

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 962 OF 2003**

The State of Maharashtra	)	
(At the instance of Park Site	)	
Police Station, C.R. No.118/99)	)	..Appellant
Vs.		

Pravin Meharchand Jethwani	)	
Director,	)	
Basant Rubber Company,	)	
Situate at L.B.S. Marg, Vikhroli (E)	)	
Mumbai	)	..Respondent

Ms Pallavi Dabholkar APP for State
 Mr. Anil Lalla a/w Ms Hetvi Mota i/b M/s Lalla & Lalla for Respondent
 Ms Aparna Bhosale i/b Mr. Vijay Kurlle for original complainant
 Mr. Ashok Avaghade, Original complainant present

**CORAM : K.R.SHRIRAM, J.
DATE : 24th JANUARY, 2020**

ORAL JUDGMENT

1 This is an appeal by the State, impugning an order and judgment dated 28-11-2002 passed by the Learned Special Judge (under SC & ST Act), Greater Mumbai, acquitting respondent of offence punishable under Section 3(1)(x) (*Punishments for offences of atrocities*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act) and under Section 504 (*intentional insult with intent to provoke breach of the peace*) of IPC.

2 I have to note that the original complainant himself was given an opportunity to present his case before the court and support the appeal.

There were many occasions, when the original complainant did not remain present, but on 19-12-2019, counsel for respondent brought to the notice of the court that on a representation made by the original complainant that he wishes to be heard in the appeal, the court had passed directions to give notice to the original complainant to remain present at the time of hearing. It is recorded in the order of 19-12-2019 that despite notice on 28-3-2019, the original complainant was still absent. On 19-12-2019, this court granted one more opportunity to the original complainant to remain present in court keeping in mind that the original complainant is alleging an offence punishable under Section 3(1)(x) of the said Act. Pursuant to the said order of 19-12-2019, registry dispatched notice on 4-1-2020 and the original complainant informed the court that he received the notice on 5-1-2020. Based on that, Ms Bhosale appeared for the original complainant. Ms Bhosale states though she had given an undertaking when the matter was heard on 23-1-2020 and remained inconclusive due to paucity of time, that she will file vakalatnama during the course of the day, she did not file. Ms Bhosale states that today her vakalatnama is ready and her clerk has already taken it for filing in the registry. Statement accepted.

3 It is prosecution's case that Ashok Avaghade, complainant, (P.W.-1), belongs to Chambhar by caste, a scheduled caste and, was working as a labourer in Basant Rubber Company (the said company) situated at LBS Marg, Vikhroli (w) Mumbai 400 083. Respondent, (accused) was the

Director of the company, and he did not belong to either scheduled caste or scheduled tribe.

4 On 4-2-1999, respondent intentionally insulted complainant (PW.-1) at about 10.30 a.m. to 11.30 a.m., when complainant was working in Metal Pard (M.P) Department by uttering the following words:

"हरामका पगार मंगता है क्या मादरचोत. मोची कि औलाद. तेरी माकी चुत. तेरी माका भोसडा चामर कि औलाद."

According to prosecution, the said utterances made by respondent were also provocative and the provocation given by respondent was likely to cause complainant to break the public peace apart from being an offence under Section 3(1)(x) of SC/ST Act.

5 Complainant (PW.-1), was thereafter made to stand at the gate of the company, where respondent followed complainant to the gate and once again used the utterances as noted above in the presence of one Dilip - watchman and respondent went away. It is the case of prosecution that at about 12.30 p.m. when there was lunch break, PW.-2 Prabhakar Avaghade, a cousin of PW.-1 and also a co-worker in the said company, met PW.-1 at the gate when PW.-1 narrated the incident to PW.-2 and PW.-2 advised PW.-1 to lodge a complaint. Accordingly, PW.-1 after punching his card at about 1.30 p.m., left the factory. Accompanied by his brother PW.-2, PW.-1 then went to the Park Site Police Station, Vikhroli, Mumbai, at 4.30 p.m., and lodged the complaint in writing on 4-2-1999. I have to note that the

watchman Dilip, though listed as witness in the charge sheet, has not been examined. After preliminary inquiries, the police registered the crime against respondent and recorded the statements of witnesses and collected documentary evidence. On completion of investigation at the hands of ACP Giridhar More (PW.-5) and ACP Chavan, (who has not been examined), the charge sheet was lodged in 31st Court of Metropolitan Magistrate, Vikhroli, Mumbai. Eventually, the case was committed to the Special Judge under the SC/ST Act.

