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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELATE JURISDICTION

CRIMINAL APPEAL NO.483 OF 2003

State of Maharashtra

..Appellant.

V/s.

1. Bhagwan Maruti Mane @ Kamble,
Age: 45 yrs., Occu; Labour, R/o. Kerli,
Taluka Karvir, District Kolhapur
2. Ravindra @ Balu Vasantrao Patil,
Age: 36 yrs., Occu; Labour,, R/o. 714,
Award, Rajaram Chowk, Timber
Market, Kolhapur.
3. Nandkumar Ramchandra Mane,
Age: 52 yrs., Occu; Contractor & Editor,
R/o.2656, B Ward, Mangalwar Peth,
Kolhapur.

..Respondents.

Mrs.Sharmkla Kaushik, APP for the appellant – State.

None for the Respondents.

CORAM : ANOOP V. MOHTA, J.

DATE : 1st JUNE, 2017

ORAL JUDGMENT:**INTRODUCTION :**

1] This is an appeal under section 378(1) of the Criminal Procedure Code, 1973, against the order of acquittal dated 28th October, 2002, passed by the IV Ad-hoc Assistant Sessions Judge, Kolhapur, in Sessions Case No.26/2002, whereby accused Nos.1 to 3 have been acquitted. They were charged for the offences punishable under section 3(1)(v)(x) of the Schedule Castes and Schedule Tribe (Prevention of Atrocities) Act, 1989 (The Atrocities Act), section 7(1)(d) of the Protection of Civil Rights Act (The Civil Rights Act), under sections 384, 347, 504, 506 and 323 read with 34 of the Indian Penal Code (IPC) and sections 5 and 33 of the Bombay Money Lenders Act, 1947 (The Money Lenders Act).

PROSECUTION CASE IN SHORT :

2] The complainant PW1 (Vasant) (a cobbler) (Marathi meaning Chamar or Chambhar) took a loan of Rs.14,000/- and borrowed 10,000 bricks in the month of June, 2000 for construction of his house from accused No.3 (Mane). There was no regular repayment. There was an issue with regard to the repayment. As stated, in view of the threats given, the complainant, on 15 August, 2000, made a part payment of Rs.4,000/-. There was a regular demand of interest on the amount. The allegations were made of extractions of money from the complainant by accused No.3. Two accused, out of three, are from Maratha community. The complainant and one accused belong to scheduled caste / tribe community. As stated, on 4th September, 2001, at about 11.00 p.m., all the accused visited the complainant's house and demanded the balance and threatened to set on fire the complainant's house. On 5th September,

2001, between 9.00 to 9.30 a.m., all the accused again came in Maruti car. The complainant's wife came out first. Accused inquired about the complainant. The complainant came out of the house. The accused abused the complainant as “*Chambardya Tu Gharatach Aahes, Baheer Ka Ala Nahis*”. The accused manhandled and tried to push the complainant in the car. The complainant escaped from the clutches of the accused and ran away. At the time of incident, as stated, about 25 to 30 people were present. The complainant thereafter came to Karvir police station and lodged the complaint at night 9-30 p.m. After investigation, a delayed charge-sheet came to be filed. The learned trial Judge framed the charges. As there was denial, the trial proceeded. The prosecution has examined 11 witnesses. There was no defence witness examined. The learned judge, after hearing the parties, by the reasoned order, has passed the order of acquittal.

THE STATE APPEAL – SCOPE :

3] The State has preferred this appeal. There is no appeal and / or application filed by the complainant. Therefore, considering the scope of appeal against the order of acquittal and keeping in mind the provisions of law to interfere and / or not to interfere with, when there is no perversity, illegality or material irregularity in the findings arrived at by the learned trial Judge, I am proceeding ahead.

