

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

CRIMINAL APPEAL NO.235 OF 2005

Mohammed Nazim s/o Mohammed Kasim
Age 34 years, Occ. Photographer,
R/o Dargah Road, Ghalib Nagar,
Parbhani

... **APPELLANT**
(Orig. Accused)

VERSUS

The State of Maharashtra
(Copy served on the Public Prosecutor,
High Court of Judicature
at Bombay, Bench at Aurangabad)

... **RESPONDENT**

.....
Shri Joydeep Chatterji, Advocate for appellant
Mrs. V.N. Patil Jadhav, A.P.P. for respondent/ State
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 4th August, 2016.

Date of reserving judgment : 21st July, 2016

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J U D G M E N T :

1. The appellant (original accused) was prosecuted before 2nd Adhoc Additional Sessions Judge, Parbhani in Special Case No.22/2004 and he came to be convicted on 29.3.2005. The Additional Sessions Judge convicted the appellant for offence

under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act" for short) and sentenced him to rigorous imprisonment for six months and fine of Rs.200/-, in default of fine, he was directed to suffer rigorous imprisonment for one week. He was also convicted for offence under Section 353 of the Indian Penal Code, 1860 and sentenced to rigorous imprisonment for one month and to pay fine of Rs.200/-, in default of fine, it was directed that he will suffer rigorous imprisonment for one week. He has been convicted under Section 294 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one month and fine of Rs.200/-, and in default, to suffer rigorous imprisonment for one week. He has also been convicted under Section 323 of the Indian Penal Code and sentenced to pay a fine of Rs.500/-, and in default, to suffer rigorous imprisonment for one month. The present appeal is filed being aggrieved by the said judgment of conviction and sentence.

2. The case of prosecution in brief is as follows :

- (a) Complainant Sambhaji Gaikwad (P.W.1) (hereinafter referred as "complainant") filed F.I.R. Exh.13 at Police

Station, New Mondha, Parbhani on 3.3.2004 and Crime No.55/2004 was registered. The complainant reported that, he is Mahar by caste and was working as District Information Officer at Parbhani, since about two years. On 3.3.2004 there was scheduled visit of the Governor to Parbhani and he had the job of issuing passes to journalists. For this purpose, on 2.3.2004, he was working in his chamber in the administrative building at Parbhani and time was about 7.30 p.m. The accused, a photographer at that time came to the office in his chamber and asked him as to why his pass has not been made. The accused abused the complainant, calling him "Mahardya, Dhedgya", asking why his pass has not been made and why in the list given to Police Commissioner Office his name had not been put.

- (b) The F.I.R. further recorded another dirty abuse adding that the accused abused complainant calling him "Mahardya, Dhedgya" and asked him to come out and that he will be burnt to death by putting kerosene. Such threat and abuses were given. At that time, in the office of complainant there were other persons like P.W.2 Pravin Prabhakarrrao Bhanegaonkar, Anil Pardeshi, P.W.3 Rajesh Labade, Shankar Shelke,

Ramnarayan Daga, Weekly Editor Shri Ulhas Devghare. It was reported that the accused then went to the office of Police Commissioner and brought the pass and declared to the complainant that he has brought the pass from father of complainant. The accused threatened the complainant to come out of the office and he will see him. Complainant reported in the F.I.R. that he informed this incident to Resident Deputy Collector (R.D.C.) on telephone, who told the complainant that there is visit of the Governor tomorrow and thereafter the accused would be called and explained.

- (c) Complainant further informed that, on the next day of 3.3.2004, there was visit of Governor to the Technology Centre of Agricultural University and after the programme, when he came out from the said Technology Centre at about 3.30 p.m. and was about to enter his car and proceed, the accused came near the Car and giving an abuse, he boxed the complainant on his mouth. At that time, in the car there was employee P.W.3 Rajesh Labade and Driver Shamrao Suryawanshi. The complainant, however, waited for the programme of the Governor to be over and after the programme, he

finished his work and thereafter had come to the police station to file the complaint (Exh.13).

