

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.719 OF 2004**

The State of Maharashtra	)	
(Smt. Savita Samadhan Thorat)	)	
Age 21, years, r/o Shirasmani,	)	
Tal Kalwan, Dist Nashik	)	..Appellant

V/s.

Ashok Kashinath Deore	)	
Age 45, years, R/O Kundane,	)	
(O) Tal - Kalvan, District Nashik	)	
(Otur. Kharad)	)	..Respondent (Orig. Accused)

Mrs. Anamika Malhotra, APP for State

**CORAM : K.R.SHRIRAM, J.
DATED : 11th DECEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 26-2-2003 passed by Learned 3rd Ad-hoc Asst. Sessions Judge, Nashik, by which, respondent was acquitted for the offence punishable under Section 3(1)(xi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and Sections 354 (*Assault or criminal force to woman with intent to outrage her modesty*) and 452 (*House trespass after preparation for hurt, assault or wrongful restraint*) of Indian Penal Code.

2 It is prosecution's case that complainant – Savita Samadhan Thorat (P.W.-3) was a widow. Her husband had died sometime in January 2003. On 10-9-2003 at about 9.00 p.m., when complainant was alone in her house,

accused came to her house under the influence of liquor and asked her to prepare fish for him. Complainant refused as she was observing Anusthan (performed religious rites). Accused thereafter caught hold of complainant's hand and made an indecent proposal that since she was a widow they should eat together and sleep together. As complainant got angry thereupon accused left. Supplementary statement was given by complainant to police, in which it is recorded that complainant was living in the house of Mohan Shirsat on rental basis and the house had a loft. The roof of the house was made of mangalore tiles. On the back side of house there was open space and the back wall had an opening. When complainant had gone to call P.W.-4 her neighbor, accused had slipped through the window / gap on the wall and he was found lying under the cot of complainant when complainant and P.W.-4 came back to the house of complainant. It seems complainant requested P.W.-4 to stay the night with her since she was scared that accused may harm her. According to complainant, when she opened the door, she found in the electricity light that accused was sleeping under the cot. Thereafter, P.W.-3 and P.W.-4 shouted and accused left the place. P.W.-3 complainant belonged to Hindu Cobbler Caste and accused was a Hindu Maratha.

3 Investigation was conducted by P.W.-6, who was the Deputy Superintendent of Police. Charge sheet was filed and charges were framed as noted above. After hearing the parties, the Trial Court acquitted accused,

per impugned judgment. I totally agree with the conclusion arrived at by the Trial Court. The fact that complainant belongs to scheduled caste is not an issue. Similarly, the caste of accused being Maratha is also not disputed. In the statement under Section 313 of CrPC accused had stated that there was an incident between him and the brother of late husband of complainant and accused was beaten up following which, a police complaint has been filed. The present case is a counter blast to the complaint filed by accused.

4 To drive home the charge, prosecution led evidence of 6 witnesses. P.W-1 Sandip Keda Aher, who was a panch witness, was declared hostile. P.W.-2 Kashinath Vithal Thorat, is the father-in-law of complainant, P.W.-3, is complainant herself, P.W.-4, eye witness and the prime witness Ranibai Wagh was declared hostile, P.W.-5 Prakash Sonar, Police Sub-Inspector, who recorded the statements and the incident panchnama etc and P.W.-6 Mohan Sitaram Pawar, Dy. S. P. Kalvan the Investigating Officer.

5 P.W.-1 panch witness for spot of incident has stated that he was not called by the police to act as panch. He also says it is not true to say that he was called opposite the house of complainant and it is not true that the other panch witness Chandrakant Kedar was also with him. When the Learned APP read over the contents of panchnama, P.W.-1 has even denied the same.

P.W.-2 – father-in-law is a hearsay witness. He states on the next day of the incident complainant (P.W.-3) narrated the incident to him. P.W.-3 – complainant states on the date of incident accused came to her house when she was cooking, accused asked her to prepare fish but she refused as she was observing Anusthan. P.W.-3 says that accused caught her hand and told her that they could eat fish together and thereafter sleep together as she did not have a husband. When complainant got angry, accused left the place after which P.W.-3 locked the house and went to the house of P.W.-4 Ranibai. P.W.-3-complainant then narrated the incident to P.W.-4 and both of them went to the house of complainant. Complainant says that when she opened the door and they went inside the house she told P.W.-4 that she was scared and P.W.-4 should sleep that night with her. According to complainant, she and P.W.-4 also saw dust and broken pieces of wood of the roof and also tiles and accused was found sleeping under the cot, accused thereafter got up and caught her hand in the presence of P.W.-4 and asked her why she brought P.W.-4. P.W.-4 angrily abused accused and accused left. Thereafter, complainant went to Ranibai's house (P.W.-4) and stayed at night and in the morning woke up and proceeded to their filed. On the way complainant met her husband's brother and sobbingly narrated the incident to him. Complainant also states that there was no electricity on the day of the incident in their village and the time of incident was 9 to 10 p.m. and hence she could not lodge the complaint on the same day.

6 Complainant in her cross-examination admits that the FIR does not mention that she went to their filed and then she told the incident to her father-in-law. Complainant also says that FIR is silent about the meeting with her husband's brothers Prashant and Vasant when she was proceeding to the filed on the next day of the incident. In the cross-examination complainant says that she saw accused in the light at night in the house, whereas in the examination-in-chief, she says as there was no electricity she did not lodge the FIR on the same day. P.W.-4, who was declared hostile states she does not know anything about the incident and the police has not recorded her statement. P.W.-4 also states that it is not true to say on the date of incident complainant went to her house and narrated the incident. P.W.-5 Sub Inspector of Police admits that there were two rooms adjoining to complainant's house and also admits that offence has been registered against the brother-in-law of complainant as stated by accused in his statement under Section 313 of Cr.P.C. P.W.-6 – Investigating Officer states that in the statement of complainant it is mentioned that after opening the door of the house complainant had seen accused in the electricity light. Whereas, complainant in her examination-in-chief states that there was no electricity at the time of incident.

7 As regards the charge under Section 3(1)(xi) of SC/ST Act, the Kerala High Court in ***Suresh @ Makkan Suresh V/s. State of Kerala***¹ has held that in order to attract the provision of Section 3 (1) (xi) of SC and ST Act, there

1CRL.A. No.275 of 2008 dated 27th November 2013

has to be an element of racial prejudice or atleast the act should have been committed by accused with the full knowledge that it was being committed on a member who belonged to Scheduled Caste or Scheduled Tribe community. In the case, at hand there is no allegation or evidence to show that the alleged act was committed because she belonged to a lower caste. If that is absent, the offence cannot be attracted.

Similarly, the Madhya Pradesh High Court in *Baja alias Bajasingh V/s. State of M.P.*² held that to hold a person as having committed the offence under Section 3 (1) (xi), there has to be evidence to show that accused used criminal force on the prosecutrix to outrage her modesty only because she belonged to a particular caste or community.

The charge under Section 3 of SC and ST Act, therefore, has to fail as there is no evidence to prove that the ingredients listed in the above judgments are produced in the prosecution's case.

As regards charge under Section 354 and 452 of IPC, there is no evidence.

8 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.

9 Appeal dismissed.

Meera
M.
Jadhav

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by Meera M.
Jadhav
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(K.R. SHRIRAM, J.)