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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1297 OF 2012**

The State of Maharashtra

... Appellant

vs.

1. Jomesh Kana Thakur
Age 53 years

...

2. Vikram Jomesh Thakur
Age 26 years Respondent
Both resident of Rodpali,
Post Navda, Taluka Panvel,
District Raigad

... Respondents

Mr. Y. Y. Dabke APP for the Appellant-State.

Mr. Pravin B. Gole with Mr. Pradeep Patil for Respondent Nos.1
and 2.

Mr. Nitesh P. Hinduja, Advocate appointed for the Complainant.

CORAM : S. M. MODAK, J.

RESERVED ON : 28TH APRIL 2023

PRONOUNCED ON : 5TH JUNE 2023

JUDGMENT :

1. Heard learned APP for the Appellant-State, learned Advocate
for Respondent-accused and learned Advocate for the complainant
and victim.

2. In fact, in this Appeal learned APP Shri Dabke and learned Advocate Shri Gole for the Respondents-accused have almost completed their arguments. At the fag end, Mr. Dabke pointed out that as per amendment by way of section 15-A (2) of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989, the victim needs to be heard.

3. In this case, Kiran Ram Kamble-first informant, and her Maternal Aunt-Shobha Mukund Gaikwad are the victims. Hence, notice was issued to them. Though served, they have not appeared through their Advocate. Hence, as per request made, learned Secretary of the High Court Legal Committee has appointed Advocate Mr. Nitesh Hinduja to represent them. Accordingly, I have heard him and then closed matter for order.

4. The Court of Additional Sessions Judge, Raigad, Alibag acquitted both the Respondents for the offences punishable under sections 504, 506 read with section 34 of IPC and under section 3(1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, as per judgment dated 11th November 2011. The said judgment is impugned in this Appeal.

5. The first informant-Kiran Ram Kamble is resident of village Rodpali, Taluka Panvel, District Raigad. He does labour work. Jomesh Thakur is the father of Respondent No.2-Vikram Thakur. He owns a shop at Roadpali road. The incident took place on 22nd September 2009, at about 17.30 hours near pan shop in front of garage. Shobha Mukund Gaikwad is the Maternal Aunt of the first informant. There is background to this incident.

6. As such trivial incident took place on 9th September 2009. At about 6 pm, the first informant-Kiran Kamble had gone to Kalamboli market, on motor cycle. There was crowd on road. At that same time accused No.2-Vikram and his father accused No.1-Jomesh Thakur, were coming in their Scorpio jeep. The first informant gave hand signal to stop the vehicle. The accused No.2-Vikram got annoyed and beat Kiran with fist and kick blows. The complainant also lodged police complaint.

7. The main incident took place on 22nd September 2009. At about 17.30 hours the first informant-Kiran Kamble was standing near pan shop of Shobha Mukund Gaikwad, in front of garage. She is his Maternal Aunt, at the same time Respondent-Vikram was also standing in front of garage with his Scorpio vehicle. After seeing

Kiran, accused No.2-Vikram abused Kiran by referring him to his caste Mahar and also beat him with fist and kick blows. His maternal aunt Shobha Gaikwad tried to separate quarrel. Respondent No.2-Vikram also abused her in filthy language by referring to their caste as Mahar. Respondent No.2-Vikram called his father-Jomesh Thakur. After arrival on the spot, Jomesh Thakur instigated his son Vikram. Some how the complainant-Kiran Kamble escaped and then lodged complaint with Kalamboli police station on 22/09/2009. The police have registered an offence under sections 323, 504, 506 read with 34 of IPC and under sections 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under section 7(1)(d) of Protection of Civil Rights Act.

8. As required by law, the investigation was carried out by ACP Pralhad Sadanshiv. The charge-sheet was filed. As the Respondents-accused have denied committing the offence, the trial was conducted. Though expressly they have not pleaded about injuries caused to them during cross examination they have brought on record, the certificate issued by Satyam Multi Speciality Hospital, Kalamboli for injuries caused to Respondent No.2-Vikram Thakur.

The prosecution examined following witnesses :

- (a) PW 1 Kiran Ram Kamble-first informant.
- (b) PW 2 Shobha Mukund Gaikwad-victim.
- (c) PW 3 Shantabai Gaikwad-witness.
- (d) PW 4 Kailash S. Jaiswal-spot panch.
- (e) PW 5 Sudhakar D Mahale-PSI registered the FIR.
- (f) PW 6 ACP Pralhad Sadanshiv, ACP, Investigating Officer.

9. PW 1-Kiran Kamble and PW 2-Shobha Gaikwad are the eye witnesses, whereas Shantabai is the grand mother of Kiran and she is not an eye witness. After the incident, Kiran told her about the same. There are nothing objectionable articles found from the spot. So except for verifying whether ingredients of clause (x) of section 3(1) of the said Act are fulfilled or not (that is to say, whether it can be said that the people at large have also formed the opinion that really there was insult or intimidation to the member of the Scheduled Castes and the Scheduled Tribes community), it has no importance. On reading the spot panchnama, it is clear that it is situated on public road, there was pan shop of Shobha Gaikwad.

