

(2020) 02 BOM CK 0095
In the Bombay High Court
Case No : Criminal Appeal No. 573 Of 2004

State Of Maharashtra

APPELLANT

Vs

Satish Dattatray Atole And Ors

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 143, 147, 504, 506
Scheduled Castes And Scheduled Tribes (Prevention Of Attocities) Act, 1989 —
Section 3(1), 3(1)(10), 3(1)(X)
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2020) 02 BOM CK 0095

Hon'ble Judges : K.R. Shriram, J

Bench : Single Bench

Advocate : Anamika Malhotra, Apurva Manwani, Saif Dingankar

Judgement

1. This is an appeal impugning an order and judgment dated 23-02-2004, passed by the 1st Adhoc Assistant Sessions Judge, Baramati, acquitting

respondents (accused) of the offence punishable under Sections 143 (punishment for unlawful assembly), 147 (punishment for rioting), 504 (intentional

insult with intent to provoke breach of the peace) and 506 (punishment for criminal intimidation) of Indian Penal Code and under Section 3(1)(X) of

the Scheduled Castes and Scheduled Tribes (prevention of Attocities) Act 1989 (SC and ST Act).

2. At the outset, since one of the offence charged was under the SC and ST Act, and the original complainant (PW-1) has not been appearing, the

court appointed Ms Apurva Manwani as counsel for the original complainant pursuant to an order dated 21-2-2020. Similarly, as respondents were

also not been represented, the court appointed Mr. Saif Dingankar as counsel for

respondent. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Ms Manwani and Mr. Dingankar, for it has been of immense value in rendering the judgment.

3. The prosecution's case is that on 10-4-2001, there was a fair in the village Khandaj, Baramati. Complainant " Uddhav Nivrutti Kamble (PW-

1) belongs to Hindu Mahar caste, which is a scheduled caste. The accused belongs to Hindu Dhangar community, which is not a scheduled caste or

scheduled tribe. Complainant's son " Rajendra Kamble (PW-2) participated in a wrestling match at village fair and won the match. In his

excitement, PW-1 ran into the arena to lift PW-2. At that time, the accused who had come to witness the wrestling match, shouted at PW-1 stating

"Mahardya why did you entered in the wrestling place " Which accused said that is not specified. According to complainant (PW-1) that

amounted to intentional insult made with an intention to humiliate him, a member of scheduled caste and as it was made in public view, it amounts to

an offence punishable under Section 3(1)(x) of SC and ST Act.

4. PW-2 and PW-3 state that the accused also charged at them with sticks and, therefore, prosecution added the charge under sections 143, 147, 504

and 506 of IPC.

5. After completion of investigation and recording of statements, charge sheet was filed before the JMFC, who committed the case to the 1st Adhoc

Assistant Sessions Judge, Baramati. All accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial and

according to them it is a false case that is lodged against them.

6. To prove the case, prosecution led evidence of 7 witnesses as against 26 listed in the charge sheet. Complainant " Uddhav Nivrutti Kamble as

(PW.-1); Rajendra Uddhav Kamble, son of complainant as (PW-2); Bapat Nivrutti Kamble, brother of complainant, as (PW-3); Prakash Sudam

Kamble, an eye witness, as (PW-4); Sunil Vasant Kolhe, Dy. S.P. an Investigating office as (PW-5); Vijay Mahadeo Bankar, ASI, Baramati, as PW-

6) and Prakash Ratilal Shaha, Dy. S.P. as (PW-7).

7. With the assistance of learned APP Ms Malhotra, Ms Manwani and Mr. Dingankar, I have perused the evidence and the impugned judgment and I

also concur with the Trial Court that the prosecution has miserably failed to prove the charges.

8. In his examination-in-chief, PW-1 says that when his son (PW-2) won the wrestling match, he entered the arena to lift PW-2, at which time, the

accused said â??Mahardya why he entered in the arenaâ?. He does not say which accused said that. Hence, PW-1, his son (PW-2) and his brother

(PW-3), came outside the arena. In the cross-examination, PW-1 admits that he has not mentioned in his complaint that the accused asked him

â??why Mahardya entered in the bamboo compoundâ?. PW-1 also admits that there are criminal cases pending against him, his son (PW-2) and his

brother (PW-3) and copy of which, has been filed alongwith statement recorded under Section 313 of CrPC.

9. PW-2 in his examination-in-chief says that when his father (PW-1) and uncle (PW-3) entered the arena, the accused asked his father (PW-1) and

uncle (PW-3) â??as to why Mahardya entered in the arenaâ?, but admits in his cross-examination that it does not find a mention in his statement

recorded by the police. In his examination-in-chief, PW-2 says that thereafter all the accused proceeded towards them with sticks and in the cross-

examination, PW-2 admits this also does not find a mention in his statement recorded by the police. The evidence of PW-3 is almost identical to PW-

2. PW-1 does not say anywhere about accused proceeding towards them with sticks.

10. PW-4 says all the accused asked PW-1 as to why Mahardya entered in the wrestling compound, but admits that only after 20 days of the incident,

he was called by the police to make the inquiry.

