

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

**CRIMINAL APPEAL NO.644 OF 2003
WITH
CRIMINAL APPLICATION NO.412 OF 2013
(FOR INTERVENTION)**

State of Maharashtra)....Appellant
(Org.Complainant)

V/s.

1) Suresh Sakharam Sawant)
Age: 50 years)

2) Mrs.Kunda @ Sushma Suresh Sawant)
Both R/o Namdeo Patil Chawl, Kashal)
Mill, Azad Nagar, No.1, Thane (West))
Dist. Thane.)....Respondents
(Org.Accused nos.1 & 2)

Ms.Anamika Malhotra APP for appellant/State.
Mr.Rohan Savant appointed as Amicus Curiae.

**CORAM : K.R.SHRIRAM,J
DATE : 27.1.2020**

ORAL JUDGMENT :-

1. A Criminal Application No.412 of 2013 was filed by the original complainant for leave to assist the prosecution at the time of final hearing of the appeal. That application was allowed on 26.4.2013. Subsequently, on 14.1.2020 when the appeal was taken up, the original complainant's representative was present in Court who informed the Court that their Advocate is not present on that day. The

matter was stood over to 21.1.2020 and as accused were not represented, the Court appointed Mr.Rohan Savant, an Advocate as Amicus Curiae. In fact, the Court also had asked the original complainant's representative whether she wishes to engage the Advocate from the Legal Aid Services Authority. The representative stated that she wanted the 'सरकारी वकील' herself to argue. It appears that complainant has been sending representations to the registry for expeditiously hearing this matter as complainant is being continued to be harassed by the accused. I am not dealing with these allegations because that is not the subject matter of this appeal.

2. Today again no Advocate appeared for the original complainant and her representative says she is happy if learned APP Ms.Anamika Malhotra argues the matter. Pursuant thereto the learned APP and the learned Amicus Curiae were heard and the Court also with their assistance, went through the record & proceedings, the impugned judgment and the evidence. Before I proceed with the case, I must express my appreciation for the assistance rendered by Mr.Rohan Savant, learned amicus curiae. The endeavour put forth by Mr.Rohan Savant has been of immense value in rendering the judgment.

3. It is prosecution's case that complainant Anusayabai Govind Lokhande was living with her husband, three daughters and three grand children in Heerabai Patil chawl at Thane, since prior to 1994. The house of accused is situated in front of the house of complainant.

4. In the year 1994, before the monsoon season started accused fixed a tin sheet over the door of their house, due to which rain water falling on the roof of their house would end up falling at the door of complainant's house. Complainant therefore, requested accused to remove the said tin sheet at which time, accused abused complainant and refused to remove the tin sheet. Accused also are alleged to have told complainant that she could leave the house and go elsewhere. Since then, relationship between the two neighbours, i.e., accused and complainant got strained. Nothing seems to have happened for 5 ½ years thereafter because the next incident which is the incident relating to the case in hand happened on 7.12.1999 at about 6.00 a.m. According to complainant, the husband of complainant had left the house at about 5.00 a.m. on 7.12.1999 for some work and complainant, her daughters and grand son were present in the house. At that time, accused no.2 threw water in front of her door, resulting in the door of complainant getting wet and the water also entered the house of complainant. Complainant asked

accused no.2 why she threw water at her door whereupon accused no.1 came out of his house, pushed complainant and uttered words and abused like “*Mahardya Ghanerdya Jathichya Ithun Kholi sodun Nighun Ja. Amhi Tumhala Mhardya Lokana Amache Kholi samor Thevanaar Nahi*”. Both the accused uttered abuses on the basis of caste of complainant and these abuses were heard by daughter of complainant and also had been seen by other people in the chawl and grandson of complainant. Complainant thereafter, approached the social worker of her community, viz., Rajendra Gaikwad and narrated the incident to him and on his advise, lodged complaint with the police. Complainant belonged to Mahar (Nav Baudha) community. Offence was registered with the City Police Station, Thane and after due investigation, a charge-sheet came to be filed against the accused charging the accused of offences punishable under Section 323 (*Punishment for voluntarily causing hurt*), 504 (*Intentional insult with intent to provoke breach of the peace*), read with section 34 (*Acts done by several persons in furtherance of common intention*) of The Indian Penal Code and under Section 3(1)(x) (*Punishments for offences of atrocities*) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under section 7(1)(d) (*Punishment for other offences arising out of “untouchability”*) of the Protection of Civil Rights Act 1955.

