

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

CRIMINAL APPEAL NO. 178 OF 1997

Kailashchandra Satyaprakash Agarwal ...Appellant

Versus

The State Of Maharashtra ...Respondents

....

Adv. Tripti Shetty a/w Mr. Suresh Jhamble, Advocate for the Appellant.

Mr. Y. M. Nakhwa, APP for Respondent-State

CORAM : PRAKASH D. NAIK, J.

DATE : 17th JULY, 2023.

JUDGMENT:

1. The Appellant challenges the Judgment and Order dated 27th September, 1996 passed by learned Additional Sessions Judge, Sessions Court, Mumbai in S.C.S.T. Special Case No.12 of 1995 whereby the Appellant is convicted for offences punishable under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act'). The Appellant is sentenced to six months simple imprisonment and fine of Rs.100/-.

2. The case of prosecution is as under :

- i. The complainant was on official tour to Mumbai on 31st March, 1995. He went to meet his relation Mr. Laxman Harle

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working in Head Office of the Central Bank of India situated at Chandramukhi Building, Nariman Point, Mumbai.

ii. Complainant was accompanied by his friend Mr. Jagdish Singh Dhanota. After reaching at the ground floor of Chandramukhi Building, the complainant enquired about whereabouts of his relation Mr. Harle. He was informed that office of Mr. Harle is situated at 16th floor of the said building.

iii. Complainant his friend Mr. Dhanota and 7 to 8 other persons boarded the lift on the ground floor of the building for reaching on 16th floor.

iv. The lift stopped at 8th floor of the building. The complainant, his friend Mr. Dhanota and the lift man remained inside the lift and all other persons got out of the lift at 8th floor.

v. While getting out from the lift, one person whose name was not known to the complainant, made the remarks “Scheduled Caste Maharoke liye lift khali karo”

vi. This utterances of Accused hurt complainant and he felt insulted and humiliated on the caste.

vii. The complainant reached at 16th floor and informed about the said incident to his relation Mr. Harle.

viii. The complainant, Mr. Harle and Mr. Dhanota went to 8th floor in search of the Accused. The Accused was sitting in the canteen situated on 8th floor of the building. Complainant enquired with him about his name. He refused to disclose. On enquiry with inmates of canteen, the name of the Accused was revealed as Mr. K.C. Agarwal. He was working as Personal Assistant to General Manager of Central Bank of India.

ix. The complainant approached Cuffe Parade Police Station. He addressed letter dated 31st March, 1995 to Sr. Police Inspector Cuffe Parade Police Station, Mumbai.

x. Crime was registered vide LAC No.679 of 1995 with Cuff Parade Police Station on 31st March, 1995. On completing investigation, charge-sheet was filed.

3. Charge was framed against the Accused for offences under Sections 3(1)(x) of Atrocities Act and Sections 7(1)(d) of Protection of Civil Rights Act, 1955.

4. The prosecution examined PW-1 Mr. Ashok Shaligram

Deshbhratar, PW-2 Mr Laxman Ramaji Harle, PW-3 Mr. Jagjitsingh Bhagatsingh Dhanota, PW-4 Mr. Santosh Mahadeo Yezare and PW-5 Mr. Deepak Shankar Makam.

5. The defence of the Accused was denial. It was pleaded that on 31st March, 1995, the Accused was participating in Dharna organized by employees of Central Bank in the compound of Chandramukhi building. At about 3:00 pm, the Accused was taking the participants in Dharna for lunch to the canteen on the 8th floor of the building. While in the lift, they were discussing their problems regarding Dharna. The complainant made some comments regarding Dharna. Participants in Dharna objected to his comments. The lift reached on 8th floor. Participants of Dharna got out from the lift. The complainant came to the canteen while the Accused was having lunch and shouted at him. He enquired about comments. The Accused told him that he does not know him and denied having made any comments. The complainant disclosed his identity as ACP and threatened him that if he fail to disclose his identity, he would teach him lesson. After lunch, Accused came to the ground floor. The complainant came there with Police and he was arrested.

6. Section 3(1)(x) of Atrocities Act, reads as follows :

Punishment for offences of atrocities-(1) Whoever not being a member of a Scheduled Caste or a Scheduled Tribes,-

(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.”

