

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 212 OF 2008

Ratan Nilkanth Raghorte,
Age about 51 years
Occupation Agriculturist and
Resident of Alesur, Taluka Lakhani,
District - Bhandara

.... **APPELLANT**

// **VERSUS** //

State of Maharashtra,
Through its Police Station Officer,
Lakhani, District - Bhandara

....**RESPONDENT**

Shri Akash Tiwari, Advocate for appellant.
Ms Shamshi Haider, Additional Public Prosecutor for respondent.

CORAM : **N.B. SURYAWANSHI, J.**
DATE : **15/02/2021.**

ORAL JUDGMENT

The appellant is aggrieved by his conviction under Section 354 of the Indian Penal Code and sentence of 15 days simple imprisonment with fine of Rs. 100/- imposed on him by the learned Special Judge, Bhandara, in Special Criminal Case (Atrocities Act) No.47/2007.

CASE OF PROSECUTION:

2. The prosecution case in short is that the accused No.1-Ratan was a Police Patil of village - Alesur, Tahasil - Lakhani, District- Bhandara. Accused No. 2- Ratnamala was his wife. On 26/06/2007 at about 9.00 a.m., when the complainant was performing her work in the courtyard, the accused started abusing from their courtyard. The filthy abuses and abuses in the name of caste were hurled at the complainant. It was alleged that at about 9.30 a.m. both the accused entered the house of the complainant and told the complainant to accept Rs. 10,000/- and to convince her brother to withdraw the case pending against their son. When the complainant told the accused that it was due to their sons deeds, her brother had lodged report against him. The accused then abused the complainant in filthy words in the name of caste. During the altercation, the accused threatened the complainant that police and Court cannot do any wrong to him and then abruptly held her hand and started dragging her. As a result, her bangles were broken. She fell down. Her brother was coming from the

shop at that time. On seeing him, the accused No.1 left the place. The complainant therefore went and lodged her report to Lakhani Police Station, Bhandara, which was registered as Crime No.103/2007 under Sections 3(1)(x) and (xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 448, 294, 506 and 354 r/w 34 of the Indian Penal Code. After completion of investigation, charge-sheet came to be filed against the appellant and his wife.

3. The learned Trial Court framed charge against both the accused persons for an offence punishable under Sections 3(1)(x) and 3(1)(xi) of the said Act and Sections 448, 354, 294 and 506 r/w Section 34 of the Indian Penal Code. The accused pleaded not guilty and claimed to be tried. Their defence was of denial. They claimed that due to village politics and since there was a dispute between the accused and brother of complainant namely; Narendra Kamble (PW.3), they were falsely implicated. After recording evidence, the learned Trial Court was pleased to

acquit the accused No.2 (wife of accused No.1) of all the charges. The appellant-accused was acquitted of the charges under Sections 3 (1) (x) and 3 (1) (xi) of the said Act as well as under Sections 448, 294 and 506 r/w 34 of the Indian Penal Code. However, convicted the appellant-accused for the offence punishable under Section 354 of the Indian Penal Code. Hence, the present appeal.

SUBMISSIONS:

4. Heard Shri Akash Tiwari, learned Advocate for appellant and Ms Shamsi Haider, learned Additional Public Prosecutor for respondent.

5. The learned Advocate for the appellant submitted that the evidence of prosecutrix does not inspire confidence and the political rivalry as well as dispute between the appellant and the brother of the complainant is brought on record. The complainant was in habit of lodging complaints. The evidence of only interested witnesses is adduced by the prosecution and they contradict each others.

He further submitted that there was a delay of five hours in lodging First Information Report. The delay is not explained by prosecution. The learned Trial Court has disbelieved the evidence of the prosecution while acquitting the appellant of the charges under the Atrocities Act as well as under the Sections 448, 294, 506 and 34 of the Indian Penal Code. However, the learned Trial Court has erred in convicting the appellant for the offence under Section 354 of the Indian Penal Code. He therefore submitted that the appellant is entitled for acquittal and the appeal deserves to be allowed.

6. Per contra the learned Additional Public Prosecutor for respondent-State supported the decision of the learned Trial Court. She submitted that proper appreciation of evidence on record on the part of the Trial Court is obvious from the fact that the learned Trial Court has acquitted the appellant of the other charges which were not proved. She submitted that the prosecution witnesses have corroborated the evidence of prosecutrix. According to her the learned Trial Court has rightly convicted the

appellant and there is no merit in the appeal. Hence the appeal is liable to be dismissed.

