

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.114 OF 2011

Baliram Dattatraya Patil & Ors. .. Appellants
Versus
The State of Maharashtra .. Respondents

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Mr.Shekhar Ingawale for the Appellant.
Mr.S.R.Agarkar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 13th OCTOBER, 2023

P.C:-

1. By the judgment passed by the Additional Sessions Judge, Raigad, Alibaug on 13/01/2011, the three accused persons (the Appellants) were convicted for committing an offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short, **“the Atrocities Act”**) as well as under Section 7(1)(d) of the Protection of Civil Rights Act, 1955.

Upon their conviction, they were sentenced to suffer rigorous imprisonment for six months and for one month respectively and to pay fine. They also came to be convicted under Section 341 read with Section 34 of the Indian Penal Code (for short, **“the IPC”**) and sentenced to pay fine of

Rs.300/-. Similarly, on conviction under Section 323 read with Section 34 of the IPC, they are sentenced to pay fine of Rs.500/-

The substantive sentences were directed to run concurrently and the sentences in default were directed to run consecutively.

2. Being aggrieved by the impugned judgment, Appeal No.114 of 2011 was preferred, which is admitted by this Court on 23/02/2011.

On the same date, the sentences imposed upon the Appellants are suspended and they continued to remain on bail, on furnishing fresh bonds.

3. Upon the Appeal having made ready, it is taken up for final hearing

Heard the learned counsel, Mr.Shekhar Ingawale for the Appellants and the learned A.P.P. Mr.Agarkar for the State.

It is the submission of the learned counsel that, the impugned judgment has failed to consider that the necessary ingredients of Section 3(1)(x) of the Atrocities Act are not made out in the trial, as the testimonies of PW 1 to PW 4, the witnesses to the incident, do not justify the conviction under the said Section, as they have failed to prove that the casteist abuses were hurled within a “public view”. It is his submission that the inconsistencies in the version of these prosecution witnesses make the prosecution case doubtful and apart from

this, since there is no evidence lead before the trial Judge to establish that the Complainant and the persons accompanying him, who belong to the scheduled caste, were intentionally insulted on the ground of untouchability, it would not attract Section 7(1)(d) of the Protection of Civil Rights Act, 1955.

It is the submission of the learned counsel that the injuries sustained in the incident, are simple in nature and the Medical Expert, who was examined, has specifically admitted that none of the injuries sustained by the injured persons were caused by sharp edged weapons and the eye injury sustained by Vishnu Gaikwad was possible due to foreign substance.

It is the specific submission of the learned counsel for the Appellants that since the prosecution has failed to establish it's case beyond reasonable doubt, the conviction and the sentence imposed under the impugned judgment cannot be sustained.

Per contra, the learned A.P.P. Mr.Agarkar would support the judgment and he would specifically submit that the evidence lead by the prosecution through it's witnesses has made out the case and by appreciating the evidence in it's right perspective, the learned Additional Sessions Judge, has rightly recorded the finding of guilt and appropriately imposed the sentence befitting the charge levelled against the accused persons.

4. The case of the prosecution, which has surfaced before the Sessions Court is to the effect that, on 09/12/2007, when the death anniversary of the Complainant's mother was

ongoing at their residence, he was present alongwith his father (PW 3). At that time, wife of the servant, who was taking care of the farmhouse, visited them and she informed that the farmhouse erected by means of wooden sticks, was dismantled by four persons, who had arrived on two two-wheelers and even they extended threats to her and her husband.

She also recounted the description of the four persons.

The Complainant categorically deposed that on that date, at about 11.30 a.m., he had seen Accused Nos.1 to 3, crossing his house on motorcycle.

Upon the information being received, the Complainant (PW 1), accompanied by his father (PW 3) and uncle (PW 2) approached the spot to assess the damage caused and noticed that entire house was destroyed. Therefore, they all went to the police station, but his complaint was not accepted and, thereafter with the help of one social worker, he managed to give a complaint in writing to the police.

After submitting the complaint, when he accompanied with his father, uncle as well as PW 4, was returning, in his vehicle and passed through the house of the Accused, they were intercepted and it is the Complainant's version that he was dragged out of the vehicle and abused by uttering the word " महारड्या". He was also questioned on the aspect of the complaint.

As per PW 1, Accused No.1 assaulted him on his head and on stomach by means of fist blows and kicks and when his father came out of the vehicle, he was also assaulted and he sustained injuries on his head and legs. His uncle was also

assaulted, who sustained injury near his left eye. It is his version that his father, fell on the ground on account of the assault and was taken to the police station and, thereafter, the injured were referred to the hospital.

