

(2016) 09 BOM CK 0022
In the Bombay High Court
Case No : Criminal Appeal No. 460 of 2005

State of Maharashtra

APPELLANT

Vs

Yuvraj Yesaji Jodgan

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(i)(x)

Citation : (2016) 3 AIRBomRCri 564 : (2016) ALLMRCri 4424 : (2017) 1
BomCR(Cri) 245

Hon'ble Judges : A.I.S. Cheema, J.

Bench : Single Bench

Advocate : Mr. R.B. Bagul, A.P.P, for the Appellant-State; Mr. S.B. Rajebhosale,
Advocate, for the Respondent Nos. 1 to 4

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—The State has filed this Criminal Appeal against acquittal of Respondents - original accused Nos. 1 to 4 (hereafter referred as "accused Nos. 1 to 4") under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Act" in brief). The accused were acquitted also of offences punishable under Sections 323, 504, 506 read with 34 of the Indian Penal Code, 1860 ("I.P.C." in brief).

2. The case of prosecution, in short, is as under:-

A). Complainant Suresh Sonu Padame (PW-1) (hereafter referred as "complainant") filed report at Police Station Pachora on 2nd December 2002. He referred to his family and stated that he is residing at Bambrul (Raniche), Tq- Pachora and works at the field of one Onkar Narayan Wagh. About 8-10 days back accused No. 1 Yuvraj along with his colleagues was sitting near board of Sambhaji Brigade and when complainant was passing, accused No. 1 Yuvraj told him as to on whose assurance he has become arrogant and had abused him.

Complainant had told him that he had not become arrogant on the assurance of any body. Subsequently on 30th November 2002 complainant after finishing work, had gone home and then to his sister Kasturabai and was returning back. On the way, he met friend Sultan Rasul. They were going by road and were in front of Keli group of Chandrakant Wagh. Time was about 8.30 p.m. Accused No. 1 Yuvraj was there and he was under influence of liquor. He again told complainant as to on whose assurance he has become arrogant and started abusing loudly saying "SALYA CHAMTYA CHUMTYA". He started giving abuses on the basis of caste. Hearing him, his friends Dagadu Bajirao Gavali (accused No. 4), Arun Ramu Gavali (accused No. 2) and his relative Pundlik Ramchandra Gavali (accused No. 3) came there and started threatening the complainant and abused him by calling him "CHAMTYA" and saying that he had become arrogant and they knew on whose assurance he had become arrogant. All the four accused persons started calling him "CHAMBHARDYA" and saying as to how he will reside in the village. The accused claimed that they will see him and gave dirty abuses and slapped and boxed him on face and head. The F.I.R. refers to Sultan Rasul, Ramlal Baburao Lohar (PW-2), Jagdish Padame intervening and having seen the incident. Complainant claimed that the villagers had tried to explain to him, but however as the accused were not in condition to understand, he was filing the complaint late. He had invisible injury and wanted to go to the doctor.

B). The complaint was received by PW-5 Vasant Patil, A.S.I. Pachora and offence came to be registered at Crime No. 66 of 2002 on 2nd December 2002. The same was investigated by Sub Divisional Police Officer Tejbahadur Singh (PW-6). He recorded Spot Panchnama. He procured caste certificates of the complainant and the accused. Caste certificate Exhibit 30 of the complainant had been issued by PW-4 Tahsildar Preetam Tayade. The investigating officer PW-6 Tejbahadur Singh claimed that accused persons were Hindu Marathas. The statements of witnesses were recorded. After investigation, charge-sheet came to be filed and the accused were prosecuted.

3. The defence of the accused persons is that of denial. According to them, in the village there are two political groups. One is of M.L.A. Onkar Wagh who belongs to a political party (I will refer to that as "R.C. Group") and they have been workers of another political party (to which I will refer as "S-S" Group) and thus out of political vengeance, the complainant who was labourer of the M.L.A., has filed false case and the witnesses examined are also of the same group.

