incident happened near the door of the Accounts section when this witness was handing over some papers to coemployee named Kulkarni (DW1 Sudhir Kulkarni). This witness

claims that there were hot talks between the appellant / accused and PW1 Mahadeo Gaikwad and therefore, he advised them not to quarrel. PW3 Maruti Kale claimed that following were the utterances of the appellant / accused to the first informant PW1 Mahadeo Gaikwad :

"Tu kai malak ahe. Tu koun vicharnar. Tu maje kay wakde karnar. Ja re mangdya tula kay karaiche te kar"

If freely translated in English, these utterances are to the effect that whether you are the employer, who are you to ask, what harm you can cause to me, go away mangdya do whatever you can do.

17. Utterances of two alleged eye witnesses as well as the informant PW1 Mahadeo Gaikwad - alleged victim of the crime in question, as narrated in foregoing paragraphs, as such, are not consistent. On the contrary, there is divergence in material particulars in respect of those utterances. The spot of alleged incident is also not the same as stated by PW1 Mahadeo Gaikwad, as seen from their version. These discrepancies may on the face of it appear to be not of much significance but if we recapitulate the fact situation in which the alleged incident took place, these discrepancies can definitely be said to assume grate value and importance in casting a shadow of doubt on the prosecution case.

18. PW1 Mahadeo Gaikwad claimed that at the time of incident in question, employee by name Kulkarni was at the Typing branch whereas PW3 Maruti Kale has disclosed that the incident happened in presence of coemployee by name Kulkarni and particularly when this witness was handing over papers to said Kulkarni. This employee named Sudhir Kulkarni is examined as DW1 by the defence. It is well settled that defence witnesses are also entitled for same treatment as is given to witnesses for the prosecuting agency. Evidence of PW1 Mahadeo Gaikwad and PW3 Maruti Kale is showing presence of this defence witness in the office at the time of the incident. Rather, PW3 Maruti Kale is claiming that the incident happened in presence of this DW1 Sudhir Kulkarni. On this factual background, if evidence of DW1 Sudhir Kulkarni is perused, then it is seen that the actual incident which took place was only questioning by PW1 Mahadeo Gaikwad to the appellant / accused and asking her to go back to her home and her consequent refusal to go back to her home. This witness has not spoken about any alleged insult with an intent of causing humiliation of PW1 Mahadeo Gaikwad by the appellant / accused to PW1 Mahadeo Gaikwad.

19. Evidence of PW4 Rajan Shah, Executive Engineer, categorically goes to show that PW1 Mahadeo Gaikwad never made any written complaint about the alleged incident to him at any point of time. Evidence of PW4 Rajan Shah does not show that PW1 Mahadeo Gaikwad had approached him immediately on the next day of the incident and had disclosed about utterances of the appellant / accused to him which were pointing out intentional insult or intimidation with the intent to humiliate PW1 Mahadeo Gaikwad, he being a member of the Scheduled Caste. If really PW1 Mahadeo Gaikwad was subjected to casteist abuses with requisite

intention by the appellant / accused, in the wake of the fact that PW4 Rajan Shah was head of the Division where PW1 Mahadeo Gaikwad was working, then in ordinary course PW1 Mahadeo Gaikwad would have narrated casteist abuses and remarks allegedly addressed to him by the appellant / accused, to PW4 Rajan Shah. This did not happen. A lurking doubt arose as to whether actually there were utterances indicating intentional insult with intent to humiliate the first informant PW1 Mahadeo Gaikwad - who is a person belonging to the Scheduled Caste.

20. The incident took place on 10th April 1998 as per case of the prosecution. Undisputedly, the FIR for the same came to be lodged on 12th April 1998. It is not in dispute that at the time of registration of the FIR offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was not invoked. Evidence of PW6 Manish Ajinkya, Investigating Officer shows that those were added subsequently. His evidence further shows statements of prosecution witnesses were recorded on 30th May 1998 i.e. after about one and a half month from the incident in question. First informant PW1 Mahadeo Gaikwad and the appellant / accused were at loggerheads and the incident in question is a fall out of the quarrel between them. The appellant / accused, in past, had complained about indecent behaviour of the local P.S.I. named Jagdale to her superior officer who had taken cognizance thereby seeking explanation of that local P.S.I. Evidence coming on record from the mouth of prosecution witnesses is inconsistent and infirm. There is variance in respect of the spot of the incident. On this factual backdrop, unexplained or rather the delay which is sought to be explained with a false reason assumes importance. The First Informant tried to explain the delay by stating that he made written complaint to PW4 Rajan Shah, the Executive Engineer, who asked him to wait, but as PW4 Rajan Shah did not take any action, he lodged the FIR whereas PW4 Rajan Shah has candidly stated that the First Informant never made any written complaint to him. PW4 Rajan Shah has not stated that he asked the First Informant to wait or not to lodge the FIR. Belated recording of statements of prosecution witnesses gives rise to possibility of bolstering up the prosecution case. It indicates that the Investigator might be thinking of the shape to be given to the prosecution case. There is no evidence to the effect that the delay in recording statements of witnesses caused for the reason that prosecution witnesses were not available. Ultimately, they were employees of Irrigation Department working at Sangvi and very much available to the Investigator. In this backdrop, equally plausible view that the appellant / accused might have been falsely implicated in the crime in question because of her inimical terms with PW1 Mahadeo Gaikwad, is possible. It is seen that eye witnesses have come up with a version which is significantly different from the prosecution case. Their evidence indicates variance so far as the spot of alleged incident is concerned. There is every possibility of cooking up a story during long and unexplained delay or delay sought to be supported by false explanation, coupled with inordinate delay in recording statements of prosecution witnesses. For these reasons, the appellant / accused is certainly

