

(2018) 01 BOM CK 0117
In the Bombay High Court
Case No : 1071 of 2002

THE STATE OF MAHARASHTRA

APPELLANT

Vs

SHRISHAIL BASAPPA PATIL & ORS.

RESPONDENT

Date of Decision : 20-01-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 506, 427, 143, 504, 352
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(v)
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 — Rule 7

Citation : (2018) 01 BOM CK 0117

Hon'ble Judges : A. M. Badar

Bench : Single Bench

Advocate : S.V.Gavand

Final Decision : Dismissed

Judgement

1. By this appeal, the State is challenging the judgment and order passed by the learned 2nd Additional Sessions Judge, Solapur, in Special Case No.9 of 1999, thereby acquitting respondents/accused of offences punishable under Sections 352, 427, 504, 506 read with 34 of the Indian Penal Code and under Section 143 of the Indian Penal Code, as well as for the offence punishable under Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Facts leading to the prosecution of the respondents/accused in nutshell are thus :

(a) It is case of the prosecution that PW1 Laxmibai Hippargi is

owner of Gat No.23/2 of Village Alagi, Taluka Akkalkot, admeasuring about 10 acres. On 14th June 1996, she entered into transaction in respect of the said land with Sadakshari Hiremath. It was a transaction of mortgage of the said land with conditional sale. However, said Sadakshari Hiremath sold the said land at Gat No.23/2 of village Alage to accused no.5 Apparaya Patil and accused no.6 Baburao Patil. Still, possession continued with PW1 Laxmibai Hippargi. She filed a Special Civil Suit bearing no.411 of 1996 against the defendants which included accused no.5 Apparaya Patil, accused no.6 Baburao Patil and Sadakshari Hiremath for declaration and perpetual injunction. On 15th February 1997 when PW1 Laxmibai Hippargi along with her parents-in-law and PW3 Sarubai Hippargi etc. were working in the said field Gat No.23/2, accused persons came there. Accused no.6 Baburao Patil was holding a fire arm. They abused PW1 Laxmibai Hippargi as well as her relatives and threatened them to go out of the field. The accused persons then demolished a hut belonging to PW1 Laxmibai Hippargi. A complaint (Exhibit 22) of this incident was lodged to the Superintendent of Police by PW2 Pargonda Hippargi - husband of PW1 Laxmibai Hippargi.

(b) According to the prosecution case, thereafter, again on 19 th February 1997, at about 11 p.m, all accused persons came to the "vasti" (residence of PW1 Laxmibai Hippargi and PW2 Pargonda Hippargi) by tractor and trolley. They took away electric meter, starter and pipeline belonging to the members of the prosecuting party. The complaint (Exhibit 23) of this incident came to be lodged by PW2 Pargonda Hippargi with

the Superintendent of Police.

(c) According to the prosecution case, on 20th March 1997, First Information Report (FIR) was lodged by PW2 Pargonda Hippargi and accordingly, the Crime No.14 of 1997 came to be registered with Police Station Akkalkot South. After completing investigation, charge-sheet came to be filed against all accused persons.

(d) In order to prove the charge leveled against the accused persons, the prosecution has examined in all seven witnesses. Laxmibai Hippargi is examined as PW1. Her husband Pargonda Hippargi is examined as PW2. Sister-in-law of PW2 Pargonda Hippargi namely, Sarubai Hippargi is examined as PW3. Panch witness Abhimanu Kasbe is examined as PW4. Spot panchnama is at Exhibit 20. Investigating Officer Police Sub-Inspector Dilip Londhe is examined as PW5. Circle Inspector Satyashree Kshirsagar is examined as PW6. Awwal Karkoon with the Collector namely Pradip Deshmukh is examined as PW7. Exhibit 44 is the Caste Certificate issued by the Tahsildar. The defence of the accused persons was that of total denial.

(e) After hearing the parties, the learned trial court by the impugned judgment and order dated 20 th June 2002 passed in Special Case No.9 of 1999 was pleased to acquit all the respondents/accused of offences alleged against them. Feeling aggrieved by this acquittal, the State is in appeal before this court.

3. Heard Shri S.V.Gavand, the learned APP, appearing for the State. By taking me through evidence of PW1 Laxmibai Hippargi, PW2 Pargonda Hippargi and PW3 Sarubai Hippargi, Shri Gavand, the learned APP, vehemently argued that the

evidence of all these three prosecution witnesses is clear and cogent. Their version is reflecting that all accused persons, in furtherance of their common intention, destructed the hut of the members of the prosecuting party and used criminal force on PW1 Laxmibai Hippargi, PW3 Sarubai Hippargi and other members of the prosecuting party. The learned APP further argued that the evidence of PW1 Laxmibai Hippargi and PW3 Sarubai Hippargi shows that accused persons committed mischief by causing wrongful loss to the members of the prosecuting party by damaging the hut situated in the field Gat No.23/2. The members of the prosecuting party were intimidated by the respondents/accused and they were provoked to break the public peace. The accused persons had formed an unlawful assembly with common object to commit cognizable offence.

