

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1054 OF 2004**

The State of Maharashtra	)	
V/s.		Appellant
1. Sardar S. Agre	)	
Age about 42 yrs.	)	
2. Yovraj Shripati Agre	)	
Age about 40 yrs.	)	
3. Prakash Shripati Agre	)	
Age about 35 yrs.	)	
4. Vishwas Shripati Agre	)	
Age about 30 yrs.	)	
5. Shivaji Bandu Agre	)	
Age about 44 yrs.	)	
6. Pandu Namdev Patil	)	
Age about 60 yrs.	)	
7. Ananda Namdev Patil	)	
Age about 47 yrs.	)	
8. Khandu Namdev Patil	)	
Age about 45 yrs.	)	
9. Krishnath Balu Patil	)	
Age about 25 yrs.	)	
10. Laxman Ganu Jarag	)	
Age about 45 yrs.	)	
All R/o Katebhogaon,	)	
Tal: Panhala, Dist: Kolhapur	)	Respondents

Mrs. Anamika Malhotra, APP for State
Mr. Shekhar Ingawale for Respondents

CORAM : K.R.SHRIRAM, J.
DATED : 23rd NOVEMBER 2020

ORAL JUDGMENT:

1 This is an appeal impugning an order and judgment dated 20-5-2004 passed by Learned 3rd Ad-hoc Asstt. Sessions Judge, Kolhapur, by which, respondents were acquitted for the offence punishable under Sections 3(1)(x), 3(1)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 and Section 7(1)(d) of Protection of Civil Rights Act and Sections 147, 148, 336, 337, 323 and 504 r/w Section 149 of Indian Penal Code.

2 Notice as required under the provisions of Section 15A (5) of SC/ST Act to the victim has also been given and there is an affidavit on record of one Ambrushi Dattatray Phadtare, Police Inspector, Panhala, affirmed on 23-10-2020, confirming service of the notice upon the victim Damaji Shamrao Kamble (Victim).

3 It is the prosecution's case that victim alongwith his wife, children and parents resided at Village Katebhogaon. Field Gat No.150 locally known as "Dhamnycha Mal" stands in the name of his father Shamrao Shankar Kamble. Field of accused no.1 Shripat Agre is adjoining to the field of victim's father. Accused no.1 erected a bund, which encroached into the field of victim's father. According to prosecution, on 15-6-2003 at about 5.30 p.m., victim alongwith his uncle Narayan Shankar Kamble, Pandurang Devappa Kamble, Abhijit Ramchandra Kamble, Shankar Ramchandra

Kamble went to their field to verify the extent of encroachment by accused no.1. That time, accused nos.1 to 5 were found in the field erecting the bund. When victim asked them the reason for erecting the bund and encroaching their field, accused nos.1 to 5 rushed towards them and abused them by saying “Ye Mharadyano Ethe Kay Vicharta, Tumche Ethe Kay Aahe”. Victim is a Mahar by caste and Mahars are schedule castes. It is alleged that accused no.1 beat the victim with a stick on his left and right side of head. Accused nos.2 to 4 assaulted Narayan Shankar Kamble with stick and Shankar Ramchandra Kamble was assaulted with a stone. Accused nos.4 and 5 have also assaulted Pandurang Devappa Kamble with a stick.

4 Victim, thereafter, rushed to Kale Police Station with the injured persons and lodged a complaint against the accused and investigation commenced. Enroute in front of one Ganesh Milk Diary there were further skirmishes and accused no.6 to 10 also joined in the abuses and assaults. After the completion of investigation, charge sheet came to be filed and charges were framed and the accused pleaded not guilty.

5 To drive home their case, prosecution led evidence of 12 witnesses. Out of 12 witnesses, 4 were eye witnesses, i.e., P.W.-3 Shankar Ramchandra Kamble, P.W.-4 Pandurang Devappa Kamble, P.W.-5 Damaji Shamrao Kamble and P.W.-9 Abhijit Ramchandra Kamble. The fact that victim and witnesses P.W.-3 and P.W.-9 belong to Hindu Mahar community which comes under scheduled caste, has not been disputed and also not challenged. The fact that the fields of victim as well as accused no.1 were adjacent to each other,

is also not disputed. The fact that the accused belong to Maratha community and were not scheduled caste and scheduled tribe, is also not disputed.