As per PW 1, his father remained in the hospital for three days. This resulted in registration of the F.I.R., which is proved through PW 1. A caste certificate is also proved, as a proof of the claim that he belongs to scheduled caste.

5. The version of PW 1 is corroborated by PW 2, 3 and 4.

PW 2 is the uncle of PW 1 and he corroborate him on the aspect that they went to the farmhouse and noticed that it was damaged, and, hence a report was lodged with the police about the mischief committed and the non-cognizable offence was registered.

As regards the incident of assault and the casteist abuses having been hurled, PW 2 deposed that their car was intercepted by Accused Nos.1 to 3 near their house and they were armed with weapons. According to him, the Complainant was dragged out of the car and abused, by questioning him on filing of the complaint. Thereupon the father of the Complainant-Dharma Gaikwad (PW 3) also alighted from the car and as per PW 2, Accused Ram Patil, who was holding a knife, uttered the following words, before assaulting him.

“महारडया तुला चरबी आली आहे काय”

It is his version that the other accused persons assaulted his brother Dharma and also the Complainant. He deposed that

Accused Ram Patil attacked him by means of knife on his right eye, which resulted in his spect being broken and injury was sustained on right eye. He also makes reference of Accused Vasudeo assaulting by means of sickle on head of his brother Dharma, which resulted into bleeding injury.

PW 3-Dharma, the father of the Complainant slightly differ in his version, when he deposed that when they were near the house in the car, his son and brother were dragged out of the car and when he tried to intervene, Accused Vasudeo assaulted him by means of sickle on left side of his head. Even Accused No.1 kicked him on his mouth, when he was sitting and this caused loss of two teeth and he became unconscious and, thereafter, was shifted to the hospital. PW 3 is conspicuously silent about any abuses nonetheless casteist abuses being hurled.

Another witness, who has witnessed the incident is PW 4 and acquaintance of the Complainant and his family, who accompanied the family to the farmhouse.

Despite of the incident, which had occurred, at around 3.00 p.m. while they were returning after the visit to the police station, he corroborated the other witnesses to the extent that their car was stopped by the accused persons and Accused Baliram dragged the Complainant and, thereafter, his father immediately got down from the car. Accused No.2-Vasudeo tried to "assault" and, therefore, even he got down from the car, when Vasudeo assaulted Dharma by means of a sickle on his head and Accused Nos.1 and 2 pushed him inside the car and threatened to finish him, if he stepped out of the car. He gives an additional information, when he states that a lady by name Nirmala was also present in the car alongwith them.

6. This is how the prosecution case has surfaced on record through the four witnesses.

Analyzing the evidence to meet the charge under Section 3(1)(x), the witnesses in unison have stated that when they were returning from the farmhouse, on lodging the complaint with the police station, when their car was intercepted in front of the house of the accused persons.

PW 1 in his cross-examination has admitted that nobody except himself and the persons, who were accompanying him, were knowing about the complaint given to the police, when they were enroute by the vehicle, from the police station. In the cross-examination, he has deposed that the incident of assault and hurling abuses went on for about half an hour and took place on public road. He admit that there is only one building and house of Accused No.1 at some distance from the spot of incident, though he denied a suggestion about the incident not having been occurred at all.

As far as the other witnesses are concerned, they are silent on the place of occurrence of the incident, but accepting their version, the incident took place near the house of the accused and as per PW 1, on public road.

In order to attract Section 3(1)(x) of the Atrocities Act, the necessary ingredient is, 'intentional insult or intimidation with an intent to humiliate the member of the Scheduled Caste or a Scheduled Tribe, occurring at any place within a 'public view'.

The term "public view" has been a matter of interpretation by the Apex Court on more than one occasion

and has been assigned a definite connotation. The corresponding Section in the amended Act finds place in form of 3(1)(r), which is supplemented by 3(1)(s), which make an act of abusing any member of Scheduled Caste or a Scheduled Tribe by caste name within a public view, as an offence.

7. The expression “public view” occurring in Section 3(1) (x) definitely convey, within the view i.e. which may include hearing, knowledge or accessibility also, of a group of people of the place, locality, village as distinct from an incident occurring within the four walls of a premises or precincts without access to any stranger or outsider. Contrary to this, even if an incident takes place within the four walls of a house or precincts, but in the presence of the members from the public, then definitely it would fall within the meaning of “public view”.

The Hon’ble Apex Court in the case of ***Hitesh Verma Vs. State of Uttarakhand***¹ has summarized the ingredients of the term “place in public view” as distinct from “public place” and has clarified that presence of the members of public inside the building or any enclosed place would render such place a “place in public view” due to presence by members of the public. It is necessary to reproduce the relevant observation of the Apex Court to the following effect :-

“14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as *Swaran Singh v. State* [(2008) 8 SCC 435]. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It

1 2020 SCC 710

was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view(sic).