7. Ms. Tripti Shetty appearing for the Appellant submitted as under :

- i. There is no evidence to convict the Appellant for the offence under Section 3(1)(x) of Atrocities Act.
- ii. The evidence of PW-1 was not corroborated by any other witness.
- iii. The statement of eye witness to the alleged incident was recorded after 3 to 4 months from the date of incident.
- iv. There is no reference to the caste of the complainant in FIR. The complainant has not stated that he has certificate of caste in the FIR.
- v. Caste certificate was directly produced in the Court. It

was not collected during investigation.

vi. There was no reason for the Appellant to know the caste of the complainant and question of insulting or humiliating him on the basis of caste does not arise.

vii. The alleged abuses on caste are not supported by any independent evidence. The version of complainant is not corroborated by independent witness. The alleged abuses cannot be said to have occurred within public view.

viii. The complainant while producing the caste certificate had stated that the S.E.M. who had issued said certificate was authorized to do so. No S.E.M. is empowered to issue caste certificate.

ix. The caste certificate was based on another certificate issued by S.E.M. Kolhapur. The certificate issued by S.E.M. Kolhapur was not produced before the trial Court.

x. The Accused would not have known that the complainant belongs to Scheduled Caste. The complainant was not in uniform and not carrying name plate on his person to know his identity.

xi. The complainant has stated that he had not disclosed his name to anybody while boarding the lift. There was no reason to infer that the Accused was knowing the caste of the complainant. The trial Court committed an error in concluding that if any words were used by the Accused they were directed against the complainant when there were several persons in the lift. According to complainant, the eye witness Mr. Dhanota and Mr. Harle accompanied the complainant to Police Station, but the statement of complainant alone was recorded and the statement of eye witnesses were not recorded.

xii. The independent eye witness to the incident does not support the version of complainant.

xiii. The complainant did not protest against the Accused immediately when he uttered the abuses on caste.

xiv. The Accused had no reason to use any insulting utterances against the complainant. The Accused had no enmity with the relative of the complainant.

8. Ms. Shetty has relied upon the following decisions :

- i. State of Karnataka V/s. Irappa Dhareppa Hosamani¹*
- ii. Bai @ Laxmibai w/o Nivratti Poul & Ors V/s. The State of Maharashtra²*
- iii. State of Gujrat V/s. Naran Ramji Patel³*
- iv. Haridas V/s. State of Maharashtra⁴*
- v. Bharatsingh & Anr. V/s. State of Madhya Pradesh⁵*
- vi. Manoj Kumar Giri V/s. State of Jharkhand and Anr.⁶*
- vii. T. Hanmunthu V/s. State of Aandra Pradesh⁷*
- viii. Dhanraj Singh And etc. V/s. State of Madhya Pradesh⁸*
- ix. State V/s. Smt. D. Jayamma and another⁹*
- x. State of Gujrat V/s. Anusayaben Vanilal Patel¹⁰*

9. Learned APP Mr. Nakhwa submitted that there is sufficient evidence to convict the Accused/Appellant for the offence under the Atrocities Act. There is no reason to disbelieve the evidence of PW-1 (complainant), PW-2 and PW-3. The evidence of PW-1 discloses that he had visited Chandramukhi Building on the date of incident. He wanted to visit 16th floor where the office of his

1 2001 CRI. L. J. 3566

2 2001 ALL MR (Cri) 219

3 Criminal Appeal No.529 of 1993 dated 12th June, 2012

4 Criminal Appeal No.120 of 1994 dated 23rd February, 1996

5 2006 CI. L. J. 4429

6 2004 CRI. L.J. 3434

7 2004 CRI. L. J. 4087

8 2005 CRI. L. J. 3782

9 2002 CRI. L. J. 3872

10 1999 CRI. L. J. 557

relative Mr. Harle is situated. He made inquiry about the office of his relative. The Accused was on the ground floor. He had reasoned to believe that the complainant is the relative Mr. Harle and knowing the caste of his relative, the Accused had presumed that complainant belongs to Schedule Caste and thereby humiliated him by uttering the words while leaving the lift. The incident had occurred within a public view. The trial Court has rightly convicted the Appellant for the offence under Section 3(1)(x) of the Atrocities Act.

10. I have scrutinized the evidence of witnesses. The evidence is not sufficient to convict the Appellant for the aforesaid offence under the Atrocities Act.

