

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1313 OF 2002

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

1) SHIVAJI RAMCHANDRA SHELKE)

2) PRABHAKAR RAMCHANDRA SHELKE)

3) ASHOK VAMAN UTEKAR)

4) SANTOSH JANU KHARMARE)

5) TANAJI GOVIND BHALEKAR)

6) MURLIDHAR JANU KHARMARE)

7) KALURAM GOVIND MHASKAR)

8) RAGHUNATH SAKHARAM KHARMARE)

9) DASHRATH RAMCHANDRA SHELKE)

10) CHINDHU PANDU KHARMARE)

11) BHAGWAN HIRU KHARMARE)

12) ANKUSH RAGHO KHARMARE)

13) HARIBHAU GANPAT KHARMARE)

14)VASANT HARISHCHANDRA KHARMARE)

(since deceased, case abated))

15) LAXMAN RAGHO KHARMARE)...RESPONDENTS

Mr.Prashant Jadhav APP for the Appellant – State.

None for the Respondents.

CORAM : A. M. BADAR, J.

DATE : 20th JANUARY 2018

JUDGMENT :

1 By this appeal, the appellant/State is challenging the judgment and order dated 18th June 2002 passed by the learned Sessions Judge, Raigad at Alibaug, in Sessions Case No.31 of 1997, thereby acquitting the respondents/accused persons of offences punishable under Sections 3(1)(vii) and 3(1)(xv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, as well as under Sections 365 and 342 read with 34 of the Indian Penal Code.

2 Facts leading to the prosecution of the respondents/accused persons can be summarized thus :

(a) First Informant/PW4 Pandit Shelke lodged report on 23rd October 1997 against respondents/accused persons leading to the registration of Crime No.50 of 1997 in Police Station Karjat for offences punishable under Sections 365, 342 read

with 34 of the Indian Penal Code as well as for offences punishable under Sections 3(1)(vii) and 3(1)(xv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

- (b) According to the prosecution case, on 25th October 1997, there was election to the group Gram Panchayat of Kondivade. First Informant/PW4 Pandit Shelke had filed his nomination form for the said election from Congress-I party. Original accused no.14 Vasant Kharmare (since deceased) had also filed his nomination form for the post of Member of the Gram Panchayat from Shivsena party. It is case of the prosecution that because of this contest in the election, deceased accused no.14 Vasant Kharmare was harbouring grudge against PW4 Pandit Shelke. For defeating him in the election, at about 3.30 a.m. of 23rd October 1997, accused no.14 Vasant Kharmare (since deceased) along with the accused abducted PW1 Bhagwan Pawar, PW2 Krishna Waghmare and other 12 voters of PW4 Pandit Shelke.

According to the prosecution case, abducted persons belonged to Scheduled Tribes (Katkari). Accused persons had taken them by a tempo to a room at Dombivli-Kopargaon, and confined them at that place. The incident in question was witnessed by PW4 Pandit Shelke and he as well as his party persons started searching the abducted voters. During the course of that search, PW3 Keshav Shelke accompanied by Shantaram met him and disclosed the whereabouts of the abducted persons.

- (c) Routine investigation followed in pursuant to the First Information Report (FIR) lodged by PW4 Pandit Shelke. On completion thereof, the respondents/accused persons along with deceased Vasant Kharmare came to be charge-sheeted for offences punishable under Sections 365, 342 read with 34 of the Indian Penal Code as well as for offences punishable under Sections 3(1)(vii) and 3(1)(xv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. They pleaded not guilty to the charge

framed against them and claimed trial. During pendency of the trial, original accused no.14 Vasant Kharmare died and case against him stood abated.

- (d) In order to bring home the guilt to the respondents/accused persons, the prosecution has examined in all five witnesses. Bhagwan Pawar and Krishna Waghmare, who were allegedly abducted by accused persons are examined as PW1 and PW2 respectively. Keshav Shelke, who allegedly escaped from the confined place is examined as PW3. First Informant Pandit Shelke is examined as PW4 whereas, Investigating Officer Assistant Police Inspector Dayanand Dhome of Karjat Police Station is examined as PW5. Defence of the respondents/accused persons was that of total denial. After hearing the parties, by the impugned judgment and order, the learned trial court concluded that the evidence adduced by the prosecution is not trustworthy and reliable. Accordingly, the respondents/accused persons came to be acquitted.

3 I have heard Shri S.V.Gavand, the learned APP, appearing for the appellant/State. He vehemently argued that evidence of PW1 Bhagwan Pawar, PW2 Krishna Waghmare and PW3 Keshav Shelke is sufficient to establish the fact that they were abducted by the respondents/accused persons and were wrongfully confined in order to see that they would not vote in the ensuing Gram Panchayat elections. The prosecution, as such, has established offences alleged against them. None appeared for the respondents/accused persons in this old appeal of the year 2002.

