

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1206 OF 2018

State of Maharashtra.

(Through Taluka Police Station, Pandharpur)

..Appellant.

V/s.

1 Kushkumar Janardhan Wakase, Age 42 years.

2 Bhausahab Raosaheb Wakase, Age 22 years.

3 Lahu Popat Wakase, Age 24 years.

4 Santosh Ganpat Wakase (Dead),

5 Mahesh Popat Wakase, Age 28 years.

6 Kiran Laxman Wakase, Age 25 years.

7 Tanaji Vitthal Shinde (dead).

8 Sandip Ashok Wakase, Age 22 years.

9 Sachin Ashok Wakase, Age 25 years.

10 Shailesh Dada Salgar, Age 37 years,

11 Shankar Rangnath Wakase, Age 35 yrs.

12 Mahaveer Kushkumar Wakase, Age 18 yrs.

13 Prativeer Kushkumar Wakase, Age 18 yrs.

14 Sudhakar Devidas Kodlinge, Age 35 yrs.

15 Sontosh Govind Waghmode, Age 32 yrs.

16 Rahul Haridas Panhalkar, Age 27 yrs.

All R/o : Punarvasan Takli, Tal. Pandharpur,

Dist. Solapur.

..Respondents.

Mr. Y.M. Nakhwa, APP for State.

Mr. Sarang S. Aradhye a/w. Mr. Milind Prabhune, advocate for respondents.

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CORAM : SMT. SADHANA S. JADHAV,J.

DATE : NOVEMBER 22, 2018.

JUDGMENT :

1 The State being aggrieved by the Judgment passed by Special Judge, Pandharpur dated 1/8/2017 in Special Case No. 6 of 2012 has filed present appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) The informant Vinayak Zende and the accused respondent are resident of village Punarvasan Takli, Tal. Pandharpur. The informant belongs to a scheduled caste i.e. Mahar.

(ii) The fair/carnival(yatra) of Lord Mhasoba used to be celebrated every year in the village. It was a tradition of the village that the celebration used to commence with breaking of coconut in front of Palanquin(Palkhi). Vinayak Zende was the sarpanch of the village.

(iii) It is alleged by him that on 10/5/2011 at night when the function was to commence, he had taken coconut for breaking it in front of palanquin. At that time, the respondents herein had snatched coconut from his hand and had restrained him from breaking it since he

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belongs to scheduled caste. There was chaos. At that time the original accused No. 2 had assaulted the informant on his left hand. Accused No. 2 Bhau Saheb and thereafter, original accused No. 10 Shailkesh had slapped Shrinath. There was verbal altercation which culminated into assault.

(iv) Ultimately, the incident was reported to the police. The informant felt insulted, humiliated and hence, he lodged FIR against the accused alleging that they had committed offence punishable under the provisions of the Atrocities Act. The case was registered as R.C.C. No. 625 of 2011. 8 witnesses were examined to bring home the guilt of the accused.

3 The prosecution rest on the evidence of witnesses i.e. P.W. 1 Vinayak Zende, P.W. 4 Shrinath Vinayak Zende and P.W.5 Vijay Bhimrao Zende. Upon scrutinizing of evidence adduced by the prosecution, it was seen that there were inter se contradictions in the evidence of the witnesses. There were inherent inconsistency. It was apparent on the face of the record that it was a faction ridden village.

4 The specific defence of the accused was that there was no question of restraining Vinayak from breaking the coconut because he

belongs to scheduled caste since it was disputed as to whether Vinayak continued to be sarpanch of the village on the day of the incident. The gram panchayat consisted of 7 members. Four members were on one side and 3 on the other. The informant had joined the other group and had claimed that he stood elected since he belong to other faction. There was resolution passed by the Gram-panchayat that the coconut was to be broken by the sarpanch of the Gram-panchayat. The prosecution had not proved that all the accused belong to Hindu Maratha Caste.

5 The accused No.16 Rahul Haridas Panhalkar was not on the spot at the time of incident as there was material to show that he was serving and was on duty on the day of the incident. All witnesses are interested witnesses. No independent witness is examined although the incident had occurred at the time of village fair. There was political rivalry between the two factions of the village.

6 The learned Special Judge upon appreciation of evidence had rightly considered the material omissions and contradictions and had held that the omissions and contradictions affects the credibility while ascertaining the truthfulness in the narration of the incident. It was considered that there were latches and lacunas in the material put forth

by the investigating agency as well as the prosecution. The findings recorded by the learned Special Judge are justifiable and therefore, no interference is warranted. Hence, the appeal stands dismissed.

[SMT. SADHANA S. JADHAV, J.]