- (d) The offence was registered and S.D.P.O., Parbhani P.W.4 Navinchandra Reddy investigated the offence. He went to the spot, which was the office of the complainant and recorded panchanama Exh.21. He asked the complainant and accused to produce their caste certificates. Complainant produced his caste certificate Exh.14 showing that he was Mahar by caste. The accused produced his caste certificate Exh.22 showing that he was Chhaparband. Statements of witnesses were recorded and charge sheet came to be filed.
- (e) Charge was framed against the accused. He pleaded not guilty. His defence is of denial. Prosecution examined four witnesses. Trial Court considered the oral and documentary evidence and the defence, and convicted the accused with sentences passed, as mentioned above.

3. In this appeal, I have heard learned counsel for the appellant-accused. He contended that, although the complainant P.W.1 and another employee P.W.3 Rajesh Labade deposed

about the abuses which were stated to be given, P.W.2 Prabhakar only mentioned that abuses were given without specifying what were the abuses. According to the counsel, it is surprising that there were other employees in the office and they did not intervene to stop the accused from the behaviour in the cabin of the complainant. It is argued that, the caste certificate produced of the complainant was certified copy of the caste certificate and original had not been produced. According to the counsel, the accused should have been acquitted of the offence under the Atrocities Act. The police prepared spot panchanama only of the office of the complainant and did not prepare the spot panchanama of the place where in the University, it is alleged, the the accused boxed the complainant. It is argued that, P.Ws.2 and 3 are subordinate employees of the complainant and thus, should have been disbelieved. The Driver of the Car was not examined for the second part of the incident, which is dated 3.3.2014. There was delay in filing of F.I.R., as the complainant did not tell the police available at the time of programme of Governor. Although it was deposed that he informed the incident on 2.3.2004 to the R.D.C., the R.D.C. was not examined. Police did not record the statement of R.D.C. also. He went to Police Station only on the next day. Thus, according to the counsel, for these reasons the accused should have been acquitted.

4. The learned A.P.P. opposed the arguments of the learned counsel for the appellant-accused. According to the learned A.P.P., there is evidence of P.Ws.1, 2 and 3, which goes to prove the incident. P.Ws.1 and 3 deposed regarding the incident which took place on 2.3.2004 as well as on 3.3.2004. The complainant was senior officer, who was busy with the programme of the Hon'ble Governor and could not leave his job midway to go and file report to the police station. According to the A.P.P., there is nothing wrong in this and delay should be treated as properly explained. In evidence, there is no denial of the fact that the complainant was Mahar by caste. The appeal deserves to be dismissed.

5. I have gone through the evidence as well as the judgment of the trial Court and the reasons recorded for conviction and sentence. The evidence of the complainant P.W.1 Sambhaji Gaikwad shows that, on 2.3.2004 he had the additional charge of District Information officer. There was visit scheduled of the Hon'ble Governor on 3.3.2004 in Parbhani district. His evidence is that, with the help of police, his office was distributing passes to newspaper correspondents and photographers and media persons. He deposed that, he was

doing the work of distributing passes in his chamber, which is situated in the administrative building. Spot panchanama of the said place has been proved at Exh.21 by P.W.4 S.D.P.O. The evidence of complainant is that, the time was about 7.30 p.m. when the accused, who is a press photographer, came to his office and entered his chamber. According to complainant, without asking anything, the accused started abusing the complainant in filthy language and the accused started asking as to why his name has not been sent to the Police Department. The evidence of complainant records dirty abuse given by the accused which the complainant has referred in his F.I.R. also. The complainant further added that the accused abused him saying "Dhedgya" and threatened him to come out of the office and he will burn the complainant by pouring kerosene on him. Evidence of complainant is that, he requested the accused to show his identification and told him that he will ask the police officer including the Superintendent of Police to provide pass to him. The evidence is that, the editors sent the names of reporters and photographers to the office of complainant for issuing passes and as the name of accused was not there, pass had not been issued to him. Complainant has deposed that, although he offered the accused to show his identification and that he will get the pass issued, the accused banged on the table

of the complainant in loud voice. P.W.2 Pravin and P.W.3 Rajesh Labade were there and there was also one Anil Pardeshi as well as others in the office. Complainant deposed that, after such behaviour, accused departed from there giving threats to the complainant. The evidence is that, he came back in an hour showing the complainant a pass, saying that he had got it from his father. Complainant deposed that, after the accused left, he telephonically informed the R.D.C. about the behaviour of the accused and requested that, for tomorrow's programme they will have to be cautious. Contents of the F.I.R. Exh.13 are substantially proved by oral evidence in this regard.