4. None appeared for the respondents/accused.

5. I have carefully considered the submissions advanced by the learned APP and also perused the record and proceedings including the deposition of witnesses as well as documentary evidence adduced by the prosecution.

6. It is case of the prosecution that field Gat No.23/2 of Village Alagi owned by PW1 Laxmibai Hippargi was mortgaged with Sadakshari Hiremath and the said mortgage was by conditional sale of the said field, which took place on 14 th June 1996. However, said Sadakshari Hiremath had illegally sold the said field to accused no.5 Apparaya Patil and accused no.6 Baburao Patil, though the possession of the said field continued with PW1 Laxmibai Hippargi. The prosecution alleged that all accused persons formed an unlawful assembly and attempted to disturb possession of PW1 Laxmibai Hippargi and her husband PW2 Pargonda Hippargi over the field Gat No.23/2 by forcing the

members of the prosecuting party to remove themselves from the said field, and in that process, the respondents/accused took away electric meter, starter and pipeline belonging to PW1 Laxmibai Hippargi and her husband PW2 Pargonda Hippargi. The prosecution has only examined highly interested witnesses to prove the incidents alleged by PW1 Laxmibai Hippargi and her husband PW2 Pargonda Hippargi. Witnesses examined by the prosecution comprised of PW1 Laxmibai Hippargi, First Informant - PW2 Pargonda Hippargi and his sister-in-law PW3 Sarubai Hippargi. Not a single disinterested witness is examined to prove the alleged incidents by the prosecution. Therefore, let us at the outset, examine the documentary evidence coming on record in order to ascertain the veracity of highly interested prosecution witnesses.

7. The documentary evidence adduced on record can be considered better by keeping in mind admissions given by First Informant PW2 Pargonda Hippargi. In paragraph 9 of his cross-examination, PW2 Pargonda Hippargi has candidly admitted that name of Sadakshari Hiremath is recorded in 7/12 extract pertaining to suit land i.e. Gat No.23/2 of village Alagi. This First Informant further admitted that he had filed an application before the Sub-Divisional Officer for claiming possession of the suit land bearing Gat No.23/2 of Village Alagi by resorting to the provisions of Section 36 of the Maharashtra Land Revenue Code as well as Section 3 of the Restoration of Land to the Scheduled Castes and Scheduled Tribes Act . PW2 Pargonda Hippargi further admitted that the said application moved by him for claiming possession of the land bearing Gat No.23/2 came to be rejected by the Sub-Divisional Officer. This position emerging on record through the cross-examination of First Informant PW2 Pargonda Hippargi

unerringly points out that neither he nor his wife i.e. PW2 Pargonda Hippargi were in possession of the land bearing Gat No.23/2 of Village Alagi. PW2 Pargonda Hippargi further admitted that on 12th February 2002, Special Civil Suit bearing No.411 of 1996 filed by his wife PW1 Laxmibai Hippargi for declaration and perpetual injunction came to be dismissed. On this backdrop let us examine certified copy of the plaint in Special Civil Suit No.411 of 1996 which was filed by PW1 Laxmibai Hippargi. It is annexed to the list Exhibit 56. By this civil suit, it was claimed that the Sale Deed of the land bearing Gat No.23/2 was executed in favour of the defendant named Sadakshari Hiremath, by way of security for refund of loan amount. The Sale Deed was a nominal and sham document. The complainant i.e. PW1 Laxmibai Hippargi further averred that vide the said Sale Deed, no title passed to defendant Sadakshari Hiremath and therefore, further transaction by defendant Sadakshari Hiremath in favour of defendants Apparaya Patil and Baburao Patil (accused nos.5 and 6) is illegal. PW1 Laxmibai Hippargi, who is plaintiff in the said suit, claimed possession of land bearing Gat No.23/2 of Village Alagi and prayed injunction against the defendants which included accused no.5 Apparaya Patil and accused no.6 Baburao Patil. Alternative relief of re-conveyance was also claimed. The said suit came to be dismissed on 12th February 2002 by holding that the transaction was out and out sale of the land bearing Gat No.23/2 by PW1 Laxmibai Hippargi to defendant Sadakshari Hiremath. The Sale Deed dated 14 th June 1996 executed by PW1 Laxmibai Hippargi in favour of Sadakshari Hiremath was held not to be null and void, but binding on the plaintiff. It is further held by the civil court while deciding the said suit that the land is in possession of the

defendant i.e. Sadakshari Hiremath as well as accused nos.5 and 6, namely, Apparaya Patil and Baburao Patil. Needless to mention that judgment of the competent civil court is binding on the criminal court. This documentary evidence coming on record, thus, shows that on the date of the incident, neither PW1 Laxmibai Hippargi nor PW2 Pargonda Hippargi were in possession of Gat No.23/2.

8. In the backdrop of this documentary evidence, let us examine what PW1 Laxmibai Hippargi, PW2 Pargonda Hippargi and PW3 Sarubai Hippargi are deposing in respect of the incidents in question. PW1 Laxmibai Hippargi has deposed that on 15 th February 1997, at about 9.00 a.m., she herself alongwith her sister-in-law PW3 Sarubai Hippargi and her parents-in-law were working in the field Gat No.23/2. Her husband PW2 Pargonda Hippargi was also working there. At that time, all accused persons came in the field. Accused no.6 Baburao Patil was carrying a gun. They all abused her and asked her as well as her relatives to get out of the field. She further deposed that accused persons demolished her hut which was standing in the field. As per her version, four days thereafter, again accused persons came at about 11.00 p.m. in the night and took away electric meter, starter and pipes belonging to her and her husband PW2 Pargonda Hippargi. In the similar way, PW2 Pargonda Hippargi deposed about the incident which took place at about 9.00 a.m. of 15 th February 1997. His evidence in that regard is in unison with version of PW1 Laxmibai Hippargi. Hence, there is no point in repeating the same. His version in respect of the incident dated 19 th February 1997 is also congruous to the version of his wife PW1 Laxmibai Hippargi. This witness deposed about lodging complaints Exhibits 22 and 23 in respect of these incidents to the Superintendent of

Police.

9. It is seen from cross-examination of PW1 Laxmibai Hippargi that she has added embellishments to her version, so far as presence on the scene of occurrence is concerned. She had not stated to police while recording her first version that on 15 th February 1997, at about 9.00 a.m., she herself along with her relatives was working in the field. She has no answer as to why this fact is not appearing in her police statement. She had also not disclosed the fact that accused no.6 Baburao Patil was carrying a gun at that time, while giving her statement to the police. Her evidence that accused persons abused her and her relatives and asked them to get out of the said field is also coming on record by way of omission.

10. In the similar way, perusal of reports Exhibits 22 and 23, so also the FIR at Exhibit 26 lodged by PW2 Pargonda Hippargi shows that he had not disclosed the fact that he himself was present on the scene of occurrence with his wife in those reports. Those reports are conspicuously silent about the fact that PW2 Pargonda Hippargi and his wife PW1 Laxmibai Hippargi were present in the field Gat No.23/2 on 15 th February 1997 and 19th February 1997. If these omissions or improvements are ignored, then these two witnesses do not seem to be eye witnesses to the incident in question, which, allegedly, took place on 15 th February 1997 as well as 19 th February 1997. Documentary evidence as discussed in foregoing paragraphs belies version of both these witnesses.

11. PW3 Sarubai Hippargi is near relative of PW1 Laxmibai Hippargi and PW2 Pargonda Hippargi. Her cross-examination reveals that she is totally dependent on First Informant PW2 Pargonda Hippargi for her survival and she acts on

his tunes. This witness was not knowing anything about the transaction regarding alleged mortgage or sale of the field Gat No.23/2. Perusal of the impugned judgment and order of the learned trial court vis-a-vis version of PW3 Sarubai Hippargi shows that the learned trial court has rightly appreciated evidence of this witness and refused to place explicit reliance on it. She is a highly interested witness, and therefore, her version, which is contradictory to the documentary evidence on record, needs to be ignored.

12. PW7 Pradip Deshmukh is Awwal Karkoon working in the office of the Collector, Solapur. This witness has duly proved certificate at Exhibit 44 issued by the Tahsildar, North Solapur. This documentary evidence as well as version of PW1 Laxmibai Hippargi and PW2 Pargonda Hippargi shows that they belong to Mahadev Koli tribe, which is a Scheduled Tribe under the Scheduled Castes and Scheduled Tribes (Modification) List 1962, as well as Scheduled Castes and Scheduled Tribes Amendment Act, 1976. The offence punishable under Section 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was attributed to the respondents/accused with an averment that they destructed the hut belonging to the members of the prosecuting party. As per provision of Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, it is mandatory that the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act shall be investigated by a Police Officer not below the rank of Deputy Superintendent of Police. Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, as well as provisions of Section 9 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are held to be mandatory by

this court in the matter of Ramnath Sadashiv Koltharkar vs.

State of Maharashtra, 1999(2) Mh.L.J. 743 . However, in the case in hand, it is seen

that the investigation of the crime in question was not conducted by an officer of the rank of Deputy Superintendent of Police.

13. Net result of foregoing discussion requires me to hold that the prosecution has failed to prove the offences alleged against the accused. The learned trial court, as such, rightly acquitted them of the alleged offences.

14. In the result, the appeal fails, and the same is dismissed.