6 After hearing the parties and upon considering the records, the Trial Court framed charges. Respondent pleaded not guilty and claimed to be tried.

7 Prosecution examined P.W.-1–Ashok Avaghade, complainant, P.W.-2 – Prabhakar Avaghade, P.W.-3 Radheshyam Patel, P.W.-4 Ashok Borse and P.W.-5 Giridhar More. The prosecution further adduced in evidence the following documents:-

- (i) Caste Certificate of complainant (Exhibit 10)
- (ii) Complaint (Exhibit 11)
- (iii) FIR (Exhibit 11-A)
- (iv) Affidavit dated 2.10.1999 of accused (Exhibit 18)
- (v) Portion marked “A” in the statement dated 28-4-1999 of P.W.-2 Prabhakar Avaghade (Exhibit 20)
- (vi) Scene of offence panchnama dated 20-5-1999 (Exhibit 22)

(vii) Statement dated 18-5-1999 of P.W.-3 Radheyshyam (Exhibit 28)

8 The cross-examination of prosecution witnesses brought on record the following documents:

(i) letter of apology dated 20-10-1993 tendered by complainant (Exhibit 13)

(ii) Letter dated 5-1-2001 issued by Secretary, Bhartiya Kamgar Karmachari Mahasangh revealing the status of complainant as a 'protected worker' (Exhibit 14)

(iii) Charge sheet issued by the General Manager, Basant Rubber Factory Ltd. against complainant (Exhibit 15)

(iv) Rough sketch of the factory premises (Exhibit 16)

(v) Written complaint dated 4-2-1999 made by respondent against complainant to Park Site Police Station (Exhibit 25)

(vi) Letter dated 7-4-1999 from Mr. Ramdas Athavale, M. P. to Part Site Police Station, recommending action upon the complaint made by complainant (P.W.-1)

9 Respondent was examined as per the provisions of Section 313 of Cr.P.C., 1973. Respondent did not dispute the fact that complainant was working in the said company, of which, respondent was one of the Directors. Respondent also did not have any dispute about the activities of the Trade Unions, viz, Bharatiya Kamgar Sena and Bharatiya Kamgar Mahasangh at the said company; and that complainant had switched over to the Union of Bharatiya Kamgar Mahasangh led by one Bhai Jagtap. However, respondent

disputed the allegations made regarding the role of the management in collaboration with Bharatiya Kamgar Sena. According to respondent, on 4-2-1999 around 12 noon, Prashant Mhatre, supervisor, called him to M.P Department and on reaching the M.P .Department, Prashant Mhatre made grievance about complainant (PW.-1) refusing to work on cutting machine and the plates getting accumulated with resultant jamming of cutting machine and that he had requested complainant (PW.-1) to go on with his regular work and thereupon complainant (PW.-1) got annoyed and spoke harshly and threatened him. Respondent added that to avoid further problem, he directed Prashant Mhatre to allot some other work to complainant (PW.-1) and left the place and after some time Prashant Mhatre had informed respondent about complainant's refusal to work and complainant leaving the factory. Respondent contended that he was falsely implicated in the present case. The statement made by respondent in response to his examination under Section 313 was recorded. Defence examined D.W.-1 Prashant Mhatre, Supervisor working in the said company.

10 After completion of arguments, an application was received by the Trial Court from complainant, who requested the court to examine more witnesses. More than one application was moved and applications were granted. Accordingly, the court summoned and examined one Balkrishnan Nair (C.W.-1) and Bhiku Dagdu (C.W.-2) Mane as court witnesses. Having seen the outcome of examination of those two witnesses, prosecution

requested the court to drop another witness Mr. Kuchekar.

11 Section 3(1)(x) of the SC/ST Act reads as under:

*“3. Punishment for offences of atrocities:- (1) whoever, not being a member of a Scheduled Caste or a 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.
(xi) to (xv).....”*

12 Ingredients for the offence under Section 3(1)(x) are - (a) that complainant belongs to Scheduled Caste or Scheduled Tribe, (b) respondent does not belong to Scheduled Caste or Scheduled Tribe, (c) respondent intentionally insulted or intimidated a member of Scheduled Caste or Scheduled Tribe, (d) such an intentional insult was made with an intention to humiliate a member of Scheduled Caste or Scheduled Tribe, as an intent to humiliate is necessary. It follows that respondent must have knowledge or awareness that the victim belongs to Scheduled Caste or Scheduled Tribe and (e) finally, such an intentional insult with an intention to humiliate, must be made in any place within public view.