11. PW-5, the Investigating officer, in his cross-examination states none of the 7 witnesses stated before him which abusive words were used by the

accused. There is nothing in the evidence of PW-6.

12. PW-7 in his cross-examination stated that PW-1, PW-2 and PW-3 have not stated before him that the accused asked PW-1 â??Mahardya why

he entered in the arenaâ?. PW-7 also says that PW-2 and PW-3 have not mentioned before him that the accused charged at complainant with sticks.

PW-7 in his cross-examination admits that he recorded the statements of witnesses Sahebrao Atole, Haribhau Jadhav, Hanumant Sorte, Nivrutti

Jadhav, Pandurang Atole, Ramdas Atole and Anandra Phalke. All have stated that

the accused have not abused complainant and his witnesses on their caste. PW-7 also states that he even reported to his superior that nothing was happened at the time of fair at Village Khandaj. PW-7 also says that he was present during the fair and nobody of village Khandaj made any complaint to him or the other police staff at the time of fair. PW-1 also admits that PW-7 was present at the time of wrestling, but after he had discussion with his son and brother on the next day, he went and lodged the complaint. What has to be noted is, even though PW-7 was present at the time of wrestling match going on, complainant did not consider it necessary to immediately report to PW-7 about the incident.

13. Ms Manwani submitted relying upon Swaran Singh & Ors. Vs. State through standing counsel & Anr (2008) 8 Supreme Court Cases 43 5that calling a person by his caste would also amount to insult. But the fact is prosecution has failed to prove that the accused even called complainant by his caste.

14. Mr. Dingankar submitted that the ingredients for the offence under clause 10 of sub-section 1 of Section 3 are Sub-section (1) of Section 3 are there should be intentional insult orintimidation by a person, who is not a member of Scheduled caste or Scheduled tribe; (b) the intentional insult or intimidation should be to a person who is a member of Scheduled caste or Scheduled tribe; (c) the insult must be with an intention to humiliate member of a Scheduled caste or Scheduled tribe. As the intent to humiliate is necessary, it follows that the accused must have knowledge or awareness that the victim belongs to the Scheduled caste or Scheduled tribe; and (d) the incident must occur in any place within public view.

15. Mr. Dingankar also submitted that prosecution has failed to prove that the accused spoke the sentence at all, let alone with an intention to insult.

Even otherwise calling someone by their caste name is not sufficient, (The state of Maharashtra Vs. Pandurang Babu Patil (Cri. Appeal No.631 of 2003).

16. Mr. Dingankar also submitted that animosity between the accused and complainant â?" once admitted by complainant, the legitamacy of the complaint ought to be scrutinized strictly. Even on facts, PW-7, who was supposed to be present in the fair when the incident is alleged to have happened, has in his cross-examination stated, â?"it is true I reported to my

superior that nothing was happened at the time of fair at village Khandaj.

It is true PHC Bankar and two police constables were deputed in the village on Bandobast duty. It is true I have also visited village Khandaj during the

period of fair. It is true nobody of village Khandaj made any complaint to me or other police staff at the time of fairâ?. This is the same witness, who

according to PW-1 had allegedly stopped a fight between complainant and the accused.

17. Mr. Dingankar submitted that, therefore, charge under the SC and ST Act, has failed. I agree with Mr. Dingankarâ??s submissions.

Ms Malhotra, Learned APP, true to her role as an officer of the court, concurred.

18. As regards charges under Sections 143, 147, 504 and 506 of IPC, those charges also have to fail because prosecution has failed to prove that the

accused insulted complainant based on his caste and also failed to prove that the accused charged at complainant and others with sticks.

19. In the circumstances, appeal dismissed.

20. The way prosecution has gone about in this case shows that a course correction is required. The Apex Court in State of Gujarat V/s. Kishanbhai

and Ors. (2014) 5 SCC 108 in paragraphs 22, 23, 24 and 25 has stated as under :

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should

ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a

procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those

who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders

of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution

departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing

mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing

training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute

course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

23. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

24. A copy of the instant judgment shall be transmitted by the Registry of this Court, to the Home Secretaries of all State Governments and Union

Territories, within one week. All the concerned Home Secretaries, shall ensure compliance of the directions recorded above. The records of

consideration, in compliance with the above direction, shall be maintained.

25. We hope and trust the Home Department of the State of Gujarat, will identify the erring officers in the instant case, and will take appropriate

departmental action against them, as may be considered appropriate, in accordance with law.

21. Copy of this order be placed before the Director General of Police for information. The Director General of police to ensure that no such

meaningless prosecution is conducted because despite the evidence of PW-7-Prakash Ratilal Shaha, that he had reported to his superior that nothing

had happened at the time of fair at village, instead of closing the case, the State proceeded with prosecuting the complaint and not only that even filed

an appeal challenging the order of acquittal. The huge resources of the State by way of manpower, i.e., Investigating officer, prosecutors etc., have

been lost. More importantly, precious judicial time of the trial court and of this court has been wasted.

22. The Maharashtra Legal Aid Services Authority, is directed to pay fees as prescribed under its Rules both to Ms Manwani and Mr. Dingankar.