

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 609 OF 2014

AMBADAS LAXMAN SATPUTE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. Amol K. Gawali.
APP for Respondent/State : Mr. S. Y. Mahajan.
Advocate for Respondent No.2 : Mr. Nikhil S. Jain.

CORAM : A.M. BADAR, J.
DATE : 26th OCTOBER, 2015.

PER COURT:

1] By this appeal under Section 372 of the Code of Criminal Procedure, the informant is questioning the acquittal of respondent No.2/original accused of the offence punishable under Sections 323, 427, 504, 506 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as well as under Section 7(1)(d) of the Protection of Civil Rights Act, recorded by the learned Ad-hoc District Judge 3 and Assistant Sessions Judge, Ahmednagar, vide the impugned judgment and order dated 11.8.2014.

2] We may note few facts leading to the prosecution of respondent No.2/accused. Informant/appellant Ambadas Satpute is having agricultural land bearing Gat No.38/1, at Ranjaji Shiwar. Agricultural field of respondent No.2/original accused Kalyan Pawar is just abutting that field. On the common boundary of that field, there were some trees, which, according to the informant were illegally cut by the respondent

No.2/accused Kalnayan pawar. This had happened on 14.8.2012. Thereafter, according to informant, Ambadas Satpute on 17.6.2013, in the morning hours, he was sitting in front of shop of Krushna Keshav Paulbuddhe. When he was reading newspaper, Laxman Warule, Vitthal Thorat and Jamadar Shaikhk were also sitting just behind him. The accused came there and asked the complainant as to why he had cut the trees on the bandh. At that time, the accused uttered the following words :-

“चांभारडया तुला गाडायचे की ठेवायचे हे माझे हातात आहे. तु चांभारडया माझे काही करू शकत नाही. तसेच तुझे आईचा “टन्ना” तुझे आईचा “भोसडा”.”

The persons present on the spot intervened and pacified the respondent No.2/accused. This incident had happened on 17.6.2013 and the FIR of the same came to be lodged by the informant Ambadas Satpute on 25.6.2013 at Police Station, Shevgaon, which resulted in registration of Crime No. II-7/2013 for the offence punishable under Sections 323, 427, 504, 506 of IPC r/w. Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. After investigation, charge sheet came to be filed and the case was committed to the Court of Sessions for trial. During trial, in order to bring home the guilt of the accused, the prosecution has examined as many as 5 witnesses. Bashir Haider Pathan - panch witness to the spot panchanama was examined as PW-1. Informant Ambadas Laxman Satpute was examined as PW-2. Vitthal Shamrao Thorat, who was allegedly present on the spot of incident when the informant was allegedly humiliated and insulted by respondent No.2/accused, came to be examined as PW-3.

Investigating Officer - Ganesh Rekhanai Rathod was examined as PW-4, whereas, Vishwanath Bhaginath Golhar who had recorded the FIR, came to be examined as PW-5. After hearing the parties, the learned trial court, by the impugned judgment and order dated 11th August, 2014, was pleased to acquit the accused/respondent No.2 of the offences alleged against him.

3] Heard learned counsel for the appellant/informant He vehemently argued that as the informant was residing in the Gaothan, he came to know about the incident of cutting trees on 16.6.2013, when he lodged report to the Tahsildar. Thereafter, subsequent event of insult and assault on the informant took place on 17.6.2013. In submission of learned counsel for the appellant, evidence of informant Ambadas is duly corroborated by Vitthal Thorat - PW-3, who was very much present on the spot and the finding of the trial court that the evidence is not duly corroborated is incorrect appreciation of evidence by the trial court. According to him, an element of perversity crept in the impugned judgment as the clear, cogent and consistent evidence of PW-2 Ambadas and PW-3 Vitthal was disbelieved by the learned trial court. He further argued that delay in lodging the FIR is duly explained by the informant while in the witness box, but, still with untenable reasons, the same is discarded and the accused came to be acquitted.

4] Per contra, learned counsel for respondent No.2/accused, submits that scope of entertaining the appeal against acquittal is limited and there is no perversity in the impugned judgment. He pointed out that the

FIR does not contain explanation of delay and by relying on the judgment of the Honourable Supreme Court in the matter of “*Kishan Singh (D) through L. Rs. Vs. Gurpal Singh & Ors.*” reported in *AIR 2010 SC 3624*, contended that the delay in lodging FIR is fatal and, therefore, the finding of acquittal recorded by the trial court is correct.

5] The learned APP contended that in this State case, the prosecution has proved the alleged offences by adducing clear, cogent and consistent evidence and, therefore, the appeal needs to be entertained.

6] With the assistance of the learned counsel appearing for the parties, I have perused the record and proceedings including the FIR, as well as the deposition of witnesses apart from the documentary evidence.

