

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

**SNEHA
NITIN
CHAVAN**

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CRIMINAL APPEAL NO. 1341 OF 2006

The State of Maharashtra ..Appellant

V/s.

Sanjay Parmeshwar Ghodake
and Anr.

..Respondents

Mr. Y.Y. Dabake, APP for the Appellant/State.
None for the Respondents.

CORAM : C.V. BHADANG, J.

RESERVED ON : 27 OCTOBER 2021

PRONOUNCED ON : 28 OCTOBER 2021

JUDGMENT

1. This is an Appeal by the State against acquittal of the Respondents-accused from an offence punishable under Section 506, 509 read with Section 34 of IPC, Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of the Protection of Civil Rights Act, 1955.

2. The prosecution case may be stated thus:

That the complainant Janardhan Rajguru is a resident of Hannur, Taluka Akkalkot, District Solapur. Ms. Ashwini

Manohar Rajguru is the niece of the complainant. At the relevant time Ashwini was taking education at Anant Chaitanya Prashala in IXth standard. According to the prosecution juvenile “S” (being a juvenile, his name is redacted) used to tease Ashwini. On 06.01.2003 at about 9 to 9.30 a.m. when Ashwini was proceeding to her school along with her friends Mangal Kalshetty, Kalpana Fasage and Kamal Ghodke, the juvenile “S” is alleged to have met her on the way and asked her whether she loves him. It is also alleged that “S” abused her on the basis of her caste by saying “Chambarde”. Ashwini disclosed the incident to her family members whereupon complainant accosted “S” as to why he had made obscene approaches and used abusive words to his niece. A scuffle ensued between them. It is said that “S” thereafter ran away from the spot.

3. Thereafter at about 9.45 a.m. “S” came on the spot along with the Respondents who are respectively his brother and father and they started abusing the complainant on the basis of his caste by saying “Chambardya Tula Lai Masti Aali, Tula Chirun Takto”. It is said that Respondent No.1 was having a sword in his hand and he made an attempt to assault the complainant. The persons who had gathered on the spot including one Manik Balshankar snatched the sword from the hands of Respondent No.1. It is said that the Respondent went away after threatening the complainant.

4. On the basis of the complaint lodged by Janardhan an offence came to be registered with police station Akkalkot North under relevant Sections and after investigation a chargesheet came to be filed.

5. The learned Magistrate framed charge against the Respondents under the aforesaid Sections to which they pleaded not guilty and claimed to be tried. The defence of the Respondent is of total denial and false implication.

6. At the trial, the prosecution examined in all 8 witnesses namely PW-1 Janardhan Rajguru, PW-2 Shivanand Lokhande, PW-3 Parshuram Balshankar, PW-4 Ashavini Rajguru PW-5 Magal Kalshetty, PW-6 Manik Balshankar, PW-7 Mallikarjun Umbarje and PW-8 Mujib Osman Karjatkar and produced the record of investigation. The Respondents also examined one witness in defence DW-1-Sopan More.

7. The learned Special Judge at Solapur by the impugned Judgment and Order dated 30 July 2004 in Special Case No. 6 of 2003 has acquitted the Respondents. Hence, this Appeal.

8. I have heard the learned APP. None appears for the Respondents. With the assistance of the learned APP, I have gone through the record.

9. It is submitted by the learned APP that there is evidence to show that the Respondents had abused the complainant in a public place on the basis of his caste and had also threatened him. It is submitted that the caste of the complainant and that of the Respondents/accused has been stated in the prosecution evidence which is sufficient. He submitted that the incident happened in a public place and considering the prosecution evidence, the learned Special Judge was not justified in acquitting the Respondents.

10. I have considered the circumstances and the submissions made. The learned Special Judge has acquitted the Respondents mainly on the ground that the caste of the complainant and that of the Respondent's has not been conclusively established on record. The learned Special Judge has found that the allegations of threatening the niece of the complainant are against the juvenile. The learned Special Judge has also found that the prosecution has failed to establish the precise spot of the incident at which the Respondent had abused and had threatened the complainant.

11. Section 3(1)(x) of the Act reads as under:

“3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

.....

.....

(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."

It can thus be seen that the offence requires that complainant/victim/aggrieved party has to belong to Scheduled Caste or Scheduled Tribe. At the same time, the accused must not belong or be a member of a Scheduled Caste or Scheduled Tribe. This is a prerequisite for the offence. Next it is required to be established that the accused had intentionally insulted or intimidated the complainant/aggrieved person with intent to humiliate a member of the Scheduled Caste or Scheduled Tribe in any place, within a public view.

12. A perusal of the prosecution evidence clearly shows that prosecution had failed to establish on the basis of the evidence on record that the complainant was belonging to Scheduled Caste. According to the defence taken by the Respondents apart from total denial, they also claimed that they belong to *Dhangar* community which is a scheduled Tribe and therefore no offence could be said to have been made out against them under the said Act. The prosecution has also failed to show that the Respondents do not belong or they are not the members of the

Scheduled Caste and Scheduled Tribes which is the prerequisite for the offence under the said Act.

13. In that view of the matter, the view taken by the learned Special Judge is a plausible view. It is now well settled that in an appeal against acquittal, this court can justifiably interfere only where the view taken by the Trial Court is shown to be perverse or is an impossible view. To put it differently even where two views are equally possible and the Trial Court chooses one out of them, the Appellate Court is not justified in interfering on the ground that the other view is more plausible (see the decision of the Supreme Court in *Chandrappa and Ors. V/s. State of Karnataka*¹).

14. Applying the said principle, in my considered view, no case for interference is made out. The appeal is without any merit and is accordingly dismissed.

(C.V. BHADANG, J.)

1 (2007) 4 Supreme Court Cases 415