

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

CRIMINAL APPEAL NO.11/2015

APPELLANT : Smt. Sunita w/o Shrawan Choure
Aged about 32 years,
Occupation – Business,
R/o – Nagardhan, Tah – Ramtek,
District - Nagpur.

...VERSUS...

RESPONDENTS : 1. State of Maharashtra
Through PS.O. Ramtek,
Distt. Nagpur.

2. Pundalik s/o Tarachand Thakre,
Aged about 50 years.

3. Amol s/o Pundalik Thakre,
Aged about 20 years,

Both R/o Mali Mohalla, Nagardhan,
Tah – Ramtek, Distt – Nagpur.

Shri D.C. Chahande, Advocate for appellant
Shri Amit Chutke, APP for respondent no.1
Shri R.K. Tiwari, Advocate for respondent nos.2 to 3 is absent

CORAM : AVINASH G. GHAROTE, J.

DATE : 24/06/2022

ORAL JUDGMENT

1. Heard Shri Chahande, learned Counsel for the appellant and Shri Chutke, learned Additional Public Prosecutor for the respondent no.1. Shri Tiwari, learned Counsel for the respondent nos.2 and 3 is absent.

2. Shri Chahande, learned Counsel for the appellant, by inviting my attention to para 20 of the impugned judgment submits, that the observation of the learned Sessions Court to the effect that the prosecution has failed to prove that the accused were not members of the Scheduled Caste and Scheduled Tribe is not justified, as there is no such obligation on the prosecution and at the most, this can be considered as a defence, which may be raised by the accused. He further submits that the evidence of PW 1 - Sunita Choure/complainant, PW 3 – Ainul Hasan Nural Hasan Siddiqui, who is claimed to be eyewitness, PW 4 – Sanjay Vithobaji Ninawe as well as PW 5 – Racelal Prasadi Binjade, who are also the eyewitnesses, would demonstrate that the offence has been committed. It is, therefore, submitted that the learned Sessions Court has not properly appreciated their evidence and therefore, by acquitting the accused for the offence under Sections 294 and 506 -B

read with Section 34 of Indian Penal Code and Section 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the SC & ST Act” hereinafter) has erred in fact as well as in law and therefore the impugned judgment of acquittal is required to be quashed and set aside.

3. Shri Chutke, the learned Additional Public Prosecutor supports the impugned judgment and submits that there are material omissions in the evidence and the learned Sessions Court has rightly appreciated the evidence, which has come on record in acquitting the accused persons.

4. Shri Tiwari, learned Counsel for the respondent nos.2 and 3 is absent.

5. With the help of Shri Chahande, learned Counsel for the appellant as well as Shri Chutke, learned Additional Public Prosecutor for the respondent no.1, I have gone through the evidence in the paper-book as well as the documents in the R & P.

6. The incident is claimed to be dated 29/11/2013 when the PW 1 - Sunita Chore/Complainant lodged a report with the police station alleging that when she was alone in her house at about 11:00 a.m. the accused no.1 - Pundlik Thakre abused her by uttering the words "Sali Madarchod Chambharin" and rushed on her person by breaking a branch of shoeflower tree. The accused no.2 - Amol Pundlik Thakre, who is the son of the accused no.1 is claimed to be instigating the accused no.1. On the said report, which is at Exh.9, an offence was registered under Sections 294 and 506 -B read with Section 34 of Indian Penal Code and Section 3 (1) (x) of the SC & ST Act vide Crime No.3075/2013. The statements of PW 1, 3, 4, 5 and 6 were recorded, the spot panchanam was prepared, which is claimed to have been witnessed by PW 2 and the charge-sheet was filed. The learned Sessions Court by the impugned judgment dated 31/10/2014 has acquitted the accused/respondent nos.2 and 3. At the outset, what is material to note is that the only allegation against the accused no.2 is of instigating the accused no.1. Even the complainant/PW 1 does not indicate any utterances by the accused no.2 of any nature whatsoever, except a general statement that both the accused abused her by caste. She does not state that any single

word was uttered by the accused no.2, apart from what is stated in her examination-in-chief (pg.20), which clearly appears to be improbable. The evidence of PW 3 also does not attribute any utterance of any nature whatsoever to the accused no.2. The evidence of PW 4 and 5 though says that both the accused were accusing the complainant by uttering caste words, however, that is contrary to the evidence of PW 1 and PW 3, who have not attributed any utterances of any nature whatsoever to the accused no.2 – Amol. The evidence of PW 6 - Shrawan is only hearsay evidence as he was not present on the spot and does not carry any evidentiary value insofar as the incident is concerned.

7. The evidence of PW 1 - Sunita in this regard turns material. In her examination-in-chief, she categorically states that she was present in her courtyard at the relevant time. The time is also fluctuating inasmuch as it is not a specific time, but is stated to be a duration of one hour i.e. between 10 a.m. to 11 a.m. The accused nos.1 and 2 are also claimed to have been present at the time of the incident in the courtyard of the house of the complainant PW 1, who states that when the accused broke the branch of a tree

with an intention to beat her, she went inside the house and closed the door. Admittedly, the branch has not been seized. PW 1 in her evidence further makes a statement that the accused had tried to kill her, however, nothing is elaborated on this count. PW 1 further says that thereafter also the accused were abusing her, however, her evidence is silent as to what were the nature of the abuses at that point of time. She further states that thereafter her son-in-law Racelal (PW 5) and his friend, who is later stated to be Siddiqui (PW3) had come to the house and enquired about the incident. The examination-in-chief itself indicates that PW 1 does not indicate as to when she came out of the house as she claims that earlier in point of time she went to the house and closed the door. She also does not say as to what were the abuses hurled at her by the accused persons when PW 5 - Racelal and PW 3 - Siddiqui are said to have arrived at the spot of the incident. Her cross-examination is further telling inasmuch as she admits in para 5 (pg.22) that though she has stated in her report Exh.9 that the accused no.2 had abused her by uttering the words "Sali Chambharin" and that she has stated to the police that the accused no.2 had broken the branch of a tree and rushed upon her to beat her and even after closing the door the accused