EVIDENCE OF PROSECUTION :

7. The prosecution, in support of its case, has examined eight witnesses. PW1 Dipak Sakhare was working as Assistant Police Inspector at Police Station Lakhani. He deposed that on 26/06/2007 at about 4.30 p.m. prosecutrix submitted written report (Exh.24), in the Police Station. He therefore registered offence at Crime No. 103/2007 under Section 3 (1)(x) and 3 (1)(xi) of the Scheduled Castes and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 and under Sections 448, 354, 294 and 506 of the Indian Penal Code.

8. PW2 is prosecutrix. She deposed that the incident had taken place in the month of June at about 10.00 a.m. Her brother Narendra had a dispute with the accused who was Police Patil at the relevant time. The accused No.1 i.e. present appellant, went to her house and

told her to accept Rs. 10,000/- and to forget the dispute. When she told the accused that she had no concern with the case and he may deal with her brother, at that time, the accused-appellant held her hand and threatened to beat her. The accused also abused her in the name of her caste in filthy language. He further threatened to kill her. She then raised an alarm, on which her brother and neighbour came to her house and the accused fled away.

During cross-examination she has given following admissions:

“It is true to say that as accused has his bathroom, therefore there was dispute between accused and my brother Narendra.”

“It is true to say that my brother reported to the G.P. that the said bathroom is within his land.”

“It is true to say that due to dispute pertaining to bathroom my brother and accused persons are not maintaining cordial relations.”

“It is true to say that accused has become police patil before about 5 to 6 years.”

“Before that, Shamkuwar of my village was Police Patil.”

“Said Shamkunwar belongs to my caste.”

“Accused is the head of Nagalwade’s party. Jailapal, Wanve and others are the rival faction of the party of accused.”

“It is true to say that I annexed a complaint to remove the accused from police patilship, which was produced before the JMFC Sakoli.”

“It is true to say that till today I have lodged 11 complaints against the persons of my village.”

“One Nitin Shamkunwar was living with me for two years.”

“It is true to say that Narendra Kamade was assaulted by myself and Nitin and an offence is registered in the police station.”

“It is true to say that at the time of marriage of my daughter accused had quarreled with me.”

“It is true to say that there was dispute between me and accused as accused defamed my daughter.”

“It is true to say that I have cordial relations with Jaipal Wanave.”

“ In the last election Nagalwade’s party was elected.”

“It is true to say that I am not maintaining the cordial relations with accused since last 3 years.”

9. Narendra, brother of prosecutrix, was examined as PW3. He supported the case of prosecutrix by

deposing that on the day of incident at 10.00 a.m. he was sitting in the shop of one Shailendra. His daughter Pooja came there and told him that quarrel was going on in the house of his sister. He went there. He noticed that the quarrel was going on and accused No.1 was present in the courtyard of his sister. His parents were present in the 'varanda'. The appellant told to his sister to accept Rs.10,000/- to compound the matter. His sister refused to accept the money and told the accused that it was his dispute and he should solve it. The accused-appellant then held the hand of his sister and abused her in filthy language and in the name of caste. The accused No. 2 was also present there. Accused No.2 said to him that he was not convincing his sister. The accused No.2 then said nasty things about his sister.

During cross-examination, he admitted to have a dispute with the accused in respect of their bathroom, which according to him, was on his land. He admitted to have made representation in that behalf to the Gram Panchayat. He also admitted that he made complaint to the

Sub Divisional Officer, Sakoli against the appellant-accused to remove him from the post of Police Patil.

Omissions are brought on record in his evidence to the effect that;

“Accused No.1 held the hand of my sister and he abused her as “xxxxx, xxxxx.”

" Accused No.1 did not hold the hand of my sister in my presence."

“Accused No.2 abused my sister that she is “Nangi” and allows ten persons to sit.”

He further deposed that he was not aware that there were two parties in the village. He also did not know that Jaipal Wanave belonged to the rival party of the appellant-accused.

10. PW4 is Suresh Shamkuwar. He claimed to have seen Accused No.1 present in the courtyard of prosecutrix on the day of incident. He was abusing the prosecutrix in the name of her caste. He was also telling prosecutrix to convince her brother by accepting Rs.10,000/-.