NO CASE IS MADE OUT :

4] Heard the learned A.P.P. for the State, who read and referred to the evidence and the reasons given by the learned Judge while acquitting the accused of the crime; that on 5th September, 2001, accused No.3 insulted and humiliated the complainant by abusing and threatening and thereby committed offences punishable under the Atrocity Act, the

Protection of Civil Rights Act and the IPC. Point by point reasons are given by the learned trial Judge based upon the materials and the judgments. By keeping in mind the basic principles and scope of appeal against the acquittal, I have also noted that there is no case of perversity and / or illegality. There is no contra material to interfere with the reasoned order so passed. I am inclined to dismiss the appeal filed by the State also for the following reasons.

5] In reference to point No.1, it is necessary for the prosecution under the Atrocities Act to prove the caste of the complainant. There is no contra material or data placed on record to disprove the caste of the accused. Accused no.1 belongs to scheduled caste / tribe. Accused No.2 Balaso Patil and No.3 Nanda Mane belong to Maratha community. The complainant belongs to cobbler caste. Specific charges, though made against accused No.3, referred to the accusations, but the witnesses, including the

complainant's wife and other witnesses PW2 (Sangare) and PW5 (Nangare), failed to prove it. As recorded even by the learned trial Judge, who had, out of three, specifically insulted and humiliated the complainant remained unproved. All these witnesses in their evidence stated that the accusation was by all the accused. The alleged offences under the Atrocity Act have serious consequences, therefore, that cannot be vague and / or unclear. I am also of the view that prosecution has failed to prove the charges specifically so raised revolving around the Atrocities Act and/or the Civil Rights Act. In the present case, after going through the evidence of the complainant and the supporting witnesses, referred to above, about the accusations, I have also noted the material contradictions and veracity in the evidence and the statements. There was uncertainty in the statements that accused No.3 only had abused the complainant.

6] The incident is stated to have lasted for 10 to 15 minutes in presence of other 25 to 30 persons. No other evidence and / or witness supported the case that all the accused abused or threatened the complainant. This is specifically in the background that monetary transaction was entered into between the complainant and accused No.3, including the liability of the complainant to repay the same.

7] The prosecution witness PW5 (Mahipati) has not supported the case of abuse by accused No.3. The said witness was declared hostile. It is recorded that the story narrated by this witness was not the case of the complainant. The name of this witness did not figure in the complaint. The presence of PW5 (Mahipati) was itself, as rightly noted, in doubt, on the day of the incident and at the relevant time. He was unable to give detailed description of the persons, who were wearing white shirt and pant. There was no identification parade conducted. There

is nothing wrong, therefore, in observing that this evidence cannot be accepted to lend support to the version of the complainant. Even if the case of manhandling is taken note of, the accusation by the specific accused, is not made out. Evidence of PW6 (Shelke) was not supporting the case so mentioned in the F.I.R.

8] PW7 (Akkatai), wife of the complainant PW1 (Vasant) is another witness, who failed to support the case that accused No.3 only abused. On the contrary, she also stated that all the accused abused the complainant. The learned trial Judge has recorded that this evidence cannot be accepted. There is material variance in her evidence and allegations in the complaint. The prosecution case that on 5th September, 2001, accused No.3 abused the complainant was not supported even by this material witness when she stated that all the accused abused her.

9] The evidence PW8 (Vitthal), a nephew of the complainant, who met the complainant on the same day, was also insufficient to accept prosecution case. The complainant never disclosed the abuse given to him by the accused and specifically by which accused. He was not a direct witness to the incident. Therefore, taking overall view of the matter, I am of the view that the prosecution has failed to prove accusations by accused No.3 or any other accused. Therefore, the findings given by the learned trial Judge, referring to all the points, including 1 to 8, cannot be stated to be perverse, illegal or contrary to law. The findings are well within the law and the record.

10] Another aspect is that, though the complainant stated in his evidence that after the scuffle, he immediately escaped from the clutches of the accused and ran away and lodged complaint. The complaint was filed after 12 hours, as recorded by the

trial Judge in para 29. The positive averments about the constant harassment and torture by the accused, for alleged demand of interest and penalty were since 2000 to 2001. There was no complaint lodged by the complainant to anyone. Even there was no complaint to the nearest police station at the relevant time, immediately after the incident of such nature, if any. Therefore, doubts expressed about the prosecution case by the learned trial Judge cannot be overlooked, in the background of commercial relations between the parties about the transaction and the liability of the complainant.