6 The origin of the dispute or fight is the alleged construction of bund and encroachment on the field of victim's father. But considering the evidence, the Trial Court concluded that the bund was an old one and not newly constructed, as alleged by victim. According to victim, it was constructed four days prior to the incident. Panch witnesses do not say that they saw any evidence of newly constructed bund. Evidence of PW-3 indicates in his cross-examination that on the date of the incident when the victim and others reached the field only accused no.1 was working in the field and they demolished the said bund and returned back. Moreover, PW-5 (victim) has admitted in his cross-examination that field was measured after the incident but denied that the said bund comes within the area of field of the accused. But prosecution has not produced any map to show the encroachment by the accused, which could have triggered the fight. PW-4, PW-5 and PW-9 state that they came to know about the erection of bund through one Rekha Kamble and Malubai Kamble, four days prior to the incident. But prosecution has not examined either Rekha Kamble or Malubai Kamble. Prosecution has mostly relied on the testimony of PW-3, PW-4, PW-5 and PW-9 to support their case against the accused, that the accused abused the victim and the witnesses on their caste with intention to humiliate the victim who is the member of scheduled caste. Section 3(1)(x) of SC/ST Act provides that there must be intentional insults or intimidation

with the intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. The use of expression of intentional insult or intimidates with the intent to humiliate makes it clear that *mens rea* is an essential ingredient of the offence. It must also be established that the accused have knowledge that victim is scheduled caste or scheduled tribe and the offence was committed for that reason. Merely calling a person by caste would not attract the provisions of SC/ST Act.

7 P.W.-5 (Victim) has stated in his evidence that accused nos.1 to 5 abused him on his caste by the words as quoted earlier. P.W.-3, P.W.-4 and P.W.-9 have also stated the same in their respective testimonies. No allegations of this nature is made against any of the other accused, therefore, certainly the charges cannot stick against them.

8 P.W.-3, in his cross-examination has stated that when they went to the field where accused nos.1 to 5 have alleged to have abused them on their caste, only accused no.1 was working in the field and the victim, P.W.-3, P.W.-4 and P.W.-9 demolished the bund and went away. From this, presence of accused nos.2 to 5 at the place of incident seems doubtful. P.W.-4, who had accompanied the victim has not stated in his evidence that at that time when the incident took place the accused persons abused them on their caste. P.W.-4 simply states accused nos.1 to 5 beat them with stones, sticks and clods. If, in fact accused nos.1 to 5 were present in the field and were constructing the bund as stated by victim and abused on the caste, certainly, P.W.-4 would not have forgotten to state that in the witness box. The

evidence of prosecution indicates that except accused nos.1 to 5 and family members of the victim no other persons were present there. P.W.-3 in his cross-examination state that only accused no.1 was working in the field. Therefore, Trial Court did not accept or believe that the accused abused the victim and his companion on their caste with intention to humiliate the victim, who was a member of scheduled caste in public view. Moreover, the fact that P.W.-5 (victim) has nowhere stated in his evidence that in front of Ganesh Milk Dairy all the accused abused him on his caste; he simply states that accused no.1 told him to file any complaint where they want. Had it been that the accused intentionally insulted the victim and others with intent to humiliate them, then certainly this would have found a mention in his report to the police or he would have stated before the court that the accused abused him on his caste in front of Ganesh Milk Dairy. P.W.-3, P.W.-4 and P.W.-9 state that the accused persons abused them on their caste even in front of Ganesh Milk Dairy, but P.W.-5 (victim) does not state this. The witnesses have also admitted in their cross-examination that villagers of that locality collected on the spot in front of Ganesh Milk Dairy but the prosecution has not examined any independent witness to corroborate testimony of the witnesses. Even I.O. has not recorded the statement of any independent witness who had witnessed the incident occurring in front of Ganesh Milk Dairy. Therefore, Trial Court arrived at the conclusion that charge framed under the SC/ST Act, Protection of Civil Rights Act, have not been proved beyond reasonable doubt.

