

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL APPEAL NO.193 OF 2023

DATTA @ DNYANOBA KHARAT @ JADHAV AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. M.P. Kale, Advocate for appellants

Mrs. V.S. Choudhari, APP for respondent No.1

Mr. R.O. Awasarmol, Advocate for respondent No.2

Mr. S.V. Dixit, Advocate (appointed) for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI
ABHAY S. WAGHWASE, JJ.

DATE : 19th JULY, 2023

ORDER :

1 Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short hereinafter referred to as “The Atrocities Act”) to challenge order Exh.60 in Special Case No.146/2021 by learned Special Judge under the Atrocities Act/Additional Sessions Judge-5, Parbhani on 09.12.2022, thereby rejecting the said application which was filed by the present appellants under Section 227 and 239 of the Code of Criminal Procedure for

discharge.

2 Heard learned Advocate Mr. M.P. Kale for appellants, learned APP Mrs. V.S. Choudhari for respondent No.1 and learned Advocate Mr. S.V. Dixit as well as learned appointed Advocate Mr. R.O. Awasarmol for respondent No.2.

3 It is vehemently submitted on behalf of the appellants that learned Special Judge erred in rejecting the said application as he failed to consider the facts of the case. The First Information Report was registered on the basis of statement of the respondent No.2 – informant when he was admitted in the hospital. The learned Advocate for the appellants has taken us through the contents of the First Information Report and he submits that if the contents are taken to be true, then five persons assaulting with wooden sticks and sword cannot suffer simple injuries. If we consider the Medico Legal Certificate dated 28.05.2021 in respect of examination of the informant around 10.30 p.m. on 24.05.2021 issued by the Medical Officer, General Hospital, Parbhani, then there are only two simple injuries; one is CLW over left parietal bone and second is contusion over left forearm. He further points out that as per the First Information Report, the first alleged incident had taken inside the house and, therefore, there is no question of attracting

the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act. He then says that he ran away from the house, he was chased by the accused and at a distance he was again assaulted. Though he says that the blood was oozing profusely, the medical certificate does not support it. Nobody has either witnessed or heard the alleged abuses in the name of caste. Further, the simple injuries cannot attract the ingredients of Section 307 of the Indian Penal Code. Therefore, the learned Special Judge ought to have discharged the appellants.

4 Per contra, the learned APP representing respondent No.1 as well as learned Advocates representing the respondent No.2 support the reasons given by the learned trial Judge. Further, the statement of witness Sudhakar Jadhav is pointed out stating that even the accused persons rushed towards him when he had tried to rescue the informant and then he had seen the accused persons running after the informant. He has also seen accused Datta assaulting with some sharp weapon to the informant from a distance. Therefore, prima facie when ingredients of the offence are attracting, the accused cannot be discharged.

5 At the outset, it is to be noted that at the stage of framing charge before a Sessions Court or Special Court, then Section 227 of the Code of

Criminal Procedure only would be attracted and not Section 239 of the Code of Criminal Procedure. The entire material in the charge sheet has to be considered and the charge cannot be restricted to the First Information Report. The facts of the case disclose that at 7.30 hours of 25.04.2021 when the informant was in his house alone, at that time the accused persons went and alleged to have abused informant in the name of caste. Thereafter, they started assaulting by sticks. He has assigned specific role to accused Datta Jadhav and also says that he was assaulted for about 20-25 minutes. He has stated that he had received covert injury to his right hand, back, head, calf, eyes and head by means of stick. This is the first incidence which he has stated. The words used by him are - “ मी एकटाच घरी होतो..... दरम्यान मी घरी बसलो असता तेथे आले ”. If we consider the spot which is alleged to have been shown by one Rajashri Gaikwad, who is stated to be an eye witness. That spot is on the road in front of the house of the accused. Road is an open space in a passage (बोळ). It would be then for the Special Court to appreciate whether the incident has taken place inside his house i.e. there is scope for interpretation of the word “within the purview of public place”. Further, the second incident is stated to have been committed on public road and at that time it is said that Datta Jadhav had assaulted the informant with sword. The accused persons had abused him in the name of caste at that place also, and the incident is stated to have been witnessed by one Sudhakar Bhimrao

Jadhav and Digambar Apparao Bhosale. The appellants are pointing out the Medico Legal Certificate, which shows that the injuries which were possessed by the informant were simple in nature. The first injury is to the parietal bone. There is discovery of sword and, therefore, on this point also it is required to be appreciated by the learned trial Judge, as to what was the intention behind the act and when the First Information Report specifically says that all the accused were saying that the informant should be killed, prima facie we are of the opinion that ingredients are attracted. Not mentioning of the caste in specific sentence cannot be taken as basic lacuna to discharge the accused from the offences under the Atrocities Act. The tenor of the First Information Report would show that he intended to indicate that he is the member of scheduled caste. We do not find any illegality or error committed by the learned Trial Judge in rejecting application Exh.60. There is no merit in the present appeal. The appeal stands dismissed. We quantify the fees to be paid to learned Advocate appointed to appear for respondent No.2 at Rs.7,000/- (Rupees Seven Thousand only).

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)