

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 898 OF 2022**

Sunil Dattatray Hajare & Ors.

.....Appellants

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Ritesh Thobde the Appellants.

Mr. S.S. Hulke APP, for the Respondent-State.

**CORAM : A. S. GADKARI AND
MILIND N. JADHAV, JJ.**

DATE : 13th SEPTEMBER, 2022.

P.C.:-

1) This is an Appeal under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short, '*the SC and ST Act*') for pre-arrest bail under Section 438 of the Code of Criminal Procedure (for short, '*the Cr.PC.*') in CR No.35 of 2022 dated 20th February, 2022 registered with Barshi Taluka Police Station, District Solapur for the offences punishable under Sections 326, 324, 452, 504, 506, 143, 147, 148 read with Section 149 of the Indian Penal Code (for short, '*the IPC*'), under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the SC and ST Act, under Section 135 of Maharashtra Police Act and under Sections 4 read with Section 25 of the Indian Arms Act.

2) Heard Mr. Thobde, learned Advocate for the Appellants at length and the learned APP for State. Perused charge-sheet.

3) As per the charge-sheet, Appellants are Accused Nos.3, 4 and 8 respectively. The first information report is lodged by Mr. Balasaheb Shravan Mhaske.

The prosecution case in brief is that, there was earlier enmity between the Appellants and co-accused against the first informant and his son Chandan. That, on 18th February, 2022 at about 7.00 p.m. when the informant along with his family members was sitting in the shop of Chandan Mhaske, the Appellants along with other 5 accused persons came at the scene of offence, armed with deadly weapons such as swords, iron rods and iron pipes and started assaulting the informant. When the informant tried to intervene and pacify the said fight, it is alleged that the Appellants in unison abused him on his caste in filthy language and thereafter assaulted brother of informant Dattatraya Mhaske.

The abuses hurled by Appellants are specifically mentioned in the first information report and its original Marathi version is reproduced hereinbelow for the sake of convenience.

“तु महाराचा आहेस, महाराला एवढा रुबाव कशाला.”

The free translation of the same is “*you belong to Mahar community and how can you make such a pomp show though being of the*

said caste.”

There are at least 4 witnesses to the said incident, undoubtedly the said incident has taken place at a public place and within public view.

4) Mr. Thobde, learned Advocate for the Appellants submitted that, the said witnesses are partisan witnesses as they were close relatives of the informant and injured witnesses. He submitted that, the investigation of present crime is completed. That, the recovery of weapons at the instance of other accused persons has already been effected and therefore custodial interrogation of the Appellants is not necessary. He submitted that, the trial Court has committed error in not appreciating the said facts and therefore the impugned Order may be set aside by allowing present Appeal.

5) The aforestated facts as recorded in paragraph No.3 have been deciphered from the statements of witnesses from the charge-sheet. It is the settled position of law that, merely because a witness is a close relative his evidence cannot be discarded.

Reliance is placed on a decision of the Supreme Court in the case of *Masalti Vs. The State of Uttar Pradesh*, reported in AIR 1965 S.C. 202 (V 52 C 38). The Hon'ble Supreme Court in the said Judgment has held that- *“There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies*

in the evidence; whether or not evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

The Hon’ble Supreme Court in the case of *State of Rajasthan Vs. Teja Ram & Ors.* reported in 1999 Cri LJ 2588, in paragraph No.20 has held that, *“The over-insistence on witnesses having no relation with the victims often results in criminal justice going awry. Merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses.”*

At this stage, a useful reference can be made to a decision of the Hon’ble Supreme Court in the case of *Vadivelu Thevar vs. The State of Madras* reported in AIR 1957 S.C. 614, wherein the Supreme Court has

enumerated three categories of witnesses namely, (i) wholly reliable (ii) wholly unreliable (iii) neither wholly reliable nor wholly unreliable.

6) Perusal of statements of informant and other eye-witnesses inspires confidence in the mind of this Court and according to us it falls under the category of '*wholly reliable witness*'. Even otherwise, we are of the considered opinion that, the abuses hurled by Appellants to the first informant and his family members on their caste were at a public place and within a public view and therefore bar under Section 18 of the SC and ST Act is clearly attracted to the present case. In view thereof, the filing of charge-sheet in the crime is of no consequence while considering the Application for pre-arrest bail.

7) Perusal of impugned Order dated 25th August, 2022 clearly reveals that, the trial Court has not committed any error either in law or on facts while passing it.

In view of the above, we find that there are no merits in the Appeal.

Appeal is accordingly dismissed.

(MILIND N. JADHAV, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed by
SANJIV SHARNAPPA
MASHALKAR
Date: 2022.09.16
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