

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 744 OF 2015

Shankar Sattu Gangurde,
Age: 31 years, Occ: Labour,
R/o. Anakwadi, Tq. & Dist. Dhule.

...Appellant

versus

1. The State of Maharashtra,
Through Police Station Officer,
Dhule Taluka Police Station,
Dhule, Tq. & Dist. Dhule.
2. Bhatu Waman Nimbalkar,
Age: 49 years,
3. Sankhubai Bhatu Nimbalkar,
Age: 46 years,
4. Sandeep Bhatu Nimbalkar,
Age: 22 years,
5. Ramesh Waman Nimbalkar,
Age: 43 years,

All R/o. Anakwadi,
Tq. & Dist. Dhule.

...Respondents

.....
Mr. P.B. Pawar, Advocate for appellant
Mr. D.V. Tele, A.P.P. for respondent No.1
Mr. N.L. Choudhary, Advocate for respondent Nos.2 to 5
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CORAM : N.W. SAMBRE, J.

DATE : 22nd MARCH, 2016

ORAL ORDER :

This is an appeal filed under Section 372 of the Code of Criminal Procedure by the complainant.

2. The complainant filed a complaint at Exhibit-33 alleging that he deposited an amount of Rs.2000/- toward the allotment of a house under the Government scheme with the accused, who was Sarpanch. After some period, when he inquired about the status of allotment of the house, the accused persons assaulted him and his mother with fist and kick blows.

3. After the investigation in the matter, charge sheet came to be filed under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under Section 7(1)(d) of Protection of Civil Rights Act, 1955.

4. The prosecution examined in all six witnesses including that of complainant PW-1 Shankar Gangurde at Exhibit-32, PW-2 Laxmibai, mother of complainant, PW-3 panch to the recovery and seizure panchnama, PW-4 Anita Patil, Sub Divisional Police Officer, PW-5 Dr. Rutvik Patil, Medical Officer, PW-6 Dy. S.P. working at Dhule. Learned Sessions Judge acquitted all the accused of the

offence. As such, present appeal.

5. Learned Counsel for the appellant submits that the learned Sessions Judge has failed to appreciate the evidence in its true perspective so as to bring home the guilt. He submits that there was enough evidence on record to connect the present appellants-accused to the crime in question and there should have been the verdict of guilt against the accused persons.

6. Learned A.P.P. assisted the Court and submits that the Sessions Judge should pass appropriate order in the matter.

7. Perused the complaint Exhibit-33 dated 24/12/2009. In the complaint, it is claimed by the complainant that prior to four years he gave Rs.2000/- under *Macchimar Gharkul Yojana* to the accused for allotment of house in his favour. On 24/12/2009 while he was proceeding to his house, he inquired with the accused about status of allotment of house and as such, the accused Bhatu assaulted with an axe on his head, accused Sakhubai assaulted his mother with fist blows, accused Sandeep assaulted his mother with stick and accused Ramesh assaulted the complainant and his mother by fist and kick blows and specifically hurled caste based insulting accusations.

8. The complainant in his cross examination has stated that he is not in a position to show receipt depicting deposit of Rs.2000/- with the accused four years back. He then stated that accused No. 4 Ramesh assaulted him and his mother, however, there is no mention about it in the complaint. It is then claimed that the accused abused him based on his caste.

9. He then has stated that in the night time, he consumes liquor. The incident in question took place in late evening hours when complainant claimed that he was returning to his house.

10. PW-2 Laxmibai, mother of complainant, who is examined at Exhibit-40, has stated in her cross examination that, already they are having two houses and all of them are residing in it. She was unable to narrate the date of the incident. She then stated that earlier her husband has filed case under Atrocities Act. It is then sought to be brought on record by the defence that in the complaint filed by the husband, witnesses in the said complainant, are the also witnesses in the present case. From the evidence of said witness, it is brought on record that there are political groups in the village and complainant and accused belong to opposite groups. She then stated that the statement recorded by the police was never read over

to her. She denied that she has not stated to the police about uttering caste based attributions.

11. PW-3 Aba Pawar, who is examined at Exhibit-42, panch witness has turned hostile. PW-4 Smt. Anita Patil, S.D.P.O., who was examined at Exhibit-45 stated about existence of political groups. She has fairly stated that she has not investigated about the alleged *Machimar Gharkul Yojana* or allotment of the house to the accused under *Indira Awas Gharkul Yojana*. PW-5 Dr. Rutvik Patil, examined at Exhibit-47 stated that the injuries suffered by the complainant were simple. He also stated that the injuries as were suffered can also be caused upon fall of person on hard object. PW-6 Ukhardu Dhobi, who is examined at Exhibit-52 stated that the accused has not produced any weapon in his presence.

12. Upon analysis of the above referred evidence, it is required to be noted that there is at all no consistency in the evidence of PW-1 complainant and PW-2 his mother. It is then required to be noted that PW-2 in clear terms has stated about non narration of caste based utterances to the police. Panch witness has turned hostile. There is nothing on record to infer that the accused have committed an offence under the Atrocities Act, particularly based on the evidence of PW-2.

13. In view of above, no case for interference is made out.
Criminal Appeal fails and stands rejected.

[N.W. SAMBRE, J.]

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