5. Accused denied the charges and claimed to be tried.
6. To prove the case, prosecution led evidence of 6 witnesses viz. Ms. Anusuyaji Govind Lokhande, complainant (PW-1); Rama Govind Lokhande, daughter of complainant as (PW-2); Chandrakant Vithoba Mahangale, PSI of Thane police station, who noted the complaint as (PW-3); Subhash Govind Jagdale, Superintendent in the office of SDO, Mahad as (PW-4); Govind Gangaji Lokhande, husband of complainant as (PW-5); and Shivaji Randra Gosavi, Investigating officer as (PW-6).
7. Complainant also produced certain documents which have been received in evidence including caste certificate of PW-2 and PW-5.
8. After considering the evidence and hearing the parties, the trial court acquitted the accused of all charges.
9. The factors to be kept in mind in an appeal against acquittal have been explained in *Ghurey Lal V/s. State of U.P.*¹ and paragraphs 72 and 73 of the said judgment read as under :

1. (2008) 10 SCC 450

"72. The following principles emerge from the cases above :

1. The appellate court may review the evidence in appeals against acquittal under Section 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal :

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when :

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) *The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.*

vii) *This list is intended to be illustrative, not exhaustive.*

2. *The Appellate Court must always give proper weight and consideration to the findings of the trial court.*

3. *If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.*

10 I would add that there are so many other judgments dealing with the approach of the Appellate Court in appeal against acquittal. In ***Muralidhar and Ors. V/s. State of Karnataka***², the Apex Court after listing many matters, where this has been dealt with, has very pithily laid down the points the Appellate Court must bear in mind and the same are as under :

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such

2. 2014 (5) SCC 730

conclusions is fully justified, and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

11 Therefore, unless the conclusions reached by the Trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the Appellate Court should be reluctant to interfere with such conclusions of the Trial Court. Even if a different view is possible, interference with judgment of acquittal is not justified if the view taken by the Trial Court is a possible view.

12 In ***Ramesh Babulal Doshi V/s. State of Gujarat***³, the Apex Court held that while sitting in judgment over an acquittal the Appellate Court is first required to seek an answer to the question whether the findings of the Trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the Appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the Appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in

3. 1996 SCC (Cri) 972

view of any of these infirmities that the findings are palpably wrong, manifestly erroneous or demonstrably unsustainable, it can then and then only re-appraise the evidence to arrive at its own conclusions.

Paragraph 7 of the said judgment reads as under :

“7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the Appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the Appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the Appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not.

13. Section 3(1) (x) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 reads as under :-

“3.Punishments for offences of atrocities-

(1) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe –

(i) to (ix).....

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe, in any place within public view.”

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine”.

14. The basic ingredients for the offence under clause (x) of Sub-section (1) of Section 3 are there should be intentional insult or intimidation by a person, who is not a member of Scheduled caste or Scheduled tribe; (b) the intentional insult or intimidation should be to a person who is a member of Scheduled caste or Scheduled tribe; (c) the insult must be with an intention to humiliate member of a Scheduled caste or Scheduled tribe. As the intent to humiliate is necessary, it follows that the accused must have knowledge or awareness that the victim belongs to the Scheduled caste or Scheduled tribe; and (d) the incident must occur in any place within public view.

15. The prime ingredient therefore, is complainant or victim or person who has been insulted should be a member of the Scheduled caste or Scheduled tribe. There is nothing in the evidence or on record to indicate that complainant Anusuya (PW-1) was belonging to

Scheduled caste or Scheduled tribe. The caste certificate of the husband (PW-5) Govind Gangaji Lokhande and the daughter Rama (PW-2) are on record that they belonged to Mahar (Nav Baudh) community. But there is no such certificate of complainant on record. The question that arises is whether complainant should independently produce her caste certificate ? or whether caste certificate of her husband or her daughter would suffice ?