11. PW-1 Ashok Deshbhratar is the complainant. According to him, he was holding the post of Dy.S.P. He had been to Mumbai for work. On 31st January, 1995 at about 3:00 pm, he went to meet his relative Mr. Harle who is working as Deputy Chief Officer in the office of Central bank of India situated at Chandramukhi Building Nariman Point, Mumbai. He is Mahar by caste. He belongs to Scheduled Caste. He produced photocopy of caste certificate issued by Special M.M. Amrawati on 7th October, 1977. It was marked as

‘X’ for identification. His relative Mr. Harle sits on 16th floor of Chandramukhi Building. On 31st March, 1995 he went to meet him. He was accompanied by Mr. Dhanota. At the ground floor of the building he met some employees of the bank holding demonstrations. He went to the lift for going to 16th floor. At that time he was not aware that his relative Mr. Harle is sitting on 16th floor. He gathered that information at the lift. He boarded lift alongwith Mr.Dhanota. The lift stopped at 8th floor. About 10 persons were in the lift. Mr. Dhanota, liftman and complainant remained inside the lift on 8th floor and others got out from the lift. One person vacating the lift uttered the words “Scheduled Caste Maharoke liye lift khali karo”. The complainant went to 16th floor. He felt humiliated due to said remarks. He informed about it to his relative Mr. Harle. All of them went to 8th floor. They located the Accused. He was taking meal. He was confronted. He refused to disclose his name. On enquiry, name of the Accused was revealed as K.C. Agarwal. The witness identified him in the Court. The complainant went to Police Station alongwith Mr. Dhanota and Mr. Harle. Complaint was lodged. He accompanied the Police to Chandramukhi Building and the Accused was arrested. PW-1 produced the original caste certificate. It was issued by Special

Executive Magistrate, Amrawati on 7th October, 1977.

12. In the cross-examination PW-1 had stated that at the relevant time S.E.M. was authorized to issue caste certificate. S.E.M. demanded affidavit and proof of his caste. He produced the caste certificate issued by S.D.M. Kolhapur. On the strength of that the S.E.M. issued the caste certificate. He was not wearing uniform on 31st March, 1995, when he visited Chandramukhi Building. There were about 7 to 8 persons in the lift. He had not disclosed his name to anybody while boarding the lift. He had enquired while boarding the lift about the whereabouts of Mr. Harle. He had made inquiry by stating that he is relative of Mr. Harle and wanted to see him. Mr. Harle and Mr. Dhanota were sitting at his side at the time of lodging the complaint. However, their statements were not recorded immediately after recording FIR. When he reached Chandramukhi Building with the Police demonstration was going on. Accused was present. He was taken to Police Station. The utterances were made after looking at him. Mr. Harle was not knowing the name of the Accused.

13. From the evidence of PW-1, it is not possible to accept that the Accused had any reason to address the utterances at the

complainant on his caste. There is no reason to believe that the Accused was knowing the caste of complainant. It is not possible to infer that the Accused was knowing the caste of relative of complainant. It cannot be accepted that the Accused was aware that the complainant and his relative Mr. Harle belongs to Mahar caste and thereby without any reason he had made the utterances in the nature of insult and humiliating the complainant on caste. He did not disclose his name to anyone while boarding lift. There is no enmity between the Accused and Mr. Harle or the complainant and the Accused to abuse him on his caste. There were several persons in the lift. Assuming that the Accused had used such words, it cannot be said that utterances were addressed to complainant. The version of the complainant is not corroborated by any independent witness. The complainant was accompanied by his friend Mr. Dhanota. The lift man has not supported the version of the complainant. The complainant produced the certificate purportedly issued by Special Executive Magistrate. According to him the said certificate was issued on the basis of another certificate issued by SDM Kolhapur. However, the complainant has not produced the certificate issued by SDM Kolhapur. It is not established that the Special Executive Magistrate was authorized to

issue caste certificate. Although Mr. Dhanota and Mr. Harle accompanied PW-1 at the Police Station when the FIR was recorded, their statements were not recorded immediately.

14. PW-2 Laxman Ramaji Harle is the relative of PW-1. He is working as Deputy Chief Officer in the Central Bank of India. His office is situated on 16th floor of Chandramukhi Building at Nariman Point. He is not eye witness to the incident of abuses on caste. According to him complainant is his relative. Complainant had been to his office. The complainant told him about the incident of utterances on caste. The complainant told him that he made inquiries about him in the lift. The complainant told him that he made enquiry in the lift about his whereabouts and was told that he works in SC and ST's cell. By that time the lift reached on 8th floor and the Accused uttered the abusive words. PW-2 went to the 8th floor canteen alongwith the complainant. Accused was identified by the complainant. He was questioned. The Accused admitted his guilt. He confirmed the name of the Accused. He had been to Police Station with complainant. His statement was recorded after 2 to 3 days. From the version of the witness it can be seen that his version is contradictory to PW-1. The evidence of PW-1 does not disclose the facts which PW-2 has stated as being

told to him by PW-1. The attempt of the witness is to create the story that Accused had knowledge that PW-1 and PW-2 belongs to Scheduled Caste. He is not an independent witness. He is relative of complainant.