During cross-examination he admitted that he was brother-in-law of the prosecutrix. Sometimes he used to visit house of the prosecutrix. He admitted that there were two rival groups of Wanve and Raghorte in their village.

11. PW.5- Jaipal Wanave claimed to have witnessed the incident. He heard shouts of quarrel in the house of prosecutrix and went there. From the road, he saw that appellant-accused was holding the hand of prosecutrix and was dragging her. He was abusing the prosecutrix in the name of her caste in filthy language. Then daughter of Narendra went to call him and came on the spot along with Narendra. Then the accused persons abused Narendra in filthy language. Since Narendra raised his voice, the accused persons returned to their house. When he saw the accused No.1-Ratan holding hand of prosecutrix, he asked whether the action of accused No.1 was proper. In the meanwhile, Narendra came there and accused No.1 released the hand of prosecutrix.

In the cross-examination he admitted to be serving as a Superintendent of Adivasi Chhatralaya, Garada of Lakhani Tahsil since 1989. He used to live at Lakhani as well as Alesur. He denied that there were two factions in the village, one of Nagalwade and another of himself. He admitted to have complained against Nagalwade about the elections of Vividh Karyakari Society. As per his duty, he had to remain present at Garada Chhatralaya from 11.00 a.m. to 5.00 p.m. but according to him, it was not hard and fast rule. The omissions about the abuses given by the appellant-accused in the name of caste were proved in his evidence, so also that the accused abused to Narendra Kamble. He was unable to explain as to why those facts were not mentioned in his previous statement.

12. Natthu Kamble uncle of prosecutrix was examined as P.W.6. According to him, the incident took place between 9.00 a.m. to 10.00 a.m., when he was present in his house which was near the house of prosecutrix. He heard the abuses given by accused No.2 to

the prosecutrix. On hearing the noise, when he went towards the spot of incident he noticed that the appellant/accused had caught hold of the hand of the prosecutrix. He questioned the appellant-accused whether his action was proper. In the meanwhile, Narendra came there and the appellant-accused released hand of prosecutrix.

During cross-examination he admitted that there was a dispute of land between the accused and prosecutrix and Narendra and they were not maintaining cordial relations. He denied that there was a party of Jaipal Wanve in the village.

Avinash Ramchandra Rajurkar (PW.7), Anant Ramdas Thorat (PW.8) are the Investigating Officers.

CONSIDERATION :

13. The prosecution evidence reveals that there was enmity between the appellant-accused and Narendra brother of the prosecutrix. The prosecutrix seems to be in the habit of lodging complaints against people, since she has

admitted to have lodged eleven complaints against persons from her village. She had also lodged complaint to remove the appellant from the post of Police Patil. She had admitted that relations between the accused and herself as well as her brother were not cordial. Her house was situated in the thickly populated area and there were houses of other villagers around her house. Before the appellant-accused became Police Patil for about 5 to 6 years, Shamkuwar, who belonged to the caste of prosecutrix was the Police Patil. There were two parties in the village one headed by Wanave and another by Nagalwade and the appellant was head of Nagalwade's party. Prosecutrix also admitted that one Nitin Shamkuwar was living with her for two years and he was ready to marry with Rina, daughter of prosecutrix. The prosecutrix had also lodged a report against the mother of Nitin Shamkuwar. The prosecutrix has also admitted that Narendra Kamble was assaulted by her and Nitin and an offence was registered in the Police Station. She also admitted that at the time of marriage of her daughter, accused had quarreled with her. She has also admitted that

there was dispute between herself and accused as the accused, according to her, defamed her daughter. She admitted to have cordial relations with Jaipal Wanave and that in the last elections Nagalwade's party was elected. She admitted that she did not have cordial relations with the accused from last three years. All the other prosecution witnesses examined by the prosecution were either belonging to the caste of the prosecutrix or from the rival party of the appellant/accused.

14. Though Narendra (PW3) brother of prosecutrix has tried to support the case of prosecutrix, his evidence is not consistent with the evidence of Prosecutrix. The prosecutrix in her evidence does not state about the presence of her parents in the 'varanda' at the time of incident and the presence of Narendra, which is stated by him. Material omissions are brought on record in his evidence in respect of the accused catching hold of the hand of the prosecutrix and about the abuses given by the appellant-accused. If PW3-Narendra was present at the

time of incident then there was no occasion for the accused-appellant to ask his sister to convince him. The appellant would have directly approached PW3 for settlement. Conduct of PW3 also does not appear to be natural. He did not intervene on seeing his sister being abused in filthy language and her modesty was being outraged.