16. A full bench of this Court in ***Rajendra Shrivastava Vs. State of Maharashtra***⁴ considered the subject matter as to what happened when a women born into a Scheduled caste or a Scheduled tribe marries to a person of forward caste does her caste change by virtue of the marriage ? The full bench has held that the label attached to a person born to a Scheduled caste or Scheduled tribe continues notwithstanding the marriage, the suffering of such a person by virtue of caste, is not wiped out by marriage with a person belonging to a forward caste because person born as a member of Scheduled caste or Scheduled tribe has to suffer from dis-advantages, disabilities and indignities only by virtue of belonging to a particular caste which he or she acquires involuntarily on birth. In my view, the judgment of the full court will be equally applicable in a case where a women not

4 2010(2) Mh.L.J.198

belonging to Scheduled caste or Scheduled tribe marries a person born into a Scheduled caste or Scheduled tribe. Just because the label of marriage is attached would not make that lady, become Scheduled caste or Scheduled tribe. It would be useful to reproduce paragraph nos.11, 12 & 13 from the said judgment and the same read as under :-

“11. The observations made in paragraph 31 of the decision in the case of Valsamma (supra) above cannot be read as a ratio laying down that on marriage, a wife is automatically transplanted into the caste of husband. The law on this aspect has been laid down by a larger bench of the Apex Court in the case of V. V. Giri (supra). The Constitution bench held that the caste is acquired by birth and the caste does not undergo a change by marriage or adoption. The ratio of the decision in the case of a Valsamma Paul (supra) is that acquisition of the status of a scheduled caste or a scheduled tribe by voluntary mobility into these categories would play fraud on the constitution. The Apex Court held that a candidate born in forward caste who is transplanted in a family of backward caste by adoption or by marriage does not become eligible to benefits of reservation under the constitution. The observations made in paragraph 31 in the case of Valsamma(supra) are not to the effect that a woman born in a forward caste , on her marriage with a person belonging to a scheduled caste or a scheduled tribe , is automatically transplanted in the caste of her husband by virtue of her marriage. In fact, the ratio of the said decision is set out in paragraph 34 of the judgment which has been quoted above.

12. When a woman born in a scheduled caste or a scheduled tribe marries to a person belonging to a forward caste, her caste by birth does not change by virtue of the marriage. A person born as a member of scheduled caste or a scheduled tribe has to suffer from disadvantages, disabilities and indignities only by virtue of belonging to the particular caste which he or she acquires involuntarily on birth. The suffering of such a person by virtue of caste is not wiped out by a marriage with the person belonging to a forward caste. The label attached to a person born into a scheduled caste or a scheduled tribe continues notwithstanding the marriage. No material has been placed before us by the applicant so as to point out that the caste of a person can be changed either by custom, usage, religious sanction or provision of law.

13. If the interpretation sought to be put by the learned counsel appearing for the applicant is accepted, it will defeat the very object of enacting the said Act. It will defeat the innovative steps taken by

the framers of our constitution for protecting the persons belonging to scheduled castes and scheduled tribes who have suffered for generations.

17. The full bench had relied upon a judgment of the constitutional bench of the Apex Court in the case of **V.V.Giri Vs.D.Suri Dora**⁵ in which the Apex Court dealt with the issue as to whether a person who is a member of the Scheduled caste or tribe can cease to be a member of such caste or tribe and can be said to have become a member of another caste. The Apex court observed thus :-