entitled to the benefit of doubt.

21. There is one more angle by which the prosecution case and the resultant trial can be looked into. After crossexamination of PW2 Manohar Gaikwad, the trial Judge chose to put court questions to him. By questioning him, the trial court elicited from him that his evidence in the chiefexamination to the effect that informant PW1 Mahadeo Gaikwad had also abused the appellant / accused is coming on record by way of omission. By putting court questions to PW3 Maruti Kale, the learned trial Judge brought on record that the appellant / accused had uttered "Me maji aai ghalayla ali ahe" which this witness had omitted to state in the chiefexamination. By questioning PW6 Manish Ajinkya, Deputy Superintendent of Police, after his crossexamination was over, the learned trial Judge has elicited from him the fact that after rejection of anticipatory bail application filed by the appellant / accused, Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was added to the case diary of the crime. In the similar manner, learned trial Judge put court questions to defence witness Sudhir Kulkarni after his crossexamination came to be concluded and elicited from him what he has stated before the police in his statement under Section 161 of the Code of Criminal Procedure. Thus, court questions were put up by the learned trial Judge to all material witnesses examined by the prosecution in this case apparently for curing the lacuna in their evidence. This was done after completion of the crossexamination by the defence. The record does not reveal that after putting court questions to these witnesses by invoking provisions of Section 165 of the Evidence Act, the learned trial Judge had granted liberty to the defence to further crossexamine those witnesses. Section 165 of the Evidence Act indeed gives right to the trial Judge to ask any questions he pleases and in any form. This provision is enacted ultimately in order to see that the justice is done and is in aid of the quest for the truth. However, though the court is invested with such wide, unrestricted and unbridled powers, the trial Judge is also required to keep in mind that witnesses are not accustomed to proceedings in the court. They are likely to be overawed by aura of the court. If the trial Judge starts assuming the role of the prosecutor, then, the parties may begin to think that the Judge is not holding the scale of justice quite evenly. It needs to be noted that under Section 165 of the Evidence Act, though the court has vast and unlimited powers to ask any question he pleases at any time, to any party or any witness, such power is to be exercised in order to discover or to obtain proper proof of relevant facts. Improper or capricious exercise of this power can lead to undesirable results. The discretion conferred by Section 165 of the Evidence Act is required to be exercised judicially and not capriciously or arbitrarily. The object for use of such discretion must be - discovery of relevant facts or obtaining proper proof of such facts. Though the Judge is not expected to be a mute spectator, referee or umpire in the criminal trial, he is also not expected to assume the role of the prosecutor or as the case may be, that of the defence lawyer. In the matter of Ram Chander vs. The State of Haryana, AIR 1981 Supreme Court 1036 the Hon"ble Apex Court has

cautioned that though the trial Judge is not expected to assume the role of a referee or an umpire and that he must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth, but while doing so, he must not unduly trespass upon the function of the public prosecutor and the defence counsel. The Hon"ble Supreme Court has further stated that this has to be done without any hint of partisanship and without appearing to frighten or bully witnesses. Be that as it may, when material adverse to the appellant / accused was elicited by the learned trial Judge by putting court questions to all relevant witnesses, then it was incumbent on his part to accord an opportunity to the defence of further cross-examination to such witnesses. This does not seem to have been done, and as such, for want of an opportunity to the defence to further cross-examine the witnesses after court questions, such evidence obtained through court questions cannot be used against the appellant / accused.

22. In the ultimate analysis, for the reasons stated in the foregoing paragraphs, it cannot be said that the prosecution is successful in proving the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the appellant / accused is certainly entitled to benefit of doubt. On reviewing the entire evidence on record, it is seen that there are compelling and substantial reasons for interference in the case in hand because of total unreasonable view taken by the trial court in convicting the appellant / accused. Therefore the order :

i) The appeal is allowed.

ii) The impugned judgment and order of conviction of the appellant / accused of the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the resultant sentence is quashed and set aside.

iii) The appellant / accused is acquitted of the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

iv) Fine amount, if any, paid by the appellant / accused be refunded to her.