13 Heard APP Ms Dabholkar, Ms Bhosale appearing for original complainant and Mr. Lalla for Respondent, and also considered the evidence, documents and impugned judgment.

Ms Bhosale very strongly urged that the appeal should be allowed and the impugned judgment should be interfered with. Ms Bhosale submitted - (a) Respondent knew the caste of complainant, (b)

complainant (PW.-1) was tortured and made to sign blank papers, which PW.-1 refused to and that is why respondent had an axe to grind against complainant (PW.-1), (c) Respondent used to be a workman with PW.-1 in 1994 and when he became a Director, thereafter they had differences with complainant and (d) that the utterances were made in public view because they were co-workers and it was done in the factory premises in the presence of co-workers, though PW.-3 turned hostile.

14 Learned APP submitted (a) that even though PW.-1 is the only witness to the incident, PW.-1 needs to be believed and he had no enmity with the employer and, therefore, there is no reason for PW.-1 to make false statement and (b) that on the date of the incident itself a complaint has been lodged with the police station. Ms Bhosale added submitting that Exhibit 11 (complaint) was lodged on 4-2-1999 and that has been confirmed by PW.-5.

15 Mr. Lalla submitted (a) that complainant was Union worker, who was charge sheeted earlier on 29-3-2003 (Exhibit 15) and he had a history of aggressive nature, (b) that respondent had even tendered written apology, which is at Exhibit 13, (c) that respondent was unlikely to use filthy language, (d) even assuming for sake of argument that utterances as alleged were made, it was not within the public view, as none of the witnesses were examined, and (e) that there was no evidence to show that respondent knew the caste of complainant.

16 It is settled law that mere utterances or merely calling complainant a Chambhar cannot be treated as an atrocity as provided under the SC/ST Act. Apex Court in *Swaran Singh & Ors. Vs. State through Standing Counsel & Anr.*¹ observed that “calling a member of the Scheduled Caste Chamar with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word Chamar will of course depend on the context in which it was used.”

Karnataka High Court in *Chandra Poojari vs State Of Karnataka*² held that merely calling someone by his caste does not attract the provisions of the SC/ST Act. It has to be proved that respondent was aware that complainant belongs to that caste and respondent was conscious of the fact that the act was committed knowing the victim belongs to the Scheduled Caste. The prosecution also has to prove *mens rea* on the part of respondent to insult complainant by calling him by that name.

17 In my view, having considered the evidence, the case of prosecution falls flat on all these points.

18 Let us examine, whether prosecution has proved that respondent was aware that complainant belonged to Chambar caste. Admittedly, complaint at Exhibit 11 (which was lodged on the date of the incident), is totally silent about it. P.W.-1 in his examination in chief says

1 (2008) 12 SCR 132

2 1998 Cri LJ 53

that “The accused might be knowing my caste as I use to sit in the leather wear shop of my uncle situate in vicinity of the office of the company. The shop was situate on the same street where the office of the company was situate. This was next to the building of the office of the company.”

In his cross-examination, P.W.-1 clarifies voluntarily when a suggestion was to put to him that there was no leather shop in the vicinity of the office of the company, P.W.-1 volunteered and stated “I had referred to the head office of the company at Sion while giving the situation of leather-wear shop of my uncle”. First of all, P.W.-1 says “might”, which means it is a speculation, he is not sure. I must state, Ms Bhosale as an officer of the court in fairness states, that is a correct interpretation. Further, P.W.-1 was workman working at the factory and respondent was the Director sitting in the factory. There is no evidence, to indicate how many times respondent was going to the office at Sion and how many times he saw complainant sitting at his uncle’s shop. Even assuming respondent was going to office at Sion, he would be going during office hours. I ask myself, what was complainant doing in uncle’s shop during office hours when he was working in the factory at Vikhroli. Therefore, there is no evidence, which can be accepted to prove that respondent knew that complainant belongs to Chambar caste.

19 Therefore, as it is not proved that respondent was aware of the fact that complainant belongs to Chambhar Caste, the question of

respondent calling or abusing complainant by his caste with an intention to insult, would not arise.