15. PW4 Suresh is brother-in-law of PW2. Though he claims to have seen the incident, he does not say that the appellant had held the hand of prosecutrix and dragged her.

16. Jaypal - PW5 appears to be a chance witness. He was serving as Superintendent of Adiwasi Chatralaya, Garada, Tah. Lakhani. He denied that there were two factions in the village one of Nagalwade and another of himself. He has improved his version during the evidence by stating the abuses given by accused No.2 to the prosecutrix and by saying that accused Nos.1 and 2 abused Narendra PW3 in filthy language. These were proved as omissions in his cross-examination.

17. PW6 - Natthu Kamble is uncle of prosecutrix. He admitted that there was dispute of land between the accused, prosecutrix and her brother and that they were not maintaining cordial relations.

18. In view of this evidence, it is clear that there was dispute between the accused on one hand and prosecutrix and her brother on the other hand. In these circumstances, the prosecution story seems improbable that the appellant-accused would approach the prosecutrix for settling the dispute between the appellant-accused and the brother of prosecutrix as the prosecutrix has admitted that she and accused were not on talking terms and their relations were not cordial. In that view also the prosecution story that accused approached prosecutrix cannot be believed. The prosecution witnesses are contradicting each other on material particulars. The manner in which the incident has taken place has been stated differently by prosecution witnesses. The evidence of prosecution witnesses therefore, does not inspire confidence. All the

prosecution witnesses are interested witnesses. They are either related to prosecutrix or they belong to her caste. They are not telling truth before the Court.

19. In the written report (Exh.26), the prosecutrix has categorically stated that her left hand was caught by the accused and he started pulling her, due to which her bangles were broken and fell on the spot. She also fell down. In the spot panchanama (Exh.29), it is specifically mentioned that no pieces of bangles were seen on the spot of occurrence. This also casts serious doubt about the version of prosecutrix. Admittedly, the appellant-accused belonged to the rival political groups who had come in the power. Representations were given by the prosecutrix and by some of the prosecution witnesses to remove the appellant from the post of Police Patil. It is also an admitted fact that the prosecutrix has filed eleven complaints against the villagers. Thus, she seems to be in the habit of lodging complaints against the villagers. Further, the prosecution

has failed to explain the delay of five hours in lodging the First Information Report.

20. It was a specific case of the prosecutrix that the appellant/accused entered her house and pulled her hand and dragged her and abused in filthy language and in the name of her caste. The learned Trial Court has disbelieved the prosecution evidence in that behalf and has acquitted the appellant for offence under Sections 448, 294, 506 r/w 34 of the Indian Penal Code. But erroneously proceeded to convict the appellant for the offence punishable under Section 354 of the Indian Penal Code on the basis of same evidence. The learned Trial Court though observed that there was a possibility that the prosecutrix might be helping Narendra to settle his account against the accused persons and therefore the testimony of the prosecutrix should not be believed, still it proceeded to believe prosecutrix while convicting appellant-accused for offence punishable under Section 354 of the Indian Penal Code without assigning proper reasons. The Trial Court has erroneously appreciated

the evidence of the prosecution and has erred in recording conviction. The presence of the prosecution witnesses on the spot is also doubtful in view of their inconsistent version about the incident. The Trial Court has failed to appreciate that prosecution evidence which does not inspire confidence and the prosecution has failed to prove the offence against the appellant beyond reasonable doubt. The judgment of the learned Trial Court is therefore unsustainable.

21. For the aforestated reasons, the conviction of appellant can't be sustained and the appeal deserves to be allowed. Hence the following order :

(i) The impugned judgment and order of conviction passed by the Learned Special Judge, Nagpur in Special Criminal Case (Atrocities Act) 47/2007, is hereby set aside.

(ii) The appellant is acquitted of the charge under Section 354 of the Indian Penal Code.

(iii) The bail bonds of the appellant stands cancelled.

(iv) Fine amount, if any, be repaid to the appellant.

(v) The appellant to execute personal bond of Rs.10,000/- with one surety in the like amount in terms of Section 437-A of the Code of Criminal Procedure.

JUDGE

J.Pethe..