

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.188 OF 2013

Pratibha @ Dnyaneshwari Bharat Chindhe,
Age-27 years, Occu:Agril. & Household,
R/o-Chambhar Galli, Wadgaon Tanpure,
Tq-Karjat, Dist-Ahmednagar

...APPELLANT
(Orig. Complainant)

VERSUS

[1) Vijay Ambadas Tanpure - Abated],

2) Gautam Narsingrao Tanpure,
Age-75 years, Occu:Agril.,

3) Baban Narsingrao Tanpure,
Age-62 years, Occu:Agril.,

4) Puja Sumit Tanpure,
Age-29 years, Occu:Household,

5) The State of Maharashtra

...RESPONDENTS
(Resp. Nos.1 to 4 - Orig. Accused)

...
Mr.N.C. Garud Advocate for Appellant.
Appeal abated as against Respondent No.1.
None present for Respondent Nos.2 to 4.
Mr.S.M. Ganachari, A.P.P. for Respondent No.5.
...

WITH

CRIMINAL APPLICATION NO.2914 OF 2013

The State of Maharashtra,
Through Public Prosecutor,
High Court, Bench at Aurangabad.

...APPLICANT

VERSUS

- 1) Vijay Ambadas Tanpure - Abated,
- 2) Fautam Narsingrao Tanpure,
Age-74 years,
- 3) Baban Narsingrao Tanpuge,
Age-61 years,
- 4) Puja Sumit Tanpure,
Age-28 years,

All R/o-Wadgaon Tanpure,
Tq-Karjat, Dist-Ahmednagar.

**...RESPONDENTS
(Orig. Accused)**

...
Mr.S.M. Ganachari, A.P.P. for Applicant.
Appeal abated as against Respondent No.1.
None present for Respondent Nos. 2 to 4.
...

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

DATE : 30TH MARCH, 2016

ORDER :

1. This is Appeal by Original Complainant

and Application by State for leave against acquittal. Heard learned counsel for the Appellant - original complainant and learned A.P.P. for State.

2. Respondent Nos. 1 to 4 were arrayed before the trial Court as accused. Respondent No.1 - Vijay Ambadas Tanpure appears to have expired during pendency of the trial and the matter abated against him.

3. Learned counsel for the Appellant - original complainant and learned A.P.P. have submitted that in present matter, accused persons had come to the house of the complainant Pratibha (PW-1) and when her husband (PW-4) returned home, accused No.1 Vijay had entered the house of the complainant, abused on caste, threatened and beat her as well as her husband. The other accused were in front of the house and when the husband went out, he was also beaten by them using neem stick.

The complainant PW-1 filed the F.I.R. and the accused persons were prosecuted for offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as well as for offences under Section 452, 323, 427, 504, 506 read with 34 of the Indian Penal Code (I.P.C.).

4. It is stated that the trial Court erred in acquitting the accused persons. There was medical evidence available regarding injuries of PW-1 and PW-4. There was evidence regarding abuses given on caste. There were strained relations between the parties and because of which the incident took place. According to the learned counsel for Appellant - original complainant, the trial Court did not appreciate the evidence properly and the accused persons were wrongly acquitted. According to him present Appeal is under Section 372 of the Code of Criminal Procedure and as the Section gives right of appeal to the victim, it stands on higher footing than

Section 378(4) of the Code of Criminal Procedure, under which provision leave is required to be sought. According to the learned counsel, the Appeal of the complainant needs to be admitted.

5. I have gone through the record and heard the submissions. The material available shows that it was the accused No.1 - Vijay Ambadas Tanpure (who has since expired) is alleged to have entered the house of complainant and assaulted the complainant and her husband in the house. No doubt, complainant and her husband gave evidence that other accused persons beat the husband of the complainant in front of the house. However, what appears is that there is no other eye witness to the incident supporting PW-1 Pratibha and her husband PW-4 Bharat. Other witnesses PW-6, PW-7 and PW-8 turned hostile. The trial Court has discussed variance in the evidence of PW-1 and PW-4 regarding the alleged abuses. Trial Court has further noted that although complaint was filed on

11th June 2008, the allegations regarding abusing on the basis of caste were added by way of supplementary statement recorded only on 24th June 2008 and 25th June 2008. The trial Court noted that there were strained relations between the parties and the parties had experience of filing cases and thus the trial Court did not believe the belatedly made allegations regarding abuses on the basis of caste. The trial Court further discussed the evidence and recorded conclusion that no allegation of house trespass against accused Nos.2 to 4 is there who were available before the trial Court for trial. The allegation regarding house trespass was against accused No.1, who is no more. The trial Court discussed the medical evidence and considered the admission of PW-4 that he came along with the cattle and he was tying the cattle at the time of alleged incident and in the process possibility of suffering minor injuries. The trial Court observed that considering the strained relations between the parties, the

possibility could not be ruled out that the allegations might have been made falsely. The trial Court further recorded that although prosecution alleged that in the incident PW-1 lost her Mangalsutra, but in the evidence she has not stated about loss of Mangalsutra. Trial Court further discussed that except the abusive words related to caste there is no other material to support charge under Section 504 and 506 of I.P.C. For such reasons, the trial Court concluded that Respondent Nos.2 to 4 deserve to be acquitted and acquitted the accused persons.

6. Considering the material available and considering the fact that this is Appeal against acquittal, it appears difficult to entertain the Appeal. The reasons recorded by the trial Court for the given evidence, is a possible view. That being so, the question of granting leave to the State does not arise. For similar reasons, it is not a fit case to admit the Appeal.

7. For above reasons, admission of Criminal Appeal No.188 of 2013 is declined.

8. For reasons recorded, leave as sought in Criminal Application No.2914 of 2013 is also declined.

9. Criminal Appeal and Criminal Application stand disposed of, accordingly.

[A.I.S.CHEEMA, J.]

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