

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

921 CRIMINAL APPEAL NO. 570 OF 2001

Ramesh Shyam Choudhari

Age : 39 years, Occu : Police Constable,

r/o. Shahada, District Nandurbar

presently residing at Mohadi,

Dhule, District Dhule (In Jail)

..Appellant

(Orig. Accused)

VERSUS

The State of Maharashtra

.. Respondent

...

Mrs. Varsha Ghanekar, Advocate for Appellant (Appointed
as Amicus curiae)

APP for Respondent – State : Shri S.P. Sonpawale

...

CORAM : P. R. BORA, J.

Dated: MARCH 16, 2018

ORAL JUDGMENT :

1. Since the appellant had remained absent, non-bailable warrant was issued against him and in execution of the said warrant, after he was brought before the Court, was sent to the prison on 09.03.2018. Today he is produced before the Court.

2. The appellant has filed the present appeal against

the Judgment and order dated 27.11.2001 passed by the Additional Sessions Judge and Special Judge at Shahada in Special Case No.44 of 2000. The appellant has been convicted in the aforesaid special case for the offences punishable under Section 85 (1) of the Bombay Prohibition Act, under Section 3 (1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 504 and 509 of the Indian Penal Code and has been sentenced to suffer rigorous imprisonment for the period of three months and to pay fine of Rs.200/- for the offence under Section 85 (1) of the Bombay Prohibition Act. He has been sentenced to suffer rigorous imprisonment for the period of 6 months and to pay fine of Rs.300/- for the offence under Section 3 (1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and for the offence punishable under Section 504 of I.P.C., he has been sentenced to suffer rigorous imprisonment for one month and fine of Rs.100/- and for the offence under Section 509 of I.P.C. He has been sentenced to suffer rigorous imprisonment for one month and fine of Rs.100/-. All the sentences were directed to run concurrently.

3. Learned Counsel for the appellant though sought to contend that, none of the aforesaid offences can be said to have been proved against the present appellant, apparently I am not convinced with the submissions so made by the learned Counsel. I have carefully gone through the entire evidence on record and on perusal of the said evidence, it is revealed that, insofar as the offence under Section 85 (1) of the Bombay Prohibition Act and the offences under Section 504 and 509 of I.P.C. are concerned, sufficient evidence has come on record and the same has been rightly considered by the learned Sessions Judge.

4. However, there appears substance in the argument advanced by the learned Counsel for the appellant that, no sufficient evidence has come on record to prove that, the accused also did commit an offence under Section 3 (1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In this regard the evidence of PW-3 Sau. Sumanbai Atmaram More is material. She is stated to be belonging to Bhilla community and her caste certificate is also filed on record. The same is held to have been proved by the

Sessions Court. The conclusion recorded by the Sessions Court however cannot be sustained. Admittedly, the author of the said certificate has not been examined before the trial Court. Learned Counsel for the appellant has placed reliance on the Judgments of the Karnataka High Court in the case of *The State By Rural Police, Tumkur Vs. Krishnappa & Others*, Judgment delivered on 22nd March, 2011 and *State of Karnataka Through the Deputy Superintendent of Police Vs. Dyavappa & others*, Judgment delivered on 8th August, 2012. The learned Counsel particularly relied upon the observations made by the learned Single Judge of the Karnataka High Court in para nos.9 and 10 of the said Judgment. The facts in the said matter and the present matter are identical. In the present matter also, it is disputed by the accused that, PW-3 Sau. Sumanbai Atmaram More belongs to Bhilla community. In the circumstances, it was incumbent on the part of the prosecution to get the caste certificate of the PW-3 Sau. Sumanbai duly proved. Admittedly the same has not been duly proved by following due procedure. Moreover, after having gone through the evidence on record, it is quite evident that, the present appellant at the relevant time was under the influence of

liquor. The said fact has also been admitted by PW-3 Sau. Sumanbai in many words. Considering the aforesaid aspect, it appears that, even if it is accepted that at the relevant time some words were uttered by the present appellant undermining the caste of PW-3 Sau. Sumanbai, it is difficult to hold that, it was intention of the accused to undermine or insult PW-3 Sau. Sumanbai Atmaram More on her caste. Considering both the aspects that, the caste of PW-3 Sau. Sumanbai has not been beyond reasonable doubt proved and secondly that, the intention cannot be attributed on part of the appellant of undermining the caste of PW-3 Sau. Sumanbai Atmaram More and PW-4 Sushila Bhagwan Chormale, the conviction recorded by the learned Sessions Judge for the offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 cannot be sustained and deserves to be set aside.

5. Insofar as the other offences are concerned, I have already observed that, the evidence which has come on record is sufficient to hold the appellant guilty for the said offences and

no interference is required in the finding so recorded in the impugned Judgment in that regard. The next question arises about the quantum of punishment imposed upon the appellant. The learned trial Court has imposed the punishment as noted herein above. Learned Counsel for the appellant submitted that, the alleged incident had occurred in the year 1995 and in such circumstances now there seems no propriety in sending the appellant behind the bars. Learned Counsel submitted that, the appellant is behind the bars since last about 11 days and before that in the initial period, he had been behind the bars for about two months. Learned Counsel submitted that, the appellant be released for the imprisonment already undergone. According to the learned Counsel this may be sufficient punishment for the appellant for the offences held to have been proved against him.

6. I find the submissions made by the learned Counsel worth considering. There appears no propriety in now sending the appellant behind the bars for the incident, which had occurred in the year 1995 i.e. prior to about 23 years. The imprisonment already undergone by the appellant may be

sufficient punishment for him for the offences, which are held to have been proved against him.

7. In the present matter, learned Counsel Mrs. Varsha Ghanekar, was appointed as Amicus curiae. Learned Counsel has within a short period made all preparation and has submitted effective arguments for and on behalf of the appellant. I record my appreciation for the efforts taken by the learned amicus curiae.

8. In the result, the following order is passed.

ORDER

(i) The conviction of the appellant for the offences punishable under Section 3 (1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Special Case No.44 of 2000 (Old Spl. Case No.217/95), is set aside and quashed.

(ii) The conviction of the appellant for the offences punishable under Sections 504 & 509 of I.P.C. and under Section

85 (1) of the Bombay Prohibition Act in Special Case No.44 of 2000 (Old Spl. Case No.217/95) though is maintained, the sentence imposed upon by the trial Court is modified and the appellant is sentenced to suffer the imprisonment already undergone for all those offences.

(iii) The appellant be released forthwith, if not required, in any other case or crime.

. The appeal thus stands partly allowed.

(iv) The legal remuneration of the amicus curiae is quantified to the tune of Rs.10,000/-, the same shall be remitted in her favour.

(P. R. BORA, J.)