

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

CRIMINAL APPEAL NO. 742 OF 2014

Vithhal Sadaba Waghmare

..APPELLANT

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. G.G. Suryawanshi, Advocate for appellant.
Mr. S.N. Morampalle, APP for Respondent No.1.
Mr. M.P. Kale, Advocate for Respondent Nos.2 to 4.
....

**CORAM : INDIRA K. JAIN, J.
DATED : 5th APRIL, 2016**

ORDER:

. This appeal by the original complainant takes an exception to the judgment and order dated 18.06.2014 passed by the learned Additional Sessions Judge, Kandhar in Atrocities Special Case No. 0800007/2010. By the said judgment and order Respondent Nos.2 to 4 were acquitted of the offences punishable under Sections 3(1)(iv),(v),(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 447 and 506 Part II read with Section 34 of the Indian Penal Code.

2. Heard Mr. Suryawnashi, learned Counsel for appellant and Mr. Kale, learned Counsel for Respondent Nos. 2 to 4. Perused record.

3. Prosecution case in brief is as under:-

Informant Vithal Waghmare is brother-in-law of Vijay Ganpat Shendge owner of an agricultural land situated at village Penur. Vijay executed power of attorney in favour of informant. On 16.02.2009 at around 9.00 a.m. complainant visited agricultural land. He saw that accused had constructed a hut in the land of Vijay Shendge. He questioned accused regarding construction of hut. It is alleged that on that accused abused him on caste and threatened. Vithal lodged report to Sonkhed Police Station on the basis of which crime was registered against the accused. Investigation was conducted by S.D.P.O., Boparai. After completing investigation charge-sheet was submitted to learned Judicial Magistrate First Class, Loha who in turn committed the case for trial to the Court of Sessions.

4. Charge was framed against the accused. They pleaded not guilty and claimed to be tried. Their defence was of total denial and false implication.

5. To substantiate the alleged guilt prosecution examined in all six witnesses. On going through the evidence of complainant it can be seen that his brother-in-law Vijay Shendge is the owner of land. Prosecution did not examine Vijay Shendge. Statement of Vijay was

recorded during investigation but he was kept away from the witness box.

6. So far as complainant Vitthal is concerned, though he stated that at the time of incident Vijay was the owner of agricultural land, no documentary evidence was produced on record. 7/12 extract on which reliance has been placed shows possession on land by Vijay till the year 2006. Incident occurred in 2009.

7. Accused raised defence that land in dispute is a Giaran land and it is not owned by Vijay. In view of specific defence raised by accused and the grievance made by complainant it was incumbent on prosecution to show that at the relevant time said land belonged to Vijay Shendge and accused unlawfully entered the land. Since prosecution did not examine Vijay reliance on the sole testimony of informant cannot be placed. Appellant has no case on merits. The view taken by the Trial Court is a reasonable and possible view. This Court finds no reason to interfere with the same. Hence the following order:

ORDER

Criminal Appeal No. 742 of 2014 stands dismissed.

(**INDIRA K. JAIN, J.**)