6. This evidence of complainant is corroborated by P.W.2 Pravin Bhanegaonkar. He was working as Clerk on that day in the concerned office of complainant. He has also deposed that, the complainant was Incharge District Information Officer at that time. His evidence is that, the complainant is Mahar by caste. In this regard, even the complainant has deposed saying that he is Mahar by caste and has supplied his caste certificate to the police. He proved his caste certificate at Exh.14. P.W.2 deposed that, the incident took place on 2.3.2004 in the office of District Information Officer at 7.30 p.m. The work in respect of tour of the Hon'ble Governor was in progress. The accused

reached the office and started abusing complainant Sambhaji, who was in his cabin. According to him, he was present at that time. P.W.2 deposed that, accused was giving filthy abuses and after such incident, departed from the office and again came back later to the office with pass. In the cross-examination, this witness was asked and stated that, there were 5-7 staff members working in the office, but they did not try to resist or try to convince the accused or to inform the police. The learned counsel for the accused has expressed surprise on such behaviour of these employees. However, I do not find anything surprising in this as the accused, a press photographer, had come there and was quarreling with senior officer. If Clerks like P.W.2 Pravin and P.W.3 Rajesh Labade did not have the courage to interfere, that by itself is not a conduct of which the accused should get benefit. Although dirty abuses were being given including abuses on caste, as can be seen from the evidence of complainant and the evidence of P.W.3, it is not a case where physical assault started in the office which would require physical interference. The employees may be confused as to how they should react. This is possible as Government employees many times try to keep restraint as much as possible and when it is matter of superior they may wait for instructions, or at least a signal from the superior.

7. It is true that, the evidence of P.W.2 does not give details of the alleged abuses, but the fact remains that, his evidence also shows that the accused came in the office giving abuses to the complainant. The complainant gets corroboration from P.W.3 Rajesh Labade, who deposed that, they were preparing security passes in the office and he was sitting in the cabin of the complainant and at about 7.30 p.m., accused came there and started asking the complainant as to why his name is not incorporated in the list of security passes. P.W.3 deposed that, the accused started giving abuses in filthy language. Even this witness has referred to the specific dirty abuses recorded by the complainant in the F.I.R. and in his evidence also. P.W.3 corroborated complainant that accused addressed the complainant calling him out as "Mahardya" and threatening that the complainant should come out of the office and he will see him. The evidence of P.W.3 corroborates the complainant that after some time the accused came back brandishing a pass to the complainant, saying that his father had given him the pass. So saying, the accused had left.

8. The evidence regarding part of the incident dated 2.3.2004 is thus sufficiently corroborated. There is no reason

why P.Ws.1 to 3 should speak against the accused. There is no material to show if they had any axe to grind against the accused. They appeared to have been doing their job in ordinary course of business and suddenly the accused appears to have gone to the office and misbehaved, giving dirty abuses as well as abusing complainant on the basis of caste. The evidence of complainant in cross-examination shows that, he was knowing the accused to be a press photographer of a daily newspaper and that the accused used to visit office of the complainant. The cross-examiner brought on record that, prior to the incident the relations between the accused and the complainant were cordial. Thus, it appears that, the accused was knowing the complainant since before. The evidence shows that, he got agitated when he did not find his name in the list of eligible media persons for the purpose of pass and vent his anger on the complainant. In the process, the accused intentionally insulted the complainant on the basis of caste. He gave threats to the complainant to cause harm to him and humiliated the complainant in his own office.

9. Although the learned counsel for the accused has argued that the complainant should have produced his original caste certificate, the record shows that the certified true copy of the caste certificate was proved in the trial Court. Although the

complainant was asked regarding where the original is, the basic evidence of complainant that he is Mahar by caste is not denied. The evidence of P.W.2 also that the complainant is Mahar by caste, is not denied in cross-examination.

In the matter of "**Kailas & others V/s State of Maharashtra**" reported in **A.I.R. 2011 S.C. 598**, the Hon'ble Supreme Court, in para 10 of the judgment, expressed surprise when acquittal under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was recorded because Caste Certificate was not produced. It was observed that, such ground was hyper technical ground. In present matter, apart from certified copy, there is oral evidence which is not denied.