4. Trial Court considered the evidence of seven witnesses who were examined by the prosecution and found the accused persons not guilty of any of the offences. The trial Court held that the investigation had not been done by Police Officer not below the rank of Deputy Superintendent of Police appointed in terms of Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 ("Rules" in brief). It also found that the F.I.R. did not mention the caste of the complainant and also the caste of the accused persons and thus

according to the trial Court, Police wrongly investigated the offence treating the same to be under the Act of 1989. Trial Court, on the merits of the evidence, found that reading F.I.R. with the evidence of complainant PW-1 Suresh as well as witness PW-2 Ramlal did not disclose consistent evidence. The ocular evidence did not match with the medical evidence also. The evidence of doctor regarding the injury of the complainant was not acceptable. Trial Court found that it was not ruled out that due to political rivalry the accused had been implicated which was a possibility. There was no evidence of abusing beyond what was claimed as abuses on the basis of caste and there was no evidence regarding criminal intimidation and so Section 504 and 506 of I.P.C. were not made out. Trial Court found that no independent witness had been examined and for such reasons concluded that the offence was not established and acquitted the accused persons.

5. I have heard learned A.P.P. for State and the counsel for Respondents - original accused.

6. The learned A.P.P. has taken me through the oral and documentary evidence which was brought on record. According to the learned A.P.P., there was no material that the accused persons belonged to rival political group. Regarding the caste of the accused persons, the learned A.P.P. referred to photo copies of school leaving certificates in the original record with reference to the caste of the accused persons which were marked Articles A to C and pointed out the same with reference to accused Nos. 2 to 4. No caste certificate of accused No. 1 Yuvraj appeared to have been collected. Learned A.P.P. submitted that although the caste certificates of the accused were not proved as such but the evidence of the investigating officer that the accused persons were Marathas was not denied in the cross-examination. The A.P.P. submitted that the F.I.R. refers to the abuses on the basis of caste of the complainant who was "Chambhar" and thus Scheduled Caste and thus even if he did not record his caste in the F.I.R., that would not make any difference. According to A.P.P., there were only suggestions regarding political rivalry and it was double edged weapon. There was no proof that the complainant and the witnesses were members of any particular political group. The A.P.P. accepted that the complainant was person who was employee of M.L.A. Onkar Wagh.

7. Per contra, the learned counsel for accused referred to the reasonings recorded by the trial Court and supported the same. According to him, there was also delay in filing of the F.I.R. which makes the case of the complainant doubtful. The complainant was employee of M.L.A. Onkar Wagh and thus due to political rivalry, the complainant was made to file false case and the trial Court rightly acquitted the accused persons. No independent witness had been examined and the evidence on record was not consistent. The doctor was not believable when he deposed that 5-6 people must have caused the two injuries he noticed in the medical certificate. The learned counsel referred to the Judgment in the matter of Sitaram s/o Mahadu Dhadve v. State of Maharashtra

and others, reported in 2012(1) MAH. L.J. (CRI) 681 and the observations of this Court in that matter made in Para 10, which reads as under:-

"In the present case, the accusation is mainly under section 3(1)(x) of the Atrocities Act. It may be possible that due to groupism in village there may be rivalry between different persons from different grounds false accusations cannot be ruled out particularly when in a case first informant for unexplained and obscure reason, waited for days to lodge a complaint/FIR in respect of alleged offence punishable under Atrocities Act. Section 3(1)(x) of the Act punishes intentional insult or intimidation from a person who is not a member of the Scheduled Castes or Scheduled Tribes when such insult or intimidation was given at any place within the public view to a member of a Scheduled Castes or Scheduled Tribes. Thus, insult or abuse on the ground of Scheduled Castes or Scheduled Tribes must be with intention to insult or humiliate a member of a Scheduled Castes or Scheduled Tribes in any place within the public view. Mere imputation of name of the caste while addressing the complainant cannot make out an offence punishable under Section 3(1)(x) of the Act because simply addressing a person by his caste without intention to insult or intimidate does not constitute an offence under the said Section. Therefore, there must be acceptable evidence beyond reasonable doubts in respect of intentional insult or intimidation for humiliating a member of a Scheduled Caste or Scheduled Tribe in any place within the public view."

