

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO. 588/2017

(The State of Maharashtra Thr. P.S.O., Malegaon, P.S. Malegaon, Dist. Washim
..Vs..
Shivaji Chandrabhan Suroshe and another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mrs. S.V. Kolhe, Addl. P.P. for the Appellant/State.
Shri R.M. Mardikar, Advocate for Respondent 1 & 2.

CORAM: ROHIT B. DEO, J.

DATE: 28th FEBRUARY, 2018.

The State is seeking leave to appeal against the judgment and order dated 06-05-2017 rendered by the Assistant Sessions Judge, Washim in Special Atrocity Case 11/2014, by and under which the respondents are acquitted of offence punishable under Sections 504 and 506 read with Section 34 of the Indian Penal Code and under Section 3(1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard Mrs. S.V. Kolhe, learned Additional Public Prosecutor for Appellant-State and Shri R.M. Mardikar, learned Counsel for Respondent 1 and 2 .

3. The learned Additional Public Prosecutor would submit that the appreciation of evidence of the learned Sessions Judge is perverse. The evidence of PW 1 Narayan Sarkate is amply corroborated by PW-2 Maya Sarkate and PW-4 Rahul Sarkate, is the submission. The finding rendered by the learned Sessions Judge that the alleged utterance was not in public view is erroneous, is the submission. Per contra, the learned Counsel for the non-applicant- accused supports the judgment and order impugned. The learned Counsel for the accused would submit, that mere utterance of the offending words, even if it is assumed *arguendo*, that the prosecution has proved that the words attributed to the accused were indeed uttered, would not constitute an offence in the absence of intention or mens rea to humiliate a member of the scheduled caste in public view. It is trite law, that unless the utterances are in public view, offence punishable under the Atrocities Act is not made out. Public view is interpreted to mean in the view of persons who are independent and who are neither relatives nor friends nor business associates nor persons connected with the complainant. The learned Additional

Public Prosecutor does not dispute that the two eye witnesses who corroborate PW-1 informant are related to the informant PW-1.

4. The learned Sessions Judge has noted that the political rivalry-enmity between PW-1-complainant and the accused is brought out in the evidence. The learned Sessions Judge has further noted that independent witnesses, who ordinarily would be available in view of the fact that the alleged incident took place near a prominent public place (*Hanuman Temple*) in the morning time, are not examined. The learned Sessions Judge has given sound reasons for holding that the prosecution has not established the charge. Nothing is brought to my notice to take a view different from that taken by the learned Sessions Judge. This Court would be slow to interfere in the judgment of acquittal unless the judgment suffers from perversity or error of law or some admissible evidence is shut out of consideration or any inadmissible evidence is considered. No compelling case is made out for this Court to interfere in the judgment of acquittal. The view taken is a possible view.

5. The application seeking leave to appeal is rejected.

RKN

JUDGE