The trial Court has considered the certificate of the accused Exh.22, which recorded that he was Chhaparband (Vimukta Jatis). Considering the provisions provisions of the Atrocities Act, the trial Court found the accused guilty under Section 3(1)(x) of the Atrocities Act, as it then stood. I find no reason to disturb the conviction and sentence on this count.

10. Then there is evidence of P.W.1 complainant Sambhaji as well as the evidence of P.W.3 Rajesh Labade, which

shows that, on 3.3.2004, the Hon'ble Governor of Maharashtra visited the Information Technology Centre. The evidence of complainant is that, the said function took place at about 5.30 p.m. His evidence is that, after the Hon'ble Governor entered the Centre, the police closed the entry for persons who had remained out and thus, the accused could not enter the Centre. His evidence is that, he was in the Centre when the Governor had visited. After the departure of the Hon'ble Governor, he also departed from the Centre behind the Governor. According to him, he was about to enter his vehicle and at that time, the accused came there running and gave fist blow to his left cheek. Complainant stated that, at that time, his driver Suryawanshi was in the vehicle and Clerk Rajesh Labade was also there. This evidence of the complainant is corroborated by P.W.3 Rajesh Labade who has also deposed that there was programme of the Governor at the Agricultural University, Parbhani and after visiting the Information Technology Centre, they had come out and he was in the jeep of the complainant, at which time the accused came there and abused and dealt fist blow to the cheek of complainant.

11. The evidence of complainant and P.W.3 both show that, in spite of such incident they, however, completed the

programme of Hon'ble Governor and thereafter came back to their office. The evidence of complainant is that, coming back to the office he completed his work which required him to send information of the tour of the Governor to newspapers. He deposed that, only thereafter he went to the police station and filed the F.I.R. Exh.13. The evidence of complainant is corroborated by P.W.3 and there is no reason to disbelieve the evidence on this count. The accused brought on record details that there were police officials available who could have been informed incidents and the F.I.R. was not filed from the evening of 2.3.2004 till the next day till after the visit of Hon'ble Governor was over. It has been argued that even after the Hon'ble Governor left, the complainant did not go directly to the police station when he was caused hurt, but went only subsequently after completing the work in the office. Perusal of the F.I.R. shows that, these reasons were recorded even in the F.I.R. As a responsible senior officer, complainant had a job to do when the Hon'ble Governor was about to depart and when the visit of Hon'ble Governor was being executed, he had to ensure that the things went right. Even the R.D.C. appears to have told him to let the Hon'ble Governor's programme be first over. This is mentioned in the F.I.R. Even after the Hon'ble Governor left, as District Information Officer, complainant had the responsibility to

first ensure that the information reaches the right quarters. Had there been failure, may be he would have suffered more if the visit of the Hon'ble Governor had not received appropriate publicity and information. Thus, the complainant first completed his job and then filed the F.I.R. Delay is properly explained and there is no reason to doubt the complainant on this count. There is no substance in the arguments in this regard.

12. The argument that, P.Ws.2 and 3 were subordinates of the complainant and so they speak in favour of the complainant has no substance. In the statement of P.W.3, some contradictions are proved, however, they are not material contradictions. P.W.3 did not agree to the Portion A that he had accompanied the complainant to the police station. He did not agree to Portion B in the statement Exh.23 that he had also gone inside the Information Technology Centre and then returned to the jeep. Material is that, when the accused did assault the complainant, this witness was there in the jeep. Regarding that part, there are no contradictions or omissions.

13. For such reasons, I do not find substance in the submissions of the learned counsel for the appellant-accused. Even as regards argument that spot panchanama of the

Information Technology Centre was not prepared, that by itself does not mean that the evidence of P.Ws.1 and 3 regarding accused assaulting should be discarded. The trial Court has discussed all the evidence and arguments which were raised, and going through the judgment of the trial Court, I do not find any reason to interfere. The trial Court has rather been very lenient in its sentence. Although much time has passed since the incident, the sentence needs to be maintained looking to the gravity of the offence where an honest and sincere official like P.W.1, for whom his work was more important than personal insult and assault, was assaulted to deter him from discharging his duty, abused on caste, given other dirty abuses and was also caused hurt.

14. There is no substance in the Criminal Appeal. The Criminal Appeal is dismissed. Appellant - accused to surrender to his Bail Bonds. Trial Court shall ensure execution of the sentence.

(A.I.S. CHEEMA, J.)