The learned counsel for the Respondents - original accused further referred to the Judgment in the matter of Dnyaneshwar Maroti Bembde and others v. State of Maharashtra, reported in 2015 ALL MR (CRI) 3417, in which this Court, in Para 23, observed as under:-

"The case that all the witnesses are from the same political party, they knew the complainant for many years, but they came to the spot due to co-incidence, does not appear to be probable in nature. If as per the case of complainant, there were other farmers and crowd had gathered there and there was Dhaba and one Munna, hardly at the distance of 100 fts. from that place and there were other buildings, these witnesses ought to have been examined by the prosecution."

The counsel for Respondents - original accused further referred to the matter of State of Maharashtra v. Faruq Imam Sayyad and three others, reported as 2008(9) LJSOFT 67. In Para 7 of the Judgment, it was observed as under:-

"In the present case, the complainant is totally silent about the caste of the accused persons. So also in her evidence, the complainant has not stated the caste of the accused persons. As stated earlier the caste of the accused persons has not been brought on record by the prosecution. In the absence of essential facts in the evidence of the witnesses especially the evidence of the complainant, it cannot be said that any case is made out under the SC & ST Act."

The counsel for the Respondents - original accused also relied on the case of Govind Janabha Kumbhar and others v. State of Maharashtra reported as

2011(6) LJSOFT 111 and observations in Para 4, which read as under:-

"Rule 7 of the Scheduled Castes or Scheduled Tribes (Prevention of Atrocities) Rules, 1995 mandates that an offence punishable under the provisions of the SCST Act has to be investigated by an officer not below the rank of a Deputy Superintendent of Police. In this case, most of the investigation seems to have been carried out by a Police Head Constable and some final touches were given by a Police Sub-Inspector, who was not examined before the trial Court. Thus, as far as the offence punishable under Section 3(1)(x) of the SCST Act is concerned, the investigation itself was vitiated. The object of directing investigation to be carried out by a senior police officer was defeated and a rag-tag charge-sheet was sent to the trial Court. Therefore, the conviction of appellant No. 1 Govind for the offence punishable under Section 3(1)(x) of the SCST Act cannot at all sustained."

8. Referring to the above Judgments and observations in the Rulings, the learned counsel for the Respondents - original accused submitted that in present matter also the investigation was not done by the police officer duly invested with the powers under Rule 7 of the Rules of 1995 and the caste of the accused persons was also not proved and on merits also the accused persons deserve to be acquitted and thus the Judgment of the trial Court should not be interfered with.

9. I have gone through the evidence in this matter. I am keeping in view the Judgments referred to by the learned counsel for the Respondents - original accused. Without going into the technicalities that in the F.I.R. caste of the complainant and caste of the accused persons was not mentioned, and without going into the technicalities whether the investigation was by an authorised police officer (and if accused could be said to be prejudiced), I find that in the present matter on the merits of the evidence itself, the acquittal recorded by the trial Court is correct and cannot be said to be perverse.

10. I will make brief reference to the evidence which has come on record.

11. Firstly, there is F.I.R. dated 2nd December 2002 filed by the complainant Suresh which was relating to incident dated 30th November 2002. The complainant gave reason in the complaint for delay that the villagers were trying to explain to him but as the accused do not understand, he was filing the complaint late. This is lame excuse. Again, these contents of the F.I.R., have not been proved in the oral evidence. No material was brought of people in the village making efforts to make the two sides understand. Thus, the delay in filing of the F.I.R. was not at all explained in the evidence.

12. The F.I.R. claims at different places and in the evidence it has been stated by the complainant Suresh as well as his witness PW-2 Ramlal that accused persons after referring to the caste of complainant as "Chamtya Chumtya" were asking as to on whose assurance he had become arrogant. The F.I.R. states that they even declared that they knew as to on whose assurance the complainant had become arrogant. Although such evidence is given, no material regarding alleged

arrogance because of which such incident took place, has been brought on record. Thus, the cause or motive for the accused persons picking up quarrel has not been deposed to by the witnesses.