11] Under the Atrocities Act, the investigation is required to be carried out by the specifically empowered officer. The observation made by the learned trial Judge based on the judgment of this Court in ¹*Ramnath Sadashiv Kolhatkar V/s. The State of Maharashtra* that issuance of the order by the

¹ 1999 All (MR) (CRI) 839

Superintendent of Police was not sufficient as no other person below the rank of Deputy Superintendent of Police and / or empowered by the State Government to investigate the offences, just cannot be overlooked. Further, the Apex Court in ²*State of M.P. v. Chunnilal @ Chunni Singh* mandated that the entire investigation is required to be conducted by the officer not below the rank of Deputy Superintendent of Police having past experience and sense of ability to perceive the implication of the case. In the present case also, the investigating officer was not above the rank of Deputy Superintendent of Police and / or by the Deputy Superintendent of Police.

12] The case that the accused had obtained the signatures of the complainant on blank papers; and he was under threat for so many months and that he was charging interest contrary to the provisions, is

2 2009 AIR SCW 5335

unacceptable. The prosecution failed to prove the same because of serious contradictions, omissions and unsupported evidence. The monetary recovery claim in such civil dispute, itself cannot be the reason to convict the accused for the offences so charged.

13] The order of acquittal so passed after considering the evidence and the material placed on record, need no interference. The complainant / prosecution failed to prove who assaulted and accused when and at what time. The complainant even failed to prove the incident of 4th September, 2001, except vague allegations as specifically recorded by the trial Judge in paragraph 21.

**THE ATROCITY ACT PROVISIONS NEED TO BE
INVOKED CAUTIOUSLY AND CAREFULLY –
ADDITIONAL FACTOR :**

14] The Atrocities Act is framed to prevent the atrocities against the members of the scheduled castes and scheduled tribes to provide for relief and

rehabilitation of the victims of such offences and the matter connected thereof. Section 3 deals with the offences of atrocities. ³*National Campaign on Dalit Human Rights & others v. Union of India & others*. The complainant was a cobbler. The dictionary meaning of cobbler is “Chambhar” (Mochi), a person who makes or repairs shoes. In the present facts and circumstances, the utterance of that word itself cannot be treated as an act of atrocity as sought to be contended by the prosecution. In ⁴*Swaran Singh & others v. State through Standing Counsel & another*, the Apex Court in paragraph no.24 observed as under:

“24. In our opinion, calling a member of the Scheduled Caste 'Chamar' with intent to insult or humiliate him in a place within public view is certainly an offence under section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by | using the word 'Chamar' will of course depend on the|

3 (2017) 2 SCC 432)

4 (2008) 12 SCR 132

context in which it was used.”

|

(emphasis added)

15] The protection of civil rights provision prescribes punishment for practising the untouchablity. No case under the Money Lenders Act is specifically made out and proved. In all, no case of other sections of the Indian Peal Code is also made out for the reasons stated above. Therefore, the said appeal requires to be dismissed.

16] It is clear, considering the provisions of the these provisions, intentional insults or intimidation with intent to humiliate a member of a scheduled caste or scheduled tribe at public place is required. Merely because the victim / complainant belongs to the concerned caste, the provisions of the Atrocities Act cannot be extended unless there is sufficient evidence against the accused and in favour of petitioner revolving around the “atrocitiy” and/or

“untouchability” (⁵*Ramdas v. State of Maharashtra*). Bare allegations / aspersions are not sufficient to punish the person. But if found guilty, be punished in accordance with law.

O R D E R

17] Therefore, the appeal is dismissed. The bail bonds of the accused stand cancelled.

(ANOOP V. MOHTA, J.)