10. Whereas PW 5-Sudhakar Mahale is the officer who has registered an offence on the complaint of Kiran-first informant. He also arrested accused No.1-Jomesh Thakur and accused No.2-Vikram. According to learned Advocate for the Respondents, Vikram was admitted in Satyam hospital on 22/09/2009 and he was assaulted by the first informant. This witness was put questions on this lines. He was not aware about admission of Vikram in Satyam hospital. Even he has denied suggestion that Vikram had come on 22/09/2009 to police station to lodge the complaint.

11. The certificate issued from Satyam hospital is shown to him, however, during investigation he has not collected it from the hospital. Learned Advocate for the Respondents has laid emphasis on these lacunas and even the trial Court has pin pointed this lapse while writing the judgment. It is true to say that if any accused comes with the case that in fact, he was also assaulted in that incident and got injured, burden lies on the prosecution to explain those injuries. That is to say, whether injuries are caused due to assault at the hands of prosecution witnesses or there is any other reason. It is settled law that if such injuries are not explained on behalf of the prosecution, there can be serious doubt about genesis

as deposed by the prosecution witnesses.

12. When I perused evidence of all these witnesses, the theory of receiving injuries by Respondent No.2-Vikram, is not put to any of the witnesses, except PW 5-Sudhakar Mahale. Even in statement recorded under section 313, none of the Respondents have stated about these injuries and how they are caused. Learned Advocate for the Respondents fairly admits this fact. What has come on record is certificate issued by Satyam hospital for Respondent No.2-Vikram. It was marked as Exhibit-30.

13. In order to ascertain whether this injury is caused during the same incident, I have perused the papers of investigation sent along with the record. There are two forwarding letters dated 23/09/2009 and 24/09/2009 written by Kalamboli police station and by ACP. It is addressed to the Medical Officer, Rural Health, Panvel. There is request to examine both these Respondents and to issue certificate. Yet, it is not clear as to whether these letters are written, just to ascertain the health of these Respondents or they are written in order to bring on record the injuries caused to Respondent No.2-Vikram. The fact remains that there is certificate at Exhibit-30. The hospital mentions that there was assault by group of people and

there was right elbow injury. There is reason to believe that these letters are written, as Respondent No.2-Vikram complained about beating during that incident only.

14. So evidence given by two eye witnesses needs to be appreciated on this background. In fact, accused-Vikram put the defence that he was assaulted by the first informant. The trial Court in para 21 has discussed about this aspect and also noted the failure of prosecution to explain injuries on person of Respondent No.2. So also this is ground on which the prosecution evidence is disbelieved. I find no reason to disagree with this conclusion, because law on the point of burden to prove injuries on person of accused and its consequences that burden is not discharged is clear.

15. When the evidence of PW 1 and PW 2 are perused, one may find that they have given details of the incident. Initially, Respondent No.2-Vikram Thakur abused the first informant on account of caste and also abused PW 2-Shobha Mukund Gaikwad. Both have also stated, how Respondent No.2-Vikram called his father and after arrival of the father, how Respondent No.2-Vikram was instigated by his father. As such their testimony does not suffer from improvement. They have stick up to their version before the police,

however, the issues does not rest there. There can be only oral evidence about abuses, that's to say, evidence of a person, who has hurled those abuses. In such a case, there are no chances of documentary evidence.

16. It is also true that even though incident happened on public road, except these two witnesses, no other witness is examined. Even though it is true that the prosecution cannot escape from discharging the burden to explain injuries on person of Respondent No.2-Vikram, PSI Mahale went to extent of expressing ignorance of admission of Vikram at Satyam hospital. Even he has not collected certificate during investigation. It shows biased approach on the part of police. They have with-held that material from the Court.

17. For the above reason, it can be said that the version given by these two eye witnesses about the incident cannot be said to be entire true version. The defence put up by the Respondents was not explained by the prosecution through the Investigating Officer. The Court cannot accept the version of eye witnesses by discarding the defence put by the Respondents. Ultimately, the evidence has to be appreciated in totality, to say by considering both versions. The prosecution has failed in discharging that burden. The trial Court

has rightly not accepted the prosecution case.

18. Learned Advocate for the Respondents relied upon the following judgments :

*(a) Ghurey Lal Vs. State of Uttar Pradesh*¹

*(b) State of Maharashtra Vs. Suresh Sakharam Sawant & Anr.*²

19. On the point of scope of interference by the Appellate Court is well settled. The judgment of trial Court is well reasoned. The findings are not perverse. So I find no reason to interfere in the judgment in Appeal and I have no alternative but to dismiss the Appeal.

[S. M. MODAK, J.]

1 (2008) 10 SCC 450

2 2020 SCC Online Bom 180