13. The F.I.R. claimed that the four accused persons abused the complainant and slapped and boxed him on his face and head. The F.I.R. claimed that the complainant has invisible injury and wanted to go to the doctor. Against this, the evidence of PW-1 Suresh while referring to the accused persons, makes no reference to presence of accused No. 2 Arun Gavali as one of the participants in the incident. Against such evidence of the complainant, there is other set of evidence in the form of deposition of PW-2 Ramlal, who claimed that accused No. 2 Arun Gavali was also there and like the other three accused similarly abused the complainant. One set of evidence does not fit into the other set of evidence. In oral evidence the complainant claimed that the accused persons beat him on his face by slaps. He did not claim that he was also boxed. He deposed that he had invisible injury to his head. Against this, PW-2 Ramlal claimed that accused No. 3 Pundlik and accused No. 4 Dagadu beat the complainant by slaps. In the delayed medical examination of the complainant Suresh, PW-7 Dr. Ramkrishna Teli recorded that the complainant had the following injuries:-

"1. Nailed abrasion with tenderness left maxillary region.

2. There was occipital tenderness with swelling on left side."

The doctor claimed that the above injuries were possible by hard and blunt object. Although the doctor claimed that the injuries were of within 48 hours, he accepted in cross-examination that he had not recorded the colour of injuries. He accepted that colour of injuries would show the age of injuries. He accepted that the medical certificate does not bear signature of the patient. The doctor in his evidence claimed that the two injuries were possible if 5-6 persons gave beating. The trial Court has rightly questioned such evidence. Although the complainant has not deposed and the doctor did not find any bleeding injury, PW-2 Ramlal claimed that the complainant had received bleeding injuries.

14. Admittedly, the complainant was employee of M.L.A. Onkar Wagh. Complainant accepted that his friend Sultan was also working for the M.L.A. He tried to deny and thus pleaded ignorance that Onkar Wagh belonged to R.C. Group. The investigating officer PW-6 Tejbahadur Singh, however, accepted that this Onkar Wagh was M.L.A. from R.C. Group. Complainant admitted in cross-examination that Rajendra Wagh is son of this M.L.A. Onkar Wagh. He further admitted that on the day of evidence this Rajendra Wagh and Chandrakant Wagh had come along with him to the Court. Complainant admitted that PW-2 Ramlal was his friend.

The evidence of PW-2 Ramlal shows that when the incident occurred, he was sitting in Keli group belonging to Chandrakant Wagh. PW-2 Ramlal admitted that since childhood he was acquainted with Chandrakant Wagh and Rajendra Wagh. Even the Panch PW-3 Anil Wagh who was examined to prove Spot Panchnama

Exhibit 27, admitted in cross-examination that his father was chairman of Patpedhi belonging to Chandrakant Wagh. He accepted that in the recent elections panel of one Sagar Wagh of S-S Group had contested with Onkar Wagh of R.C. Group.

15. Defence of the accused persons is that due to political rivalry the present case has been filed. Although material regarding affiliation of the accused persons to any particular political group is not brought still, there are suggestions to the witnesses that due to political affiliation and their connection with the M.L.A., this false case had been filed. It would be too much of coincidence that the complainant and his witness PW-2 Ramlal and Spot Panch PW-3 Anil Wagh have got some or the other connection leading to the M.L.A. This is not to say that the M.L.A. had anything to do with the incident but only thing relevant for decision of this matter is that the delayed complaint of complainant and his witnesses do not rise above suspicion in the light of defence. Looking to the fact that there is evidence to show that there were even other people alleged to have been present at the time of incident and near the spot and there is also residence of one Mahadu Wani, and none of the independent witnesses of incident have been examined, it would be risky to rely on the oral evidence of PW-1 and PW-2 to convict the accused persons.

16. Going through the Judgment of the trial Court, I do not find that the trial Court erred in its findings on merits of the evidence that the same could not be accepted so as to convict the accused persons for Sections with which they had been charged. I do not find any reason to take dissenting view. There is no substance in the submissions of the A.P.P. on the basis of which acquittal could be reversed into conviction. The view taken by the trial Court is a possible view.

17. There is no substance in the Appeal. The Appeal is dismissed.