

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1274 OF 2002

State of Maharashtra .. Appellant
Versus
Shivji Nanasaheb Bhojane
age 46 years, Occupation service
R/at Patan, Taluka Maval,
Dist. Pune .. Respondent

Mr. P.H.Gaikwad, APP for Appellant/ State
None for respondent.

CORAM : N.M.JAMDAR, J.
DATE : 28th June 2017.

ORAL JUDGEMENT:-

The State has filed this appeal against the acquittal challenging the judgement and order passed by the Additional Sessions Judge, Pune dated 4th July 2002 acquitting the respondent of the offences punishable under section 323, 504 of Indian Penal Code and under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989.

2] The complainant was residing with her husband and children at Chetana Estate, Saste Nagar, Hadapsar, Pune. They had constructed a bungalow in the said society. Husband of the

respondent used to go for work in the morning and used to return in night. The respondent – accused had purchased a plot adjacent to the bungalow of the complainant and was carrying out construction. According to the prosecution, quarrels took in respect of the construction which led to the incident of 19th October 2001. According to the prosecution, on that date, when the complainant accosted the accused and questioned him regarding the work carried out by his labourers, the accused abused the complainant using words which were derogatory and denigrating the caste status of the complainant. According to the prosecution, the respondent also physically harmed the complainant. An offence was registered vide Crime No.3342 of 2001. Investigation was carried out. Thereafter, the case was tried out by the Additional Sessions Judge, Pune. The learned Judge held that there was breach of Rules framed under the Act of 1989 while carrying out the investigation and that the prosecution has failed to prove that the offence under section 323 and 504 of the Indian Penal Code were committed by the respondent. The Additional Sessions Judge, after considering the material on record acquitted the respondent by judgement and order dated 4th July 2002. Against the said decision and acquittal of

the accused, the present appeal has been filed.

3] Heard Mr. Gaikwad, learned APP for the State. None appears for the respondent.

4] Firstly, to take up the charge under section 3(1)(x) of the Atrocities Act, 1989. The said section makes an act with intention to insult, intimidate with intent to humiliate a member of scheduled caste/ scheduled tribe in any place within public view, a punishable offence. Under the Act of 1989, Scheduled Caste and Scheduled Tribe Rules, 1995 have been framed which also govern the investigation and appointment of officers for that purpose. Rule 7 of the Rules of 1995 refers to appointment of investigating officer and mandates that an offence committed under the Act shall be investigated by police officers not below the rank of Deputy Superintendent of Police (Dy.SP), who shall be appointed by the Government taking into account his past experience. In the present case, a finding has been recorded by the learned Sessions Judge that the investigation has been carried out by P.S.I. Mukhtar Shaikh. Though some part of the investigation appears to have been

carried out by the Assistant Commissioner of Police, the learned Sessions Judge has recorded a finding that it was only a miniscule part and the main and major investigation has been carried out by the PSI Mukhtar Shaikh, who is not an officer under Rule 7 of 1995 Rules. PSI, Mukhtar Shaikh as the record bears is not a Deputy Superintendent of Police or above. The learned Sessions Judge considered the law laid down in the decision of (i) **D. Ramalinga Reddy @ D.Babu Vs. State of A.P., reported in 1999 Cri. L.J. 2918, (ii) 2000 Cri.L.J. 1891 (Patna HC) between Mohan Choudhary Vs. State of Bihar & Ors., (iii) 2001 Cri. L.J. NOC 10 (Andhra Pradesh) between E.Seshaiah Vs. State of A.P., (iv) 2000 Cri. L.J. 956 (Madras HC) between Chinnasamy Vs. The State** and has proceeded to hold that there is non compliance with Rule 7 of the Rules of 1995 and the trial on that count is vitiated. Nothing is shown that the P.S.I. Shaikh is of the rank of Deputy Superintendent of Police or above. Neither any position of law is shown that rule 7 is merely directory in nature. In view of this position, the view taken by the learned Sessions Judge cannot be faulted with.

4] That brings to the charges in respect of Sections 323 and 504

of Indian Penal Code. For section 323 which deals with punishment for voluntarily causing hurt, there has to be an evidence that hurt was caused as defined under section 319 of the IPC. The learned Sessions Judge after considering the material on record, has held that the evidence led by the prosecution in this regard is contradictory and not trust worthy. I have perused the evidence of the complainant and that of Mrs. Kusum Tukaram Badade, who was examined as an eye witness. There is considerable variance as regards the actions of respondent. According to complainant, the respondent caused hurt by catching hold of her hair and giving blow on her shoulder, resultantly, she fell down. The eye witness Kusum has not stated regarding giving blow and has only stated that the respondent pushed the complainant down because of which she fell down. It is not the case of the complainant that merely because she was pushed that she was "hurt" but it is her specific case that she was given a blow because of which she suffered hurt. This is not supported by the version of P.W.2. Apart from this position, the learned Sessions Judge has also taken note of the fact that the complainant was not referred to any Medical Officer and she herself had given different versions of the incident in her complaint as well

as in her application. Considering these contradictions, if the learned Sessions Judge has given benefit to the respondent No.1, it cannot be said that any perversity is committed.

5] As regards, section 504 of the IPC is concerned, Mr. Gaikwad, the learned APP submitted that the incident took place on public road and therefore section 504 is attracted. As rightly held by the learned Sessions Judge that it is not mere insult or provocation that will attract section 504 but an insult or provocation with an intent and knowledge that such provocation will breach public peace or lead to commit any other offence. There is hardly any evidence to convict the respondent under section 504 of IPC. What has ensued at the most was a private quarrel between the respondent and the complainant and nothing has been shown that it was with an intention to breach public peace.

6] Considering these circumstances, no case is made out for reversing the order of acquittal. The appeal is dismissed.

(N.M.JAMDAR, J.)