



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 110 OF 2019

Renuka w/o Jitendra Kamble
Age : 41 yrs, Occ. H.H. & Agri.,
R/o. Wazra Tq. Kinwat,
Dist. Nanded

... Appellant

Versus

1. The State of Maharashtra,
Through Police Station, Mandvi
Tq. Kinwat Dist. Nanded.
2. Kapil s/o Shankar Upadhyay,
Age : 33 yrs., Occ. Agri.,
3. Satish s/o Malanna Bankewar,
Age : 33 yrs., Occ. Agri.,
4. Sandip s/o Narayan Badhawar,
Age : 25 yrs., Occ. Agri.,
5. Pravin s/o Uttam Bhawre,
Age : 26 yrs., Occ. Agri.,
6. Datta s/o Bhumanna Donankewar,
Age : 47 yrs., Occ. Agri.,
7. Narayan s/o Laxman Rekulwar,
Age : 29 yrs., Occ. Agri.,
8. Madhukar s/o Vitthal Donankewar,
Age : 31 yrs., Occ. Agri.,
9. Arvind s/o Keshav Kumre
Age : 24 yrs., Occ. Agri.,
10. Gajanan s/o Bapurao Dhurve,
Age : 25 yrs., Occ. Agri.,
11. Ganesh s/o. Maroti Kukalwar
Age : 39 yrs., Occ. Agri.,

12. Manoj s/o Bapurao Dhurve
Age : 25 yrs., Occu. Agri.,

All R/o. Wazra (Bk), Tq. Kinwat,
Dist. Nanded.

... **Respondents.**
(Orig. Accused)

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Mr. N. D. Kendre, Advocate for Appellