

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 206 OF 2003

The State of Maharashtra

... APPELLANT

VERSUS

Padubidri Damodhar Shenoy
Age 48 years, Occ. Service
R/o. Plot No. 353, No.1, `E' Sector,
(Behind Indo-German Tool Room
CIDCO, Aurangabad)

... RESPONDENT
(original accused).

Mr. S.R. Palnitkar, APP for appellant
Mr. Joyodeep Chatterji, Advocate for respondent sole.

CORAM : M.T. JOSHI, J.
DATE : 30TH MARCH, 2015.

ORAL JUDGMENT :-

1] Heard both sides.

2] Aggrieved by the judgment and order of acquittal dated 26.11.2002 passed by the 4th Adhoc Assistant Sessions Judge -cum- Special Judge, Aurangabad thereby acquitting the respondent of the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the State has filed the present appeal.

3] Case of the prosecution, in short, is as under :-

That, the complainant was working as Senior Traffic Assistant in

the office of the Indian Airlines Ltd., at Aurangabad in the year 2000. At that time, the respondent was working as Incharge Head of the Department/Station Manager. The complainant belongs to “Mahar” Caste while the respondent is a member of higher caste. According to the private complaint filed with the learned JMFC on 22.12.2000, at about 12 `O' Clock in the noon, the present respondent/accused abused the complainant before his colleagues/staff, customers, travel agents etc. by referring to his caste in unparliamentary and filthy language with intent to humiliate him. The verbatim reproduction of the insult is incorporated in the complaint.

4] According to complainant, even prior to the incident, the accused had abused him. In that regard the complainant had lodged a complaint with CIDCO Police Station, Aurangabad on 3.12.1999. The same was also complained with the higher authorities, however, no cognizance was taken and since the complaint regarding the incident dated 22.12.2000 was also not investigated, a private complaint came to be filed.

5] Learned JMFC verified the statement of the complainant and statement of witnesses, namely, PW-2 Chintamani Sudame and PW-3 Kasim Khan Rahemankhan and process was issued. Thereafter, the case was committed to the Special Judge.

6] Before the learned Special Judge, these very three witnesses were examined. The learned Special Judge, however, found that the case is not proved beyond reasonable doubt by the prosecution, therefore,

acquitted the accused. Hence, the present appeal.

7] Mr. Palnitkar, APP submits that the case of complainant is supported by two eye-witnesses. Hence, there was no reason for the learned Special Judge to disbelieve the version. However, respondent came to be wrongly acquitted. He, therefore, submits that the appeal deserves to be allowed.

8] Mr. Joydeep Chatterjee, learned counsel for the respondent, on the other hand submits that the evidence on record would clearly show that not only the complainant has made vast improvements to his earlier complaint filed with the police, but his evidence in cross-examination would also amply show that the complainant, so also, the eye witnesses were delinquents for one or another reason in Departmental Enquiries, or certain memorandums were already issued to them for disciplinary action prior to the alleged date of incident. Even on the date of incident, the complainant was on leave and had no occasion to visit the office. He, therefore, submits that the respondent is a victim of the false allegations and hence, the learned Special Judge by taking a reasonable and probable view on the basis of material on record has acquitted the respondent. As such, in the present case, no interference is warranted.

9] On the basis of this material, the following point arises for my determination :-

Whether the prosecution has proved that on 12.12.2000 at about 12.00 noon, the respondent intentionally insulted and intimidated the complainant, a member of the Scheduled Caste in his cabin in the office of Indian Airlines At Aurangabad i.e. a public place, by abusing him in filthy language referring to his caste and thereby committed an offence punishable u/Sec. 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ?

10] My finding to the said point is in the negative. The appeal is, therefore, dismissed for the following reasons.

REASONS

11] [a] The learned Special Judge, has taken into consideration the vast improvement made by the complainant in the trial to his FIR at Exhibit 25 in the police station dated 24.12.2000. According to the complainant, the incident has occurred on 22.12.2000 while the complaint was filed on 24.12.2000. Before the Special Judge, an explanation was given that as the complainant was mentally disturbed, the complaint/FIR was filed belatedly. The complaint at Exhibit 25 would show that on 22.12.2000, the complainant, as usual, went on duty and there, the respondent abused him as is reproduced in the said FIR. The statement before the Special Judge, however, would show that the present complainant went to the cabin of the respondent to put forth the grievance of PW-3 Kasim Khan regarding non payment of Id advance to him and there the said incident had happened in presence of PW-2 Chintaman Sudame. This reason is absent from the complaint. Names of the witnesses are also not found in the FIR.

[b] The cross-examination of the complainant would show that 50% of the employees working in their office belong to the Scheduled Castes and Scheduled tribes. The respondent was their superior. He denied suggestion of deviation of duty i.e. not attending the office in uniform and that he had also filed a complaint against another person with same allegations earlier. He further denied suggestion of issuing reminder to him by the respondent earlier for not attending the office in uniform. Ultimately, he admitted that on 24.7.2000, the Senior Manager (Commercial) has issued him a warning regarding uniform. He signed the office copy of the same and acknowledged its receipt.

He also admitted that one Mr. Barwale of MAHYCO Group had lodged a complaint against him on which the General Manager had called his explanation. Further, though he had accepted that he is not office bearer of any Union in the office, he was Regional Council Member of the Union. Therefore, his visiting of the cabin of superior for the cause/grievance of PW-3 Kasim Khan was doubted. He denied that in order to put a spoke in the promotion prospects of the respondent, he filed the complaint. The charge sheet issued to complainant on 13.12.1999 is accepted by him and ultimately, promotion was denied to him.

[c] PW-2 Chintaman Sudame, has denied in cross-examination that his retirement benefit amounting to Rs. 79,904/- were withheld as he had not deposited the amount received by him from a Travel Agency. In

searching cross-examination, however, he later on deposed as under :-

“ I do not remember as to whether through the letter dated 10.10.2000 the accused had called upon me to deposit an amount of Rs. 79,904/- which was to be recovered from M/s. M.I.P. Travel Agent or otherwise.”

It would thus show that though this witness remembers in verbatim the alleged insulting statements made by respondent in the complaint, he forgets that he received any letter calling upon him to deposit the amount that has been received by him, which was not deposited with the office.

[d] PW-3 Kasim Khan deposed on the line of complainant. He, however, admits that Id advance is normally paid one week in advance and he had received the Id- festival advance on 28.12.2000 while, the Id, in fact, was on 9.1.2001. This would show that there was no occasion to make allegation regarding non payment of advance on 22.12.2000.

Further, as per his cross-examination, there is a practice that as and when any cash amount is collected in the office, same should be immediately deposited with the SBI and it was the duty of this witness. Admittedly, however, in the year 1997 he defaulted in making such deposit of Rs. 15,000/-. On the same lines with PW-2, he deposed that he does not remember as to whether the accused had issued him a notice on 9.7.1999 warning him of initiating disciplinary action regarding late coming to the

office.

12] If all these facts are taken on record, the view taken by the learned Special Judge cannot be called as perverse. In the circumstances, the following order :-

13] The appeal is hereby dismissed. Bail bonds, if any, of the respondent shall stand cancelled.

**[M.T. JOSHI]
JUDGE.**

grt/-