were abusing her and PW 5 and PW 3 had come to her house and enquired with her about the incident, all these statements are absent in Exh.9, the report, for which she could not assign any reason. The learned Sessions Court has rightly held that the absence of these statements including the utterances on account of caste as claimed by the complainant in her oral report, to be material omissions and I do not see any reason to defer from the said finding. It is a trite position of law that in order to invoke a particular provision, the ingredients necessary for applicability of such a provision should be contained in the complaint/report itself, which, however, are absent in the present case. PW 1 - Sunita further admits that on account of her having constructed a staircase in the lane between her house and the house of the accused no.2, there has been enmity between her and the accused. She also admits that the accused no.2 had lodged complaint against her construction and that the staircase was in the lane. She further admits that since 2004, there was a dispute going on between herself and her husband on the one hand and the accused on the other and prior to Exh.9 she had also lodged three complaints against the accused persons. All this would indicate that insofar as PW 1 is concerned, the basic requirements of the

provisions of law, which are alleged to have been violated by the accused persons, are absent in the complaint and there is material omission as brought on record in para 5 of her cross-examination, apart from which, on account of the longstanding enmity, her evidence has to be critically analysed and doing so does not stand scrutiny as indicated above. The evidence of PW 3 - Siddiqui (pg. 38), who is the friend of PW 5- Recelal, who is the son-in-law of the complainant/PW 1 has to be considered in the contextual background of his relationship with PW 5. Though PW 3 says that when he reached the residence of PW 1, the accused no.1 was abusing the complainant/PW 1 by using her caste name, however, PW1 herself in her examination-in-chief is silent about it, as she merely says that “thereafter also accused were abusing me. That time my son in law Reslal Binjade and his friend came to my house.” She does not state the nature of abuses, which are claimed to be given by accused persons, when PW 3 and PW 5 came to her house. The evidence of PW 3, therefore, cannot be said to be sacrosanct and on account of the discord between the evidence of PW 1 and PW 3 the same cannot be relied upon. PW 4 claims to have gone to the house of the complainant on 29/11/2013 at about 10:30 to 11 a.m.

to borrow a motorcycle, where he claims to have seen a quarrel going on between accused no.1 and the complainant and further he claims to have heard the accused abusing the complainant using the caste word. What is material to note is that neither PW 1 nor PW 3 and 5 have stated anything about PW 4 being present on the spot, which makes his evidence suspect. That apart, neither PW 1, 3, 4 and 5 attribute any single utterance or spoken word to the accused persons apart from a single word of caste as indicated above, which again indicates the improbability of the allegation, as during a verbal fight, it cannot be said that what was uttered was a single caste word abuse and nothing else. PW 4 also admits in the cross-examination that he is a childhood friend of PW 6, the husband of the complainant and therefore, also appears to be an interested put up witness. The evidence of PW 5 is not in consonance with the evidence of PW 1, who does not state what were the nature of abuses, which were being hurled at her, when PW 3 and PW 5 are claimed to have come to the spot. That apart, in the entire evidence of PW 1, 3, 4 and 5, the place where the accused nos.1 and 2 were standing has not been indicated. Though PW 1 states that at the initial time when the abuses were hurled at her, the accused nos.1

and 2 were standing in the courtyard of her house and she had gone inside the house and closed the door, thereafter there is no mention about the location of accused nos.1 and 2 in the evidence of PW 3, 4 and 5, which is necessary considering the language of the provision, sought to be applied. It is also material to note that insofar as the evidence of PW 5 is concerned, in the cross-examination, it has been put to him that the abuses, which are claimed by him in his examination-in-chief and in his statement as recorded by the police, which he has admitted so and therefore, it is apparent that there is a material omission regarding the abuses on the basis of caste insofar as PW 5 - Racelal is concerned, which destroys the credibility of his evidence. The omissions in the evidence of PW 3 and PW 5 have been proved in the evidence of PW 8 - Dipak Atmaram Salunke the S.D.P.O., who has done the investigation. What is also material to note is that if the statement of PW 1 is accepted that the accused persons were standing in the courtyard at the relevant time, and it has not been brought on record that the position was accessible to public view then Section 3 (1) (r) of the SC & ST Act would clearly not be attracted. It is also to be noted that the spot panchanama has not been proved as PW 2 has turned hostile and therefore, the

location of the accused persons whether it was within public view or not is also not incapable of being ascertained without any clarity. That apart, none of the neighbours have been examined to indicate that the quarrel had taken place within public view, which position has been admitted by PW 8 the Investigating Officer. Even PW 1 - Sunita in her cross-examination in para 4 (pg.22) while naming her neighbours has admitted that “it is not true to say that the above person can hear the abuses if hurled near my house”, which would indicate that none of the neighbours had heard any abuses claimed to have been hurled by accused nos.1 and 2.

8. It is, therefore, apparent that a conspectus of the entire incident, which is claimed by the complainant as well as the material which has come on record, would indicate that the prosecution has failed to establish the ingredients necessary for the aforesaid offences, to be present and therefore, I do not see any ground to defer from the well reasoned judgment of the learned Sessions Court, which has taken into consideration and assessed the factual position as well as the evidence led before him in a correct manner.

The criminal appeal is, therefore, without any merits and is accordingly dismissed. No costs.

(AVINASH G. GHAROTE, J.)

Wadkar