

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 266 OF 2015

STATE, THROUGH PUBLIC PROSECUTOR. ... Applicant
Versus
MRS.RESHMA NAIK AND 2 ORS., ... Respondents

Mr. Pravin N. Faldessai, Additional Public Prosecutor for the Applicant.

Mr. Ryan Da Piedade Menezes, Advocate for Respondent No.1.

Coram:- C. V. BHADANG, J.

Date:- 12th April, 2016

ORAL ORDER:

This is an application for leave to appeal against acquittal.

2. PW1/Ashok, who is the complainant was working as an Accounts Clerk in the Sub-Treasury Office at Sanguem where the first respondent (accused no.1) was working as a Treasurer. The incident in question has happened on 8/05/2012 in the office. According to the prosecution, PW1/Ashok had left the office at 13.15 hrs. to go home but had returned back to the office, since he had not carried his cap. According to the prosecution, at that time, the first respondent, abused the complainant on the basis of his caste. PW2/Bhage, who is also serving in the office, is yet another material witness for the prosecution, who has allegedly witnessed the incident. Further, according to the prosecution at around 15.45 hrs. on the same day, the first respondent called her husband and his friend, who are the second and the third respondent herein (original accused nos.2 & 3).

It is said that both these accused came to the office and abused PW1 on the basis of his caste. The matter was reported by PW1 to the police on the basis of which an FIR came to be registered on 12/05/2012. After investigation, the respondents were put on trial for the offence punishable under Section 3(1)(x) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 ('the Act', for short).

3. It appears that at the stage of framing of charge, the second and the third respondents were discharged and the trial proceeded in so far as the first respondent is concerned. The prosecution led oral evidence and also produced contemporary record of the investigation.

The learned Special Court by the impugned judgment dated 10/08/2015 in Special case (SC/ST) No.1/2014 has acquitted the first respondent by extending benefit of doubt, which is subject matter of challenge herein.

4. I have heard the learned Additional Public Prosecutor and the learned Counsel appearing for the first respondent.

5. It is submitted on behalf of the applicant that merely because PW1 has stated that he had not reported the incident to his superior in the office, would not be material, as the same is not necessary. The learned Additional Public Prosecutor has taken me through para 5 onwards of the judgment in which the learned Sessions Judge has

held that, inasmuch as there was no previous incident of quarrel between PW1 and the accused, the incident could not be believed. The learned Additional Public Prosecutor submits that the said reasoning cannot be accepted as the incident occurred on the spur of the moment when PW1 asked the first respondent to sign the movement register. It is submitted that, being annoyed, the first respondent abused PW1 on the basis of his caste. The learned Additional Public Prosecutor further points out that the learned Sessions Judge has also noticed in para 6 that the first respondent was seen crying in the office which would go to show that some incident had happened. The learned Additional Public Prosecutor further submits that the delay in recording of the statement of PW2 (which was recorded on 18/05/2012) cannot have any bearing, inasmuch as the offences under the Act are required to be investigated by the Officer of the rank of the Dy.S.P. The learned Additional Public Prosecutor further points out that the FIR was registered on 12/05/2012 and the scene of offence panchanama was drawn on 14/05/2012. He submits that if the date of the registration of FIR is taken into consideration there is a delay of 6 days only. The learned Additional Public Prosecutor further points out that the reasoning by the learned Sessions Judge that because PW1/Ashok was a superior to PW2/Bhage, she was bound to oblige him, is not correct. The learned Additional Public Prosecutor submits, that for that matter, even the first respondent was a superior to PW2 and, as such, there was no specific reason for PW2/Bhage to have obliged PW1/Ashok.

He, therefore, submits that the view taken by the learned Judge is an impossible view, which needs interference.

6. On the contrary, the learned Counsel for the first respondent has supported the impugned judgment. He submits that the learned Sessions Judge after appreciating the evidence of PW1/Ashok and PW2/Bhage has rightly disbelieved the same and acquitted the accused by giving benefit of doubt. He submits that there is an unexplained delay of two days in lodging the complaint, which is fatal to the prosecution. The learned Counsel points out the evidence of PW1 in which he has admitted that a typewritten complaint was lodged on 10/05/2012 around 20.00 hrs. and the complaint was got typed through an advocate. He therefore submits that the complaint was a premeditated attempt by the PW1 to falsely implicate the first respondent.

7. I have considered the submissions and perused the record. At the outset, it is necessary to state that there is a delay of two days in lodging the complaint. The complainant PW1 has also admitted that he had got complaint prepared through an advocate which was a typewritten complaint. The reason given by PW1 for not lodging the complaint earlier was that he was fearing an attack as the first respondent had threatened to kill him. It would further be significant to note that the FIR was registered two days after lodging of the complaint i.e. on 12/05/2012 and although the scene of offence

panchanama was drawn on 14/05/2012, the statement of PW2, who was the material witness was recorded only on 18/05/2012 for which there is no acceptable explanation. Merely because the offence under the Act is required to be investigated by an Officer of the rank of Dy.S.P., is not reason for not recording the statements of the material witnesses with promptitude.

8. It appears from the prosecution case and the evidence led that the incident had allegedly occurred on the complainant PW1 asking the first respondent to sign the movement register. It has come in the prosecution evidence that earlier on the day or previous thereto there were no disputes or quarrel between PW1 and the first respondent, although PW2 has stated that on previous occasions also the first respondent had commented on the basis of the caste of the complainant to PW2. PW2 has not informed any such utterances of the first respondent to the complainant. The learned Special Judge on appreciation of the evidence of PW2 has come to the conclusion, and to my mind rightly so, that the same does not inspire confidence. Considering the totality of the evidence, the learned Special Judge has found that there is a serious doubt created in the prosecution case and the benefit of the same has to go to the first respondent.

9. There would be one more circumstance namely, although PW1 had claimed that the first respondent later in the afternoon had called second and the third respondents to the office, who had also abused

the complainant on the basis of his caste, the said part of the prosecution case was not accepted at the threshold, when the second and the third respondents came to be discharged. That matter was not taken any further. This can be considered as one of the circumstance in support of the fact that there is a serious doubt about the incident having occurred in the manner in which the prosecution claims, that it had occurred.

10. The scope of interference in an appeal of the present nature is limited. This Court whilst examining the judgment of acquittal cannot substitute its view, when two views are equally possible and the Trial Court has opted for one of them. It is only when the view taken or the finding recorded is perverse or not born out of record or is an impossible view that this Court would interfere in the matter.

11. In the circumstances, I find that, no case for grant of leave is made out. In the result, the application is hereby rejected. The registration of the appeal is hereby refused.

C. V. BHADANG, J.

NH