

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.64 OF 2016
(For Leave to Appeal - State)

The State of Maharashtra ... **Applicant**
V/s.
Arun Shripati Patil ... **Respondent**

Mrs.N.S.Jain, APP for the Applicant/State.

Mr.Vikram V. Pai, Advocate for the Respondent.

CORAM : A.M.BADAR J.

DATED : 28th August 2017.

P.C. :

1 This is an Application by the State for grant of leave to
file Appeal for challenging acquittal of the Respondent/Accused of
the offence punishable under Section 3(1)(x) of the Scheduled
Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989
(hereinafter referred to as “SC ST Act” for the sake of brevity) as
well as Section 7(1)(d) of the Protection of Civil Rights, 1955
(hereinafter referred to as “PCR Act” for the sake of brevity) so
also under Section 323 of the Indian Penal Code (hereinafter
referred to as “IPC” for the sake of brevity) by the learned trial
Court.

2 Heard the learned Additional Public Prosecutor appearing for the State. She drew my attention to the evidence of P.W.No.1 and that of P.W.No.6 Ananda Gurav – hostile witness and submitted that the offence alleged was proved by the prosecution.

3 I have also heard the learned Advocate appearing for the Respondent/Accused, who supported the impugned Judgment and Order.

4 I have carefully considered the rival submissions and also perused the record made available including the evidence of witnesses.

5 It is well settled that while examining the Appeal from acquittal, if two views are equally probable, then the view taken by the trial Court in acquitting the Respondent/Accused should not be interfered with lightly.

6 It is case of the prosecution that informant P.W.No.1 Shamrao Kamble who is belonging to scheduled caste – Mahar along with his brother were cultivating 27 acre forest land by encroaching thereon since last 60 years. According to the prosecution case, the informant/P.W.No.1 paid an amount of Rs.1,60,000/- to the Respondent/Accused for mutating his name in the revenue record. At this juncture, it needs to note that

undisputedly, Respondent/Accused was Ex-Police Patil of village Nivde having no concern with preparation and maintenance of the revenue record.

7 It is case of the prosecution that on 24/03/2013 at about 6.00 a.m. in the morning at Hanuman Milk Dairy at village Nivde, First Informant P.W.No.1 Shamrao Kamble asked about the progress of work of mutation to Respondent/Accused Arun Patil. Infuriated this query, Respondent/Accused Arun Patil rushed on person of First Informant P.W.No.1 Shamrao Kamble by abusing him “ महारा तुला मस्ती आली आहे, महारा तु कोण विचारणार मला ! ”. Respondent/Accused Arun Patil then gave fist and kick blows to First Informant P.W.No.1 Shamrao Kamble. The First Informant then went to Panhala Police Station to lodge report, but police did not take cognizance of report immediately. Ultimately, his FIR was recorded on 05/04/2013. It is case of the prosecution that incident in question took place in presence of P.W.No.3 Keshav Padekar, P.W.No.4 Ananda Patil, P.W.No.5 Santu Patil, P.W.No.6 Ananda Gurav and P.W.No.7 Dnyandev Patil.

8 After considering the evidence adduced by the prosecution, the learned trial Court was pleased to acquit Respondent/Accused Arun Patil on the ground that the delay in lodging the report is not sufficiently or reasonably explained by the prosecution. There is no documentary evidence regarding

payment of amount of Rs.1,60,000/- to the Respondent/Accused so placed on record. Evidence of the prosecution suffers from discrepancies and the evidence is not consistent. The learned trial Court held that the alleged eye-witnesses are merely chance witnesses and they are not fulfilling the test of credibility.

