

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

CRIMINAL APPEAL NO. 214 OF 2014

Gangaram s/o Laxman Ambekar,
Age: 46 years, Occ: Agri.,
R/o. Kondalapur, Tq. Biloli,
Dist. Nanded.

...Appellant

versus

1. The State of Maharashtra
Through Police Station Biloli,
Dist. Nanded.
2. Bhimrao s/o Mohanrao Kadam,
Age: 55 years, Occ: Agri.,
3. Gangaram s/o Mohan Kadam,
Age: 52 years, Occ: Agri.,
4. Parasram s/o Mohan Kadam,
Age: 48 years, Occ: Police Patil,
5. Mannu s/o Gangadhar Kadam,
Age: 20 years, Occ: Agri.,
6. Rahul s/o Gangaram Kadam,
Age: 20 years, Occ: Agri.,
7. Ashokrao s/o Mohanrao Kadam,
Age: 35 years, Occ: Agri.,

R/o. R.No. 2 to 7 is at Kondaopur,
Tq. Biloli, Dist. Nanded.

...Appellant

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Mr. G.G. Suryawanshi, Advocate for petitioners
Mr. D.V. Tele, A.P.P. for respondent No.1
Mr. U.B. Bilolikar, Advocate for respondent Nos. 2 to 7

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CORAM : N.W. SAMBRE, J.

DATE : 23rd MARCH, 2016

ORAL ORDER :

Mr. Suryawanshi, learned Counsel for the appellant has tendered copies of the deposition recorded in Special (Atr) Case No. 11 of 2010.

2. This is an appeal under Section 372 of the Code of Criminal Procedure, preferred by the original complainant, questioning the legality and validity of the acquittal of accused-respondent Nos. 2 to 7, for the offence punishable under Sections 3(1)(iv) and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under Section 506 read with Section 34 of the Indian Penal Code.

3. The facts, as are necessary for deciding the present appeal, are as under :-

4. The present appellant, complainant claiming to be belonging to Scheduled Caste, lodged complaint alleging, on 14/06/2008 the accused persons came to the boundary of his field and with the help of tractor destroyed the same, though the complainant tried to stop the accused persons. It is claimed by the complainant that insulting abuses were hurled based on his caste and the accused persons have also destroyed boundary. He then

claimed that on the next day, he called panchas, who then restored the boundary and thereafter accused persons have threatened him with dire consequences. It is claimed that the accused persons have encroached to the extent of 5 feet on his field.

5. According to the complainant, the incident in question took place on 14/06/2008. It is also claimed in the complaint that accused Nos. 4 and 5 attacked Gangabai and accused Bhimrao made caste based insulting attribution against him. He tried to lodge complaint on 17/06/2008, however, since no action was taken, he filed complaint under Section 156(3) of the Code of Criminal Procedure. During inquiry, 'B' Summary was filed, as no offence was discovered.

6. The present appellant-complainant requested the learned Magistrate to proceed with the matter based on his evidence and of other witnesses. The learned Magistrate considered the complaint and after devolving upon the material brought on record, proceeded with the trial issuing summons to the accused persons.

7. Charge against the accused was framed vide Exhibit-18.

8. In support of the prosecution case, in all four witnesses

were examined; PW-1 Gangaram Ambekar at Exhibit-33, PW-2 Gangabai, wife of the complainant at Exhibit-34, PW-3 Gangadhar Jadhav, witness to the incident at Exhibit-37 and PW-4 Sidram Jadhav, an eye witnesses to the incident, at Exhibit-41.

9. Learned Special Judge, by an order 02/01/2014 acquitted the accused persons. As such, present criminal appeal.

10. Learned Counsel for the appellant-complainant would submit that the Court below has failed to appreciate the evidence as was brought on record, which was sufficient to connect the accused persons to the crime in question. He would urge that the material as was brought on record against the accused persons takes to only inference that the accused are guilty of the crime in question. He sought re-appreciation of the evidence and conviction of the accused persons.

11. Learned A.P.P., who assisted the Court, submits that the Court below should have passed appropriate order.

12. Mr. Bilolikar, learned Counsel for respondent Nos. 2 to 7 justified the order passed by learned Sessions Judge, resulting into acquittal of present respondent Nos. 2 to 7.

13. With the assistance, I have scanned the evidence that was brought on record. In the cross examination of the complainant PW-1, who is examined at Exhibit-33, claimed to be owner of land field Gat No. 54. According to him, the land of accused is situated at higher side than that of the complainant's land. He admits that there is established boundary in between plot of accused persons and his land. According to him, he has never lodged complaint against the accused persons in relation to the boundary dispute in the police station, Biloli. He then claimed that Dy. S.P. Mane has inquired the matter. He has brought on record that boundary was removed by the accused and same was restored by putting stone by marking.

14. PW-2 Gangabai was examined at Exhibit-34. She stated in her cross examination that the accused persons have ploughed 5 feet of their land, which is part of boundary (Dhura). She denied about the measurement by surveyor in presence of complainant and herself. PW-3 Gangadhar, who is examined at Exhibit-37, has stated that his eye sight is weak since last ten years and could see little with spectacle. He admits that he had been to the field of complainant and the complainant had taken him to the J.M.F.C. Court for giving statement and has given statement as per say of the complainant. PW-4 Sidram, who is examined at Exhibit-41, stated that he

appeared before J.M.F.C. in respect of case in question and stated about encroachment. He then deposed that he has not seen the act of accused persons of removing stones from the boundary. He denied about utterances of insulting words by the accused persons.

15. The above referred evidence is required to be analyzed in the light of other evidence that is brought on record. It is required to be noted that the complainant in his complaint has stated about presence of PW-2 Gangabai on the spot. It is then required to be noted that there is substantial contradiction in the deposition of complainant Gangaram and his wife Gangabai, particularly in relation to the caste based insulting utterances, request to the accused to desist from alleged act of destroying boundaries. It is required to be noted that PW-3 Gangadhar and PW-4 Sidram, who claims to be an eye witnesses supported the case of prosecution. The evidence of PW-3 Gangadhar is required to be rejected, as he claims to have deposed at the behest of complainant. It is then required to be noted that without measuring the field, the complainant has stated that there is an encroachment on his land. It is also claimed in the deposition of PW-2 that there was no sowing operation, though it is claimed by PW-1. It is further required to be noted that there is hardly any material on record to depict that the accused persons are responsible for the alleged crime of utterance of caste based abusive words and destroying the boundary of the field of the complainant.

16. In the above referred background, Mr. Suryawanshi, learned Counsel for the appellant submits that the statement given by the accused persons under Section 313 of Code of Criminal Procedure though has no evidentiary value, the same can be looked into to find out what accused wanted to say in respect of evidence tendered against them. He would then submit that the statement under Section 313 of Code of Criminal Procedure speaks voluminous about conduct of the accused and relied upon the judgment of the this Court in the matter of ***State of Goa vs. Prakash Gonnagar*** reported in ***2014 ALL MR (Cri) 2854***. With the assistance of learned Counsel, I have perused the observations made by the Court in paragraph-5 of the said judgment. Upon perusal thereof, it is required to be noted that so far as the case in hand is concerned, the issue as regards answers given by the accused under Section 313 of Code of Criminal Procedure and the effect thereof, are not required to be taken into account by this Court below while recording the acquittal. The said statement of the accused, in my opinion, is of hardly any consequence in the present case. As such, reliance placed on the said judgment is misplaced. As a result, the criminal appeal fails and stands dismissed.

[N.W. SAMBRE, J.]