“That contention is that Respondent 1 had ceased to be a member of the scheduled tribe at the material time because he had become a kshatriya. In dealing with this contention it would be essential to bear in mind the broad and recognised features of the hierarchical social structure prevailing amongst the Hindus. It is not necessary for our present purpose to trace the origin and growth of the caste system amongst the Hindus. It would be enough to state that whatever may have been the origin of Hindu castes and tribes in ancient times, gradually status came to be based on birth alone. It is well known that a person who belongs by birth to a depressed caste or tribe would find it very difficult, if not impossible, to attain the status of a higher caste amongst the Hindus by virtue of his volition, education, culture and status. The history of social reform for the last century and more has shown how difficult it is to break or even to relax the rigour of the inflexible and exclusive character of the caste system. It is to be hoped that this position will change, and in course of time the cherished ideal of casteless society truly based on social equality will be attained under the powerful impact of the doctrine of social justice and equality proclaimed by the Constitution and sought to be implemented by the relevant statutes and as a result of the spread of secular education and the growth of a rational outlook and of proper sense of social values; but at present it would be unrealistic and utopian to ignore the difficulties which a member of the depressed tribe or caste has to face in claiming a higher status amongst his co-religionists.?(Emphasis added)

5 (1960) 1 SCR 42

Thus, membership of a caste is involuntary. Historically persons carrying on one particular occupation may belong to one particular social class forming a particular caste. A person born in a family belonging to a particular caste which is associated with a particular occupation may not continue the occupation. But still he remains and continues to be a member of a social class forming the said caste. The reason is that the label remains. For the purposes of marriage and all other social functions up to his or her death, the caste continues to be relevant. Notwithstanding all attempts of weeding out this phenomenon, the stark reality is that the theme still remains the same”.

18. Therefore, what the Apex court and the full bench of this court held is that the status of a person is based on his/her birth alone because becoming a member of a caste is involuntary. A person born in a family belonging to a particular caste which is associated with a particular occupation, may not continue the occupation. But still he/she remains and continues to be a member of a social class forming the said caste. The reason is that the label remains.

19. Therefore, just because PW-1 is married to a person who is certified to be a Mahar (Nav bauddh) would not automatically make PW-1 Mahar (Nav bauddh). The onus is on the complainant to prove that she belonged to Mahar (Nav bauddh). PW-3 PSI who wrote down the complaint admits that at the time of writing the complaint, he asked PW-1 whether she was having her caste certificate to which she replied in affirmative but he did not take a copy of the certificate

from her at that time. PW-3 admits in his cross-examination that he has not seen the said caste certificate of complainant at that time. The complaint was lodged on 7.12.1999. The evidence of PW-1 was recorded on 22.8.2002 and the evidence of PW-3 was recorded on 11.11.2002 almost 3 years after the alleged incident. Complainant had enough time to produce such evidence of her belonging to a scheduled caste Mahar (Nav bauddh) but chose not to furnish. Therefore, I have my own doubt whether complainant from the time of her birth actually belonged to Scheduled caste. I have my own doubt because PW-6 who was Investigating officer says on 29.12.1999 he obtained caste certificate of complainant's husband (PW-5) Govind Lokhande. PW-5 who is the husband of PW-1 complainant says "it is true that I had obtained this caste certificate in the year 1999", though he converted in 1956 to Nav bauddh. If complainant also belonged to that caste, I see no reason why complainant did not obtain such a certificate. There is no statement also of complainant to say that she has applied for a caste certificate, which is not ready. The impugned judgment is dated 29.1.2003. Nothing prevented complainant from obtaining a caste certificate and applying to the court to bring the same on record. Therefore, on this ground alone that complainant had not proved herself to be a Scheduled caste, the complaint has to fail. I have to note my

disappointment that PW-3 PSI of Thane police station who noted the complaint and in particular PW-6 without even sighting the caste certificate of complainant went ahead and arrested the accused and obtained remand under judicial custody. Without following the basic requirements, personal liberty of the accused was taken away by the police. In fact, a similar observation has been made by the learned single Judge of this court in *Kailas Govind Wadekar Vs.State of Maharashtra*⁶. Despite this for reasons best known to the concerned person in the State, the State wanted to pursue this appeal.

20. I have to also note that even for a moment one takes complainant to be a member of Scheduled caste, still prosecution has miserably failed in proving the offence as charged.

21. PW-1 in her evidence states that in 1994 there was a quarrel when respondent no.2 had fitted tin sheet at the door of her house resulting in water falling at the door of complainant's house and when complainant told the accused to remove the tin sheet, the accused abused by stating that `they do not like people of dirty caste residing in front of their house.....”