9 I have reconsidered the evidence of all prosecution witnesses including that of First Informant P.W.No.1 Shamrao Kamble. First Informant P.W.No.1 Shamrao Kamble's evidence is conspicuously silent as to how by payment of Rs.1,60,000/- to the Respondent/Accused, his work of mutation of his as well as his brother's name in the revenue record could have been done. Undisputably, the Respondent/Accused was Ex-Police Patil of the village, having no concern with the preparation and maintenance of revenue record, the work which is exclusively entrusted to village Talathi. Evidence of P.W.No.1 Shamrao Kamble is conspicuously silent in respect of relation of Respondent/Accused Arun Patil with village Talathi and the capacity of the accused to get the work done. It is not the case of P.W.No.1 Shamrao Kamble that the Respondent/Accused Arun Patil Ex-Police Patil had promised him that he will get the work of mutation done from the Talathi of village and therefore, an amount of Rs.1,60,000/- was paid to Respondent/Accused. Evidence of the First Informant P.W.No.1 Shamrao Kamble regarding this payment of Rs.1,60,000/- is also vague. He has not mentioned the details of

payment of this amount, whether this amount was paid in presence of any persons to Respondent/Accused. It is thus clear that when the Respondent/Accused was not competent to get name of encroachers mutated in the revenue record, there was no need of payment of such huge sum of amount to the Respondent/Accused. Thus an element of improbability creeps in the prosecution case and very foundation of the prosecution case is lost for these reasons.

10 Though it is averred that First Informant P.W.No.1 Shamrao Kamble had been to the Police Station for lodging the report, but immediately cognizance was not taken by the police, evidence of the Investigating Officer who recorded the FIR does not show that the First Informant P.W.No.1 Shamrao Kamble had approached the police at any time prior to lodging the report (Exh.13) on 05/04/2013. Evidence of P.W.No.11 Police Head Constable Shirole is very clear on this aspect. Thus the delay of 12 days in lodging the report is not at all explained by the prosecution and the possibility of false implication of the Respondent/Accused in the wake of this unreasonable delay cannot be ruled out, particularly when First Informant was accompanied to the Police Station by one Laxman Kamble/Tandale of Lahuji Sangharsh Sena who has kept follow up of the case resulted from lodging the FIR. P.W.No.6 Ananda Gurav an alleged eye-witness to the case of the prosecution has

turned hostile to prosecution. P.W.No.3 Keshav Padekar, though supported the case of the prosecution to the extent of hurling caste based abuses, his evidence is conspicuously silent in respect of giving fist and kick blows, as alleged by the First Informant P.W.No.1 Shamrao Kamble. This witness is working with the Grampanchayat having duty to release water. His presence on the scene of occurrence is held to be doubtful by the learned trial Court and rightly so when in cross-examination this witness has stated that he is required to be present between 10.00 a.m. to 5.00 p.m. at Grampanchayat Office. Evidence of P.W.No.3 Keshav Padekar shows that there were two groups in the village who were politically rival.

11 Evidence of P.W.No.4 Ananda Patil shows that he was Ex-Sarpanch of the village. He had supported the case of prosecution by stating that the First Informant was assaulted by fist and kick blows. Evidence of P.W.No.4 Ananda Patil shows that one Chabutai Kamble had succeeded him by becoming the Sarpanch of the village. Evidence of this witness is also disbelieved by the learned trial Court as his evidence indicates that his brother had deposed in similar case and had even applied for the post of Police Patil when the Respondent/Accused was selected. Evidence of this witness also indicates that there is group politics in the village.

12 P.W.No.5 Santu Patil an alleged eye-witness has not

spoken about any assault by fist and kick blows to the alleged victim of the crime in question. Evidence of P.W.No.7 Dnyandev Patil shows that Sarpanch Chabutai has prosecuted him under SC ST Act.

13 Taking over all review of the evidence before it, the learned trial Court concluded that all eye-witnesses are were merely chance witnesses. There is discrepancies regarding time of the incident also. Though the First Informant had deposed that incident took place at about 6.00 a.m. cross-examination of P.W.No.1 shows that the incident have been occurred after 8.00 a.m. as no employee of the Dairy was present on the spot. Working hours of the Dairy ends at 8.00 a.m. Non-examination of independent witness was considered to be factor which is fatal to the prosecution case by the learned trial Court. Evidence as discussed by me in foregoing paragraphs and re-appreciation thereof reveals that the view taken by the learned trial Court is plausible view in the matter.

14 In this view of the matter, no case for grant of leave is made out. The Application is, therefore, rejected.

(A.M.BADAR J.)