9 As regards the other charges under the IPC, prosecution relied on evidence of Dr. Shivaji S. Bhui (P.W-6). P.W.-6 has opined that all injuries were simple in nature and could have been caused possibly by hard and blunt object. So, whether it caused by the accused as alleged, was the issue before the Trial Court.

10 P.W.-5 (victim) had stated that on 15-6-2003 at about 5.30 p.m. when he went with his companions to the field, he found accused nos.1 to 5 were erecting the bund and encroaching the field of the victim's father and when he asked the accused why they were doing, accused nos.1 to 5 assaulted them with sticks etc. P.W.-5 has stated who hit whom with what. P.W.-5 has also stated that when he was going to the Police Station, the accused intercepted in front of Ganesh Milk Dairy and there also the accused assaulted them with stick. P.W.-5 has not stated in his report Exhibit 35 that accused no.2 Youvraj beat him with stick and the blow was received by him below his ears. FIR Exhibit 35 also does not indicate that accused no.5 Shivaji beat Narayan Kamble with stick. As far as the first incident in the field, there are discrepancies in the evidence of P.W.-3, P.W.-4, P.W.-5 and P.W.-9. Though it is possible that there are minor discrepancies in the evidence of the prosecution witnesses and such discrepancies cannot be fatal to the prosecution's case, Trial Court was satisfied that these discrepancies were fatal to the prosecution's case. This was because P.W.-3 Shankar Kamble, who is alleged to be an injured eye witness that accused no.1 beat P.W.-5 with stick on his head and pelted stones and that in front of Ganesh

Milk Dairy accused nos.1 to 10 assaulted them with sticks resulting them sustaining injuries. In his cross-examination, P.W.3 stated that at the time of first incident in the field, only accused no.1 was found working and the victim and others demolished the bund and went away. This shows accused nos.2 to 5 were not present in the field when the first incident happened. Though, P.W.-4 and P.W.-9 have stated in their evidence that accused nos.1 to 5 assaulted with sticks and stones in the field, P.W.-3 contradicts them by saying that only accused no.1 was present in the field at the time of incident. Similarly, P.W.-3 says he received a blow with a stone on his private part. But P.W.-6, Medical Officer, in his cross-examination states that on examination of P.W.-3, no injury was detected on his body. Moreover, in the FIR, victim P.W.-5 has not stated the name of the accused, who pelted stones at P.W.-3. P.W.-9 also in his statement before police has not stated that all accused assaulted them with sticks. P.W.-5 states that accused no.2 beat him with stick on his head resulting in bleeding from his head. But P.W.-6 in his medical report has not mentioned about the bleeding injury on the head of P.W.-5. P.W.-4 in his evidence states that one Vinod and Ramu accompanied them to the field, but P.W.-3, P.W.-5 and P.W.-9 do not state this. Even I.O., Manoj Patil (P.W.-10), admitted in his cross-examination that during the investigation it transpired that Malubai Kamble was present at the time of incident in the field, but Malubai is not a witness.

11 According to prosecution witnesses, when they went to the field on 15-6-2003, accused nos.1 to 5 were erecting the bund. Prosecution has not

produced any evidence like digging equipment like hoe or spreader. If what the prosecution says is true, accused nos.1 to 5 might have used those digging equipments. Another point which made the Trial Court to come to its conclusion of acquittal is because accused nos.1 to 5 are from same family, whereas accused nos.6 to 10 are not the members of family of accused nos.1 to 5. Accused nos.6 to 10 does not hail from the same village Kanabhogaon. Accused nos.6, 8 and 9 are inhabitants of Village Panarwadi, which is 2km away from Village Kanabhogaon. The arrival of accused nos.6 to 10 at the spot of incident is doubtful. There are various other points in the impugned judgment that weighed against the prosecution. For the sake of brevity, I am not reproducing the same but points mentioned have my approval.

12 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***¹ in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal.

Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an

¹ (2007) 4 SCC 415

appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him 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, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

12 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.

13 Appeal dismissed.

(K.R. SHRIRAM, J.)

Meera
M.
Jadhav

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