20 Whether respondent made those utterances as stated by complainant ? P.W.-1 is the only one, who says respondent made those utterances. P.W.-3 turned hostile. C.W.-1 and C.W.-2, who were summoned by the court on an application made by complainant, to prove that these utterances were made in public view, told the court that they do not know anything in respect of the case. The watchman Dilip, has also not been examined, in whose presence, the utterances were allegedly repeated near the gate. P.W.-1 says that there were other co-workers in the department namely; Santosh Kalgutkar, Riyaz, Krishna and Bhaskar. Though, Santosh, Krishna and Bhaskar have been listed as witnesses, they have not been examined.

P.W.-1 says that when he spoke to P.W.-2 at 12.30 p.m. on 4-2-1999 and narrated the incident to P.W.-2, P.W.-2 advised him to lodge a complaint. P.W.-2 in his cross-examination states “ I did not advise P.W.-1 Ashok to approach the police when the said disclosure was made.” This a very material contradiction, which goes to the root of reliability of the evidence of P.W.-1.

P.W.-2 says that he recollected that the police had recorded their statements and obtained signatures below such statements on 4-2-1999.

But the prosecution itself states that no such statements of witnesses were recorded on 4-2-1999.

21 PW.-1 also admits that on 4-2-1999, in the M.P. department he refused to work, though according to him he refused because work of lifting was heavy work. PW.-1 also admits that D.W.-1 Prashant Mhatre told him to leave the factory if he was not prepared to work. Accordingly, PW.-1 left the factory and while leaving, he had punched the card around 1.00 p.m. PW.-1 says that he went to the police station at about 4.30 or 5.00 p.m. on 4-2-1999 and not earlier because he was waiting for his elder brother to accompany him to the police station and wanted to consult him before lodging the complaint. As noted earlier, PW.-2 denies that he advised PW.-1 to lodge the complaint. PW.-1 also admits that there were many omissions in the complaint, though has explained as due to oversight or he wanted to be brief. PW.-1 admits that he has not stated in the complaint - (a) at what time respondent came to MP department, (b) the fact that respondent used to stand and watch his work every day, (c) the fact that respondent questioned him about his work and asked him to exert more by lifting 10 or 12 metal sheets, (d) the fact of respondent pushing him after abusing him, (e) that respondent used abusive language "Haram ka pagar mangta hain kya". Of course, complainant explains that he did not find that important to be mentioned in the complaint, (f) respondent might be knowing his caste

as he had seen him sitting with his uncle in uncle's cobbler's shop near the factory, (though in cross-examination he says near office at Sion), (g) the fact that respondent asked him to stand near the gate, (h) importantly, respondent gave abuses at the gate and (i) respondent followed him and called the watchman Dilip and gave instructions to make P.W.-1 stand at the gate.

Complaint does not reveal later events after complainant was asked to stand at the gate. On the omissions, though the omission of timing may be insignificant, but rest of course, are very significant. As against this, D.W.-1, defence witness, categorically states that nothing as alleged ever happened. D.W.-1 denies that there was any quarrel between respondent and P.W.-1, or respondent used abusive language as alleged by complainant. P.W.-1 in his evidence also admits that from M.P. Department, where the alleged incident took place, one cannot view the events occurring at the L.B.S. Marg.

22 The specific words "in a place within public view" indicates that the act of intentional insult or intimidation with an intent to humiliate must be caused in a place within public view. As in the case of defamation, mere indication of defamatory words by a letter between two parties interse by itself would not amount to defamation unless there is publication, meaning thereby bringing it to notice such insult or defamatory statement to the knowledge of others or public. Similarly in the present case, the humiliation

must be in a place within public view. If a person is abused and even humiliated in a close confined place where public had no access or no public was present, then, taking into consideration the specific words, it may not, in a given case amount to commission of offence under Section 3(1)(x) of the Act. None of the witnesses have supported complainant (PW.-1). Therefore, even though complainant states that respondent abused him and humiliated in the M.P. Department in the presence of other workmen and in the presence of watchman Dilip, in the absence of any evidence, I cannot conclude that specific words were uttered in a place within public view. On this ground also, the appeal has to fail.

23 Mr. Lalla relied on a judgment of the Apex Court in ***Ghurey Lal Vs. State of U.P.***³ Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 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

3 (2008) 10 SCC 450

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.

24 There is an acquittal and therefore, there is double presumption in favour of respondent. Firstly, the presumption of innocence available to the respondent under the fundamental principle of criminal jurisprudence

that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, respondent having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting respondent, the Trial Court rightly observed that the prosecution had failed to prove its case.

25 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, need not be interfered with.

26 Appeal dismissed.

(K.R. SHRIRAM, J.)