

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 626 OF 2016

The State of Maharashtra .. Applicant

Vs.

Shivaji S/o Kisan Doke and others .. Respondents

Mr. K.D. Munde, A.P.P. for applicant/State

Mr. R.G. Hange, Advocate for respondent nos.1 to 3 and 5 to 12

Mr. V.P. Narwade, Advocate for respondent no.13

CORAM : N.W. SAMBRE, J.

DATE : 30/08/2016

ORAL ORDER :

Heard.

2. Respondents/accused were tried for offences punishable under section 147, 324 r/w. 149, 323 r/w. 149, 504 r/w. 149, 506 r/w. 149, 435 r/w. 149 of Indian Penal Code, 3[1][x], 3[2][v] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and section 135 of the Bombay Police Act.

3. The prosecution story, as appears from the available record, is informant Ajit, PW3 lodged a report on December 7, 2009 with Police Station, Ambhora,

alleging that on December 6, 2009, he, his wife – Anita, brother – Ghumer, sister-in-law – Bigwar were in the field when the accused alongwith 10-12 persons came in tractor at about 9.30 am, used caste based insulting words, assaulted them and set their houses on fire.

4. As the consequence, it is claimed that the victim suffered loss of about Rs.1,08,000/-, resulting into registration of crime no.151 of 2009.

5. The Sub Divisional Police Officer investigated the matter in view of registration of the crime under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "**the Atrocities Act**") and after filing of chargesheet, the charge came to be framed against the accused persons at Exhibit 23 for the above referred offences.

6. In support of the claim, the prosecution has examined PW 1 – Zumber Gaikwad at Exhibit 51, who has proved spot panchanama at Exhibit 52, PW2 – Ghumer exhibit 57, brother of the informant Ajit is an eye witness, PW3 – Ajit at exhibit 59 is informant, PW 4 – Dr. Vinod exhibit 69, who has examined the informant.

The medical evidence exhibit 70 is also proved by PW4. Another victim Anita Ajit Chavan at exhibit 72 is PW5, wife of informant Ajit, PW6 – Vikas Kohok at exhibit 75 is the Investigating Officer.

7. After appreciating the evidence, as was lead by the prosecution, the learned Additional Sessions Judge, Beed by judgment and order dated September 11, 2015 acquitted the accused persons. As such, the present Application.

8. The learned A.P.P., while trying to make out case for grant of indulgence, would urge that the inconsistency in the testimony of PW2, PW3 and PW5 namely, Ghumer, Ajit and Anita speaks voluminous of involvement of accused no.1 – Shivaji, accused no.2 – Navnath and accused no.10 – Balu, who had arrived at the spot on a two-wheeler and after uttering the caste based insulting words, set the houses of the victim on fire. He would rely upon testimony of the said witnesses, so as to substantiate the contention, particularly the examination-in-chief. He would then submit that the omissions, as are noticed, could be hardly of any

consequence when the evidence in its cumulative effect is given weightage, case of conviction of the accused was made out.

9. Per contra, Shri Hange, learned counsel for respondents/accused would urge that the learned Additional Sessions Judge has rightly acquitted the accused after considering the material omissions, as were brought on record. He would then submit that in absence of members of public, the provisions of the Atrocities Act are rightly required to be held not to have been attracted, as it has come in evidence of PW5 – Anita that none of the members of public were present at the spot. According to him, the application needs to be rejected.

10. With the assistance of the respective counsel, I have scanned the entire judgment of the trial Court and the other material, as is made available on record. Though, the spot of panchancama was proved by PW 2 – Ghumer at Exhibit 57, even if presuming that the place of incident is a gairan land, where about 4 huts were situated belonging to the complainant and the other

witnesses, still, the independent witness of the witnesses *qua* the offences under section 323, 324 of the Indian Penal Code, provisions of section 504 of the Indian Penal Code are required to be gone into.

11. The evidence of the other witness, namely, PW2 – Ghumer, though he narrates about the assault by the accused no.1 – Shivaji and Navnath with the help of stick on the head of Ajit, it is required to be noted that the said witness has not named the other accused persons. It is then in the cross-examination of the Investigating Officer, that the omission is brought on record *qua* the use of stick blow to victim by Navnath and Shivaji and the utterances of words as regards sowing of crop in the gairan land. He has in clear terms admitted that no members from the public were present at the time of the incident. PW3 – Ajit, who is examined at Exhibit 59 stated that the accused no.1 and accused no.2 uttered the wordings and there was assault on him, resulting into his suffering injury which required stitches. It is then claimed that PW5 and PW2 thereafter came at the spot. It is then to be noted that he has mention about presence of 18 persons in the

FIR, however, but for the names of the accused nos.1 and 2, he is unable to name the other persons.

12. PW5 - Anita, who is examined at Exhibit 72 speaks of presence of about 100 - 150 persons and assault on her, however, the omission is recorded *qua* the assault on her and her son when tested in the light of what has been stated in the statement recorded under section 161 and 162 of the Code of Criminal Procedure by the Investigating Officer. Presence of accused nos.1 and 2 and accused no.10 - Balu, who came on the motorcycle, is also an important omission that was noted.

13. In this background, the material inconsistency, particularly as regards the omission, as was recorded, has rightly prompted, in my opinion, the learned Additional Sessions Judge, to order acquittal of the accused.

14. So far as the utterances to invite the provisions of the Atrocities Act is concerned, though PW3 - Ajit names accused no.1 - Shivaji as a person responsible, however, there is no corroboration to that

effect, whereas the general attribution against accused nos.1 to 10 is made about the utterances and, as such, the said offence was also not made out.

15. In view of above, in my opinion, no case for interference is made out. The Application is therefore rejected. Leave refused.

[N.W. SAMBRE]
JUDGE

arp/