15. In the cross-examination, PW-2 has stated that he do not remember whether he stated before the Police that PW-1 told him that he made enquiry about him at the ground floor as he was not knowing the exact location. There is no mention of the fact about PW-1 telling PW-2 about the enquiry made by him on the ground floor. He did not tell the Police that PW-1 told him about the enquiry he made in the lift about him. There is no mention of the said fact in his statement. He had told Police about conversation between PW-1 and other persons in the lift in respect to enquiry regarding his location. There is no mention of such fact in his statement. He had told a Police about specific utterances made by Accused while leaving the lift at 8th floor. There is no reference of such fact in his statement.

16. Thus, the evidence of PW-2 is full of improvements, omissions and contradictions. The evidence of this witness does not inspire confidence.

17. PW-3 Jagjitsingh Bhagatsingh Dhanota is the friend of complainant. He deposed that in 1995, he had accompanied PW-1 to the office of Central Bank of India, Nariman Point, Mumbai. While entering the lift PW-1 enquired about Mr. Harle and his location. One of the person told them that he was at 16th floor. Both of them entered the lift. The lift stopped at 8th floor. One person uttered the words “lift khali karo scheduled caste wale ja rahe hain”. The other persons vacated the lift on the 8th floor. Both of them went to 16th floor. PW-1 informed about the incident to PW-2. They went to 8th floor. They confronted the Accused. They went to Police Station. In the cross-examination, he stated that he is good friend of PW-1. PW-1 told the Police Inspector about him as a witness to the incident. He was called by Cuffe Parade Police Station after a period about three months. His statement was recorded. Although he is the eye witness to the incident. His statement was recorded after period of three months. He is not independent witness.

18. PW-4 Santosh Yezare is the liftman. He was supposedly the eye witness to the incident. Enquiry about Mr. Harle was purportedly made in his presence. He is an independent witness. He did not support the prosecution. He stated that he did not hear

anything in the lift as there were persons in the lift. He was cross-examined at the instance of the prosecution by seeking permission from the Court. Even in the cross-examination he did not support the prosecution. In the cross-examination by the defence he stated that there were about 14 persons in the lift. Out of them two persons were outsiders, not from the regular passengers of the lift. He do not know whether the two outsiders were saying anything regarding the agitation going on at the ground floor of Chandramukhi Building.

19. The incident of abuses on caste is not supported by any independent witness. No other witnesses were examined. It is not clear whether the statement of any other inmates of the lift were recorded. The eye witness to the incident is PW-3 the friend of the complainant. In the absence of corroboration by independent witness, the Appellant cannot be convicted for the aforesaid offence. It is not proved that the alleged abuses on caste were made within public view.

20. PW-5 Deepak Shankar Makam is the Investigating Officer. He received application dated 31st March, 1995. It was written by the complainant. He recorded the FIR. He conducted investigation.

He stated that whenever he tried to contact PW-3 at his residence, he was not available and as such his statement was recorded 4th August, 1995. PW-1 promised to produce his caste certificate during investigation. He produced it for the first time during trial.

21. The evidence of PW-5 discloses that the complainant did not produce caste certificate during investigation. It was produced for the first time in the Court. There was no verification of caste certificate produced by the complainant. The source of the certificate was not disclosed to the Investigating Officer. The complainant had produced caste certificate issued by the Special Executive Magistrate. The certificate purportedly issued by SDM on the basis of which the S.E.M. had issued the certificate was not produced by the complainant. There is no investigation by the Investigating Officer with regard to the caste of complainant. The certificate was produced while deposing before the Court and there was no occasion to the Investigating Officer to ascertain the genuineness to such certificate. The Court has blindly accepted the certificate as genuine.

22. Thus, the prosecution case suffers from serious infirmities. The incident is not corroborated by independent

evidence. The evidence of the witnesses is not trustworthy to establish that the Accused had addressed the utterances on the basis of caste towards the complainant. Thus, the defence adduced by the Accused in his statement under Section 313 of Cr.P.C. appears probable. The conviction would not sustain. Appeal succeeds. Conviction is required to be set aside.

ORDER

- i. Criminal Appeal No. 178 of 1997 is allowed;
- ii. The Judgment and Order dated 27th September, 1996 passed by the Additional Sessions Judge, Mumbai in S.C.S.T. Special Case No.12 of 1995 convicting the Appellant for an offence punishable under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is set aside and the Appellant is acquitted.
- iii. Appeal stands disposed off accordingly.

(PRAKASH D. NAIK, J.)