7] At the outset, it needs to be mentioned that the acquittal of the accused after due trial confirms his innocence and if it is found that the trial court has taken a plausible view in the matter and correctly appreciated the evidence on record, then, the other view cannot be taken though the appellate Court finds that such a view is also possible. Keeping in mind this settled law, let us examine, whether the acquittal of respondent No.2/accused was with a plausible reason by correct appreciation of evidence on record.

8] It is not in dispute that the informant belongs to Chambhar Caste, whereas, the respondent No.2/accused belongs to Maratha Caste. Undisputedly, the informant is a retired teacher residing in the village itself.

In this backdrop, perusal of the FIR filed by informant Ambadas goes to show that the alleged incident of cutting trees on common boundary of the agricultural fields, took place prior to the incident dated 17.6.2013. Evidence of informant makes it clear that the trees were cut on 14.6.2013. This incident was followed by the subsequent alleged incident dated 17.6.2013 and the FIR shows that on 17.6.2013, accused came to the place where the informant was sitting and upon being questioned by the informant, he insulted and humiliated the informant by uttering following words :-

“चांभारडया तुला गाडायचे की ठेवायचे हे माझे हातात आहे. तु चांभारडया माझे काही करू शकत नाही. तसेच तुझे आईचा “टन्ना” तुझे आईचा “भोसडा”.”

The informant has clarified in the FIR itself that PW-3 Vitthal Thorat was very much present at that place. The FIR does not contain any explanation of delay in lodging the same. Deposition of informant PW-2 Ambadas Satpute shows that the accused has uttered the following words on 17.6.2013, in order to insult and humiliate the respondent No.2 :-

“चांभारडया तु शेतात आला तर तुला गाडून टाकू, चांभारडया मी तुझा बेत पहातो”

The informant then deposed that due to fear, he did not lodge report on the same day.

9] As against this, it is in evidence of PW-3 Vitthal Thorat that

when the informant was reading paper, accused came and addressed the informant as “चांभारड्या” and also uttered the words, “काय कराये ते करून घे.” Thus evidence of PW-3 Vitthal is not at all corroborating the evidence of informant Ambadas Satpute. PW-3 Vitthal Thorat has not stated anything about the alleged assault on accused by the informant but he narrated that he intervened in the quarrel and rescued him. Thus, evidence PW-3 Vitthal only goes to show that there appears to be some verbal duet between the informant and the accused. Thus, it cannot be said that evidence in respect of the incident dated 17.6.2013 is clear and cogent.

10] In the backdrop of this factual position, the learned trial court by the impugned judgment and order came to the conclusion that there is absence of corroboration on the point of abuse and threat. The learned trial court further came to the conclusion that there is no explanation at all for delay in lodging the report. So, considering the evidence of informant as well as that of PW-3 Vitthal Thorat, coupled with the fact that there was delay of about 9 days in lodging FIR, the learned trial court, concluded that the prosecution has failed to prove that the accused has intentionally insulted, intimidated or humiliated the informant attributing the caste by using foul language, with a view to humiliate him in public view. The trial court further recorded a finding that the prosecution has failed to prove that the accused intentionally caused hurt to the informant or that he has committed mischief by causing wrongful loss by cutting the trees. On appreciation of

evidence adduced by the prosecution, it is seen that there is no evidence in order to come to the conclusion that the accused has caused hurt to the informant. There is no evidence on record that the trees on common boundary were owned by the informant and those were cut by the accused, causing wrongful loss to the informant.

11] So far as alleged incident dated 17.6.2013 is concerned, the impugned judgment and order shows that a plausible view has been taken by; the trial court, by appreciating the evidence adduced by the prosecution. Therefore, there is no reason to come to the conclusion that the view taken by the learned trial court is perverse and not based on the evidence on record. The delay in lodging FIR is also not explained by the informant in his FIR. No proper explanation for this delay can be found even in his evidence because he has stated in his evidence that on that day i.e. on 17-6-2013, he did not lodge report because of fear. What happened on subsequent days and what prevented the informant from lodging report is also not explained by him. The informant questioned the accused as to why he has cut trees at public place. He is having agricultural field adjoining to the field of the accused and is resident of the same village. The informant is well educated and claims to be a retired teacher. In this background, it cannot be said that informant was under the spell of terror or fear causing delay in lodging the FIR. Delay in lodging FIR makes the prosecution case suspect as there is a possibility of adding embellishment to it.

12] For the foregoing reasons, it is apparent that the impugned judgment and order of acquittal is well reasoned, taking a reasonable and plausible view in the matter and, therefore, needs no interference. Hence, the following order :-

The appeal stands dismissed.

[A.M. BADAR, J]

grt/-