4 I have carefully considered the submissions advanced by the learned APP and also perused the entire record and proceedings. It is case of the prosecution that about 14 to 15 persons belonging to “Katkari” - a scheduled tribe came to be abducted by accused persons in order to prevent them from voting PW4 Pandit Shelke – a candidate for the post of Member of Gram Panchayat from Congress-I party, and for that purpose, they were compelled to leave their houses at Village Salpe in Karjat Taluka of

Raigad district. PW1 Bhagwan Pawar, PW2 Krishna Waghmare and PW3 Keshav Shelke have not deposed anything about the fact that abducted persons are belonging to the scheduled tribe having meaning assigned to the said term under Clause 25 of Article 366 of the Constitution of India. Evidence of Investigating Officer Dayanand Dhome, Assistant Police Inspector, Karjat Police Station, is also conspicuously silent on this aspect. Thus, for want of evidence to that effect, it cannot be said that respondents/accused persons compelled members of the scheduled tribe to leave their houses in order to prevent them from voting PW4 Pandit Shelke – a candidate for the post of Member of the Gram Panchayat, Kondivade. That apart, as per Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995, investigation of the offence committed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is required to be done by the Police Officer not below the rank of the Deputy Superintendent of Police. However, in the case in hand, the investigation of the crime in question is done by PW5 Dayanand Dhome, Assistant Police Inspector of Karjat Police

Station. In this view of the matter, the charge for offences punishable under Sections 3(1)(vii) and 3(1)(xv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, cannot be said to be proved.

5 Now let us examine whether accused persons or any of them, had abducted the alleged victim of the crime in question and wrongfully confined them at Dombivli. PW1 Bhagwan Pawar and PW2 Krishna Waghmare have unanimously stated that the accused persons came and took them out of the hut and directed them to sit in the tempo. That tempo proceeded towards Karjat and they were then taken to Dombivli and confined to one room. However, if we look at cross-examination of both these witnesses, then it becomes clear that neither of them had assigned any specific role to any of the accused persons. Evidence of both these alleged victims of the crime in question is conspicuously silent about the role, if any, played by each of the accused persons, who were standing for trial. Cross-examination of both these witnesses reveals that during the course of journey, persons who had taken

them had left the tempo and then the tempo in which they were travelling, proceeded to Dombivli. There is nothing to infer from evidence of both these witnesses that those were accused persons, who had confined the victims including PW1 Bhagwan Pawar and PW2 Krishna Waghmare to a room in Dombivli. On the contrary, both these witnesses have candidly stated that none of the accused persons had come to Dombivli. As such, it is not possible to hold that the respondents/accused persons had wrongfully confined PW1 Bhagwan Pawar and PW2 Krishna Waghmare along with other alleged victims of the crime in question.

6 So far as PW3 Keshav Shelke is concerned, his evidence is inherently improbable. He deposed that at about 3.30 a.m. in the morning, he proceeded from his house for joining duty. He has not clarified which duty he intended to join at 3.30 a.m. of 23rd October 1997. It is not probable and acceptable that office hours or working hours of any establishment starts at such early morning hours. As per his version, when he was proceeding to join duty, accused Raghunath and Vasant came in a jeep and asked

him to sit in the jeep. By that jeep, then he was taken to Dombivli. This witness has not spoken that any force was applied to him for making him to sit in the jeep, or that, he was threatened by those two accused persons for compelling him to sit in the jeep. This witness further deposed that, then the jeep was taken to Kopergaon by two unknown persons. At that time, 11 *adivasis* were brought in a tempo. They all were taken to one room in the fourth floor where they were locked inside the room. Evidence of this witness is conspicuously silent in respect of role of any of the accused persons in wrongful confinement of the alleged victims of the crime in question. On the contrary, he is stating that two unknown persons had taken him in the jeep to the destination. In further part of his evidence, PW3 Keshav Shelke disclosed that he managed to escape from that wrongful confinement along with a person named Shantaram and then narrated the incident to PW4 Pandit Shelke, when PW4 Pandit Shelke was present at the Police Station.

7 Now let us examine what PW4 Pandit Shelke deposed about the incident by claiming to be an eye witness for the same. Prior to that, it needs to be put on record that the incident allegedly triggered because PW4 Pandit Shelke and deceased accused Vasant Kharmare were contesting Gram Panchayat election as rival candidates fielded by Congress-I party and Shivsena party respectively. It appears from cross-examination of PW4 Pandit Shelke that during pendency of the trial, this accused no.14 Vasant Kharmare came to be murdered. Paragraph 6 of cross-examination of First Informant PW4 Pandit Shelke shows that he himself was one of the accused in the case of murder of Vasant Kharmare and he came to be convicted in that case. Keeping in mind this aspect, let us see whether PW4 Pandit Shelke is a witness of truth. This witness claims to have seen accused persons abducting about 11 *adivasis* at about 3.30 a.m. of 23rd October 1997. He stated that in a tempo bearing registration no.MH-05 H-400, Vasant Kharmare (deceased accused) and his party members had abducted the victims. According to PW4

Pandit Shelke, this incident took place in his presence. His cross-examination reveals that PW4 Pandit Shelke was having motorcycle and the police station was within his reach. It was at a distance which could have been travelled within twenty minutes. This witness affirmed that he was sure that the accused persons had taken away the victims in the vehicle. Subsequent conduct of this witness is strange. He did not go to the police station though he noticed taking of ten to twelve persons from his party by accused persons at about 3.30 a.m. of 23rd October 1997. He, for the first time, went to the police station, at about 8 p.m. of 23rd October 1997, and then lodged the report. His report Exhibit 44 shows that the same was registered at about 8.25 p.m. of 23rd October 1997. It is hard to digest that a leader of the political party contesting the election, after witnessing abduction of his supporters by the rival group in wee hours, would wait for several hours to lodge report against his rivals. Except naming deceased accused Vasant Kharmare, this witness has not named any of the other persons, who allegedly abducted his supporters.

8 The foregoing discussion, as such, makes it clear that even after re-appreciation of the entire evidence adduced by the prosecution, it is not possible to infer that the respondents/accused persons had committed any of the offences alleged against them.

In the result, the appeal fails and hence the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)