PW-2 refers in her evidence about quarrel in 1994 but

⁶ 2010 Cri.L.J.2752

does not say anywhere that the accused abused the complainant on their caste.

PW-1 says that they lodged the complaint at that time to the police to remove the tin sheet. Again PW-2 is silent on that.

PW-1 says on 7.12.1999 at 6.00 a.m. accused no.2 threw water on the door of their house and water entered the house. PW-2 who claims to be a witness to that only says the door of their house got wet.

PW-1 admits that the accused have lodged several complainants against complainant since 1994 and there are 7 to 8 complaints with police against complainant that complainant harassed them all the time and the police also called them for inquiry about it. PW-2 denies that the accused have lodged several complaints against complainant at the police station.

PW-2 says when the incident happened on 7.12.1999 at 6.00 a.m., her mother was standing at the step of their house at the time of the incident and we all other members were also standing at the door of the house at the time of the incident. PW-1 does not say that on 7.12.1999 either she or other members of her family were standing at the door of the house. In fact, PW-1 says that when the accused threw water on the door of her house and water entered the house, PW-1 opened the door and asked why she was throwing the

water.

PW-1 admits that her complaint (Exh.14) is silent about the fact that she told the accused that she will give another tin sheet for fixing or that at that time the accused told complainant that they do not like people of dirty caste residing in front of their house or that accused came to assault her husband and they lodged the complaint with police and police came and removed the tin sheet. This relates to the 1994 incident. Therefore, it is clear that in her evidence, PW-1 has only improvised her case.

PW-1 also admits that complaint (Exh.14) is silent that on 7.12.1999 accused threw water at the door of their house and therefore, water entered in their house. Importantly, though the incident happened on 17.12.1999 at 6.00 a.m., the complaint was lodged at 11.45 p.m. that night. There is a clear gap of almost 16 hours. This delay is material because PW-1 in cross-examination admits that she lodged the complaint after discussing and after taking advise from the Advocate and also admits that her advocate had told them what should be written in the complaint.

In the cross-examination suggestion has been put that PW-1 does not belong to Mahar or Nav Baudh caste but still no caste certificate of PW-1 has been produced.

PW-2 says when the incident happened on 7.12.1999 at

6.00 a.m., her other family members and other persons from the chawl were hearing this and that at about 5.00 p.m., PW-2, PW-1 and Rajesh Gaikwad had gone to the police station. Statement of Rajesh Gaikwad has been recorded but he has not testified. PW-2 also says that police also recorded statements of residents residing in the chawl in respect of the said incident. None of those residents have been called to testify.

In the examination-in-chief, PW-2 says accused said *“mharde, ghanerde jatiche therde, tuzya porila shitha shikav va ghar sodun nighun za, mache samor rahaiche nahi.”* and other persons from the chawl were hearing this. But in the cross-examination she says it so happened that the doors of the neighbouring house were closed at the time of incident.

PW-2 also admits that her statement before the police is silent to the effect that accused no.2 also stated like ‘ghar sodun ithun nighun jaail’ to PW-1 or that neighbours were hearing her whatever abuses were given by the accused persons. This is also very serious omission particularly in view of the requirement of the Act that intentional insult should be within public view.

22. PW-3 to whom the complaint was lodged, admits that he did not record statement of persons who came to the police station.

23. PW-6 (IO) does not state whether the caste certificate of complainant was produced. PW-6 also states that PW-2 had not stated that her mother had asked accused no.2 why she threw water on the door early in the morning. PW-2 has not stated that accused no.2 uttered words like “*ghanerde jatiche ithun kholi sodun ja'*”. PW-2 also not stated that neighbouring persons heard this. In fact, PW-6 says that PW-2 had stated that neighbouring persons were present there but their doors were locked. I cannot make sense of that statement.