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered “in any place within public view” is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in *Swaran Singh*, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.”

8. Justice S. K. Agarwal of Delhi High Court has eloquently described the terminology, in the case of *Daya Bhatnagar & Ors. vs. State*², when he derived the correct and real meaning of the expression “public view” and as to whether it would include the view of an accused in a counter FIR. While interpreting the term, he highlighted the necessary ingredients in paragraphs 15 to 17 in the following words :-

“15. Basic ingredients for the offence under Clause (x) of Sub-section (1) of Section 3 of the Act, revealed through the bare reading of this section are as follows : (a) there should be intentional insult or intimidation by a person, who is not a member of SC or ST; (b) the insult must be with an intent to humiliate the member of the SC or ST. As the intent to humiliate is necessary, it follows that the accused must have knowledge or awareness that the victim belongs to the SC or ST. This can be inferred even from long association; and (c) the incident must occur in any place within the public view. There cannot be any dispute that the offence can be committed at any place whether it is a private place or a “public view” as long as it is within the “public view”. The requirement of “public view” can be satisfied even in a private place, where the public is present. I find myself in agreement with the

² 2004 SCC OnLine Del 33

following observations of learned brother Mr. Justice B.A. Khan while expounding the ingredients of the offence:

“If the accused does not know that the person whom he was intentionally insulting or intimidating or humiliating is a member of SC or ST, an offence under this section would not be constituted. Similarly, if he does not do all this at any place within “public view”, the offence would not be made out. Therefore, to attract an offence under Section 3(1)(x), an accused must know that victim belongs to SC/ST caste and he must intentionally insult, intimidate and humiliate him/her at a place within “public view”. The place need not be a public place. It could be even at a private place provided the utterance was made within “public view”.

16. The difficulty only is as of what is the true and correct import of the expression “public view” which is used by the Legislature in contra distinction to the expression “private view”. The ‘view’ here means sight or vision and hearing. Only meaning of the word “public” is left to be found in the context in which it is used.

17. The expression “public” is a poli-morphus word, which assumes different colours in different context. Judges and jurists have so far not found it possible to work out a complete logical definition of the words “public” universally applicable to all situations. Corpus Juris (page 844) defines “public” as under:

“PUBLIC AS A NOUN does not have a fixed or definite meaning; it is a convertible terms.

In another sense the word does not mean all the people, or most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few. Accordingly, it has been defined or employed as meaning the inhabitants of a particular place; all the inhabitants of a particular place, the people of the neighbourhood.

‘B. As an adjective—1. In General. It is said to be very difficult, if not impossible to frame a definition for the word “public” that is simpler or clearer than the word itself; a convertible term, used variously, depending for its meaning upon the subjects to which it is applied. It has two proper meanings.”

9. The term “public view” having been explained and propounded by authoritative pronouncements necessarily contemplate that the offence is committed against the member of the Scheduled Caste or Scheduled Tribe in a public view, i.e.

in presence within the view and accessibility of the members of the public.

10. Applying the above principles to the facts of the case, it is evident that except PW 1 to PW 4, no member of public witnessed the actual incident. There is also inconsistency in the case of the prosecution as regards the casteist abuses having been hurled. Moreover, mere abuses definitely would not warrant commission of an offence, but when the casteist abuses are also alleged to have hurled, there must be an intention to humiliate or intimidate the member of the Scheduled Caste or Scheduled Tribe to attract the provision of the Atrocities Act. This necessary ingredient is, however, conspicuously absent and the prosecution has not proved this through the evidence of PW 1 to PW 4.

Apart from this, as far as the conviction under the Protection of Civil Rights Act, 1955 is concerned, the evidence is not sufficient to sustain conviction, as it is not the case of the prosecution that the insult or attempt to insult the accused persons was on the ground of untouchability.

As far as the offences under Sections 341 and 323 are concerned, though there is conviction awarded under the said Sections, considering the aspect that the injuries sustained were the simple injuries, no sentence has been imposed, but on recording a finding of guilt, the accused persons have been made liable to penalty and it is informed that the fine is already deposited.

Since the prosecution has not been able to establish it's case beyond reasonable doubt, with cogent and reliable evidence, the learned Judge has fallen into a grave error in convicting the Appellants under the Atrocities Act, by the impugned judgment and imposing the sentence.

For the reasons recorded above, the impugned judgment dated 13/01/2011 passed in Special Cri.Case No.2 of 2010 is quashed and set aside.

The Appellants are acquitted of the accusations levelled against them. Since they are directed to be released on bail, their bail bonds stand cancelled.

Appeal is allowed in the above terms.

(SMT. BHARATI DANGRE, J.)