

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

CRIMINAL APPEAL NO. 503 OF 2014

Sau. Anusayabai w/o Pundlikrao Waghmare ...Appellant

VERSUS

Shaikh Babu Miya s/o Nale Hyder & anr. ...Respondents

.....
Smt. Manjushri Narwade, advocate h/f
Shri P.R.Katneshwarkar, advocate for appellant
Shri V.V.Deshmukh, advocate for respondent no.1
Smt. R.K.Ladda, A.P.P. for respondent no.2/State
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CORAM : INDIRA K.JAIN, J.
DATED : 12th APRIL, 2016

ORDER :

This appeal takes an exception to the judgment and order dated 27.5.2014 passed by the learned Additional Sessions Judge, Biloli in Special (Atrocity) Case No. 7 of 2010. By the said judgment and order sole respondent was acquitted of the offences punishable under Sections 504 and 506 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2] For the sake of convenience, respondent no.1 shall be referred in his original status as an accused as was referred before the Sessions Court.

3] Prosecution case, in brief, is as under.

(i) Complainant Anusayabai Wagh was resident of Kundalwadi, Taluka Biloli. She was residing with her husband and family members. Accused was residing opposite to the house of complainant. Complainant is Mahar by caste and accused is Muslim i.e. non-member SC/ST.

(ii) On 26.3.2010 at around 3.00 p.m. accused abused complainant on her caste. He removed the clothes put on the wire in front of house of complainant and threw them away in a drainage. It is alleged that accused threatened to cause death of complainant.

(iii) Report of the incident was lodged to Kundalwadi police station. Crime was registered against accused. Spot panchanama was drawn. Statements of witnesses were recorded. After investigation, charge sheet was submitted to the concerned court and in turn to the Court of Sessions.

4] Charge was framed against the accused. He pleaded not guilty and claimed to be tried. His defence was of total denial and false implication due to enmity.

5] To substantiate its case, prosecution examined in all five witnesses. Considering the evidence of complainant, her maid servant PW 2-Savitrabai, niece PW 3-Sindhu and PW 4-Baganna, Trial Court came to the conclusion that prosecution could not prove the guilt of accused beyond reasonable doubt and thereby acquitted the accused.

6] Heard the learned counsel for the parties. Perused record.

7] Upon considering the evidence of material witnesses, this court finds that there is no sufficient evidence to prove the charge against accused and the order of acquittal recorded by Trial Court needs no interference for the reasons mentioned below.

8] According to PW 1-Anusayabai accused was residing in adjoining house. She stated that accused came near the platform, detached wire on which clothes were kept and threw away clothes in a drainage. When complainant questioned the accused he abused her in the name of caste and threatened her. F.I.R. is proved at Exh. 19. As per F.I.R. accused was residing opposite to the house of complainant. Complainant stated that at the time of incident her maid Savitrabai and many other persons assembled.

9] It can be seen from the evidence of PW 2-Savitrabai that at the time of incident she was putting the clothes on wire. Accused came there. There was some altercation between Savitrabai and accused and then accused removed the clothes and threw them away in a drainage. The manner of incident disclosed by Savitrabai is not at all stated by complainant in her evidence.

10] The next witness is PW 3-Sindhu. She is niece of complainant. She stated that on the day of incident she was at the house of complainant. Savitrabai was putting clothes on wire in front of the house. Accused came there. He had altercation with Savitrabai. Then he removed the clothes and threw them away. She further stated that thereafter her maternal aunt came out of the house. Accused abused her in the name of caste. Through the evidence of this witness prosecution came with the third story, which

is neither stated by complainant nor by her maid.

11] PW 4-Baganna is a witness on spot panchanama and also on incident. Though place of occurrence is shown in spot panchanama Exh. 24 as front of the house of complainant, there is no cogent evidence to indicate that abuses were hurled by accused in a place within a public view. The evidence of complainant, her maid and niece is not consistent. The factum of previous enmity is not in dispute. In view of the previous enmity independent corroboration to the testimony of complainant was must. Complainant states that many persons had assembled on spot. Prosecution did not examine any independent witness to support the manner of incident narrated by complainant.

12] In the above premise, this Court does not find any perversity in the reasonings recorded by the Trial Court. The view taken by the Trial Court is a reasonable and possible view. No interference is warranted in this appeal. Hence the following order.

ORDER

Criminal Appeal stands dismissed.

[INDIRA K.JAIN, J.]