24. PW-6 also states that he recorded statement of other neighbouring persons like Vilashini Mahadeo Sawant, Pushpalata Manmohan Sawant, Smt.Rozi and Anita Fernandes, Sushila Mitharam Yadav, Ramlal Mahadeo, Bina Ramlal Mishra, Pushpalata Rane, Deepak Patil, Namdev Patil, Nirmala Korde and Raje Gaikwad and that all these persons resided in the same locality chawl and their statements were recorded on 8.12.1999. PW-6 is also silent about the incident in 1994 that there was a skirmish and the accused abused with such words. Though PW-6 states that indeed the family members supported her, barring PW-2 and PW-1 (who was not present at the time of alleged incident) who have testified, none of these other persons were called to testify.

25. PW-6 in his examination-in-chief itself states that he recorded the statements of Vandana Govind Lokhande, Rama Govind Lokhande, Kum.Shaila Govind Lokhande, Subhas Salvi, Bhimrao Salvi, Govind Lokhande, Advocate Rajesh Gaikwad and other adjacent neighbours but only family members of complainant supported complainant and none of the independent witnesses supported complainant.

26. In the circumstances, I cannot accept the testimony of PW-1 and PW-2 as totally reliable. There has been admittedly complaints filed against complainant by the accused and that too about 7 or 8 complaints and the police have also called complainant to the police station with regard to those complaints. Therefore, it appears more like a method to get back at the accused probably on the advise of the Advocate Rajesh Gaikwad. PW-6 in his examination-in-chief states that he recorded statement of advocate Rajesh Gaikwad. But he was not examined.

27. As regards offences under Sections 323 and 504 of the IPC and under section 7(1)(d) of Protection of Civil Rights Act 1955, to prove these offences, prosecution has examined only complainant (PW-1) and her daughter Rama (PW-2) as eye witnesses. The other

witnesses examined are not eye witnesses. Both, complainant and Rama are interested witnesses being mother and daughter. Their evidence therefore has to be carefully considered and scrutinized. Both, PW-1 and PW-2 admit that there were quarrel between them and the accused and since 1994 their relationship was strained. Complainant also admits that the accused have filed complaint against them (PW-1 says 7 or 8 complaints and police have also called them) and they have also filed 1 or 2 complaints against the accused. So there was previous enmity between complainant and the accused. There is a possibility that the present complaint has been filed falsely to harass the accused or due to previous enmity the accused had uttered the abusive words on the basis of caste of complainant, which again has not been proved.

28. Firstly it is to be noted that the present incident has taken place on 7.12.1999 at about 6.00 a.m. but the complaint is lodged at 23.35 hrs. in night. The present incident has taken place at Thane and therefore there was no impediment for complainant to approach police immediately and lodge her complaint. Complainant, however, admittedly has consulted with the Advocate of her caste one Rajesh Gaikwad and on his advise, she has lodged her complaint. This has been admitted in the evidence as noted earlier. Therefore, I cannot

accept that the complaint depicts the true picture of incident. The complaint is a mixture of personal knowledge and legal advise. The prosecution also has not explained the delay of almost 16 hours in lodging the complaint. If we also scrutinized the evidence of PW-1 and PW-2, they have made substantial improvement in their evidence before the court. In the complaint at (Exh.14) nothing is mentioned about uttering words by the accused on the basis of caste of complainant in the year 1994. PW-2 Rama deposed that even at the time of the incident in 1994 the accused uttered words "*Mahardya Ghanerdya Jaticha Tu Gher sodun Ja. Amche Ghera samor ase Maharde Therde Lok Rahila Nako*". Complainant does not say anything against accused no.2 about uttering any words to her but her daughter Rama deposed that accused no.2 has uttered words like "*Maharde Therde Ghanerdeya Jatichya Tuja Porila sista shikav*". Therefore, there is contradiction in the evidence of complainant and her daughter Rama. In view of the previous enmity between the parties since 1994, we can safely say that the attempt is only to get even with the accused. Therefore, these charges cannot also be accepted as proved.

29. In view of what is stated above, I do not find that the findings of the trial court are palpably wrong, manifestly erroneous or

demonstrably unsustainable. It requires no interference.

30. There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

31. In the circumstances, in my view, the opinion of the trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with.

32. Appeal dismissed.

(K.R.SHRIRAM,J)