

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.232 OF 2018

VIKAS SHIVAJI KHANDEKAR

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ORS.

)...RESPONDENTS

Ms.Manisha Devkar, Advocate for the Appellant.

Mr.A.R.Kapadnis, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 25th SEPTEMBER 2019

ORAL JUDGMENT :

1 By this appeal, the appellant/First Informant is challenging the judgment and order dated 20th October 2016 passed by the learned Special Judge, Satara, in Special (Atrocity) Case No.33 of 2015, thereby acquitting the respondent nos.2 to 5/ original accused of offences punishable under Sections 323, 504, 506 read with 34 of the Indian Penal Code as well as under

Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act and under Section 7(1)(d) of Protection of Civil Rights Act.

2 Heard the learned counsel appearing for the appellant/First Informant. She vehemently argued that the incident took place in parking place of the society which is a place within public view. Three apartments were situated on the ground floor of the building of the society. It is further argued that the incident was witnessed by PW4 Parshuram Mind. The learned counsel relied on evidence of spot panch PW3 Popat Awate to demonstrate that the incident took place within public view. Therefore, in submission of the learned counsel for the appellant/First Informant, the impugned judgment and order is illegal.

3 The learned APP appears for the State.

4 I have perused the record made available and considered the submissions so advanced.

5 After pleading not guilty to the Charge for offences punishable under Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, under Section 7(d) of the Protection of Civil Rights Act and under Sections 323, 504 and 506 read with 34 of the Indian Penal Code, the respondent nos.2 to 5/original accused were put to trial. In order to bring home the guilt to the respondent nos.2 to 5/original accused, the prosecution has examined in all five witnesses. The appellant/First Informant and his wife Sarika were examined as PW1 and PW2. PW3 Popat Awate is a witness to the spot panchnama. PW4 Parshuram Mind is an alleged eye witness. Offence of atrocity defined in Section 3(1)(x) of the then Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act is made out when a person, not being a member of the scheduled castes or scheduled tribes intentionally insults or intimidates with intent to humiliate a member of the scheduled castes or scheduled tribes in any place within public view. The expression “in any event within a public view” is clarified by the learned Division Bench of this court in the matter of **Pradnya**

Pradeep Kenkare and Ors. vs. State of Maharashtra¹. Relevant

observations in paragraph 8 of the said judgment reads thus :

“8.....The provisions of [Section 3\(1\)\(x\)](#) of the said Act would be attracted only in case of insulting or intimidating a member of the scheduled caste in any place within a public view. The expression "in any place within public view" has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression "public view" has been prefixed by the preposition "within" which in fact follows the expression "in any place". In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being "within public view". The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under [Section 3\(1\)\(x\)](#) of the said Act. In the provision of law comprised under [Section 3\(1\)\(x\)](#) of the said Act, the word "view" refers to that of 'public' but prefixed by the expression "in any place within". Being so, the word "public" not only relates to the location defined by the word "place" but also to the subjects witnessing the incidence of insult or

1 2005 (3) Mh.L.J. 368

intimidation to the member of scheduled caste or tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under [Section 3\(1\)\(x\)](#) of the said Act.”

6 Similarly, in the matter of **Balu s/o. Bajirao Galande vs. State of Maharashtra and Another**², it is observed thus in paragraph 19 of the said judgment :

“19 Considering the judicial pronouncements on the subject, the expression within public view must be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of at least one independent person. The test of audibility and visibility can be taken to have been satisfied if an independent person is actually present or is at a place where the utterances are clearly audible and reaches the scene of occurrence while the incident is still in progress.”

2 2006 6 AIR (BOM) (R) 251

It is, thus, clear that in order to make out this offence, the incident is required to be witnessed by atleast one independent public person so as to bring the said incident “within a public view”.

7 According to the prosecution case, PW4 Parshuram Mind is a witness to the alleged incident. His cross-examination revealed that he is a friend of Vijay Khandekar and said Vijay Khandekar is brother of appellant/First Informant. PW4 Parshuram Mind had come to the house of the appellant/First Informant Vikas Khandekar along with Vijay Khandekar, and therefore, he cannot be considered as an independent public person in order to bring the alleged incident in any place within the public view. PW1 Vikas and his wife PW2 Sarika were unanimous in stating that when PW2 Sarika had gone to the parking place of the building of the society for disposal of garbage, respondents/original accused persons abused her and thereby intentionally insulted her and intimidated her. However, there is nothing on record to show that the said incident was witnessed by any independent public witness. Therefore, it cannot be said that

the prosecution has demonstrated that the incident took place in any place within public view.

8 Evidence of First Informant/PW1 Vikas Khandekar shows that there was dispute between him and accused persons on account of payment of maintenance charges. Notice was served on the First Informant/PW1 Vikas Khandekar in that regard.

9 Considering this nature of evidence, the learned trial court came to be conclusion that the prosecution has failed to make out the offence alleged against the respondents/original accused. Evidence of defence witnesses was also considered by the learned trial court in arriving at such conclusion. Perusal of evidence of witnesses goes to show that the view taken by the learned Special Judge of acquitting the respondents/original accused persons is a plausible view based on evidence adduced by the prosecution and as such, the same is not warranting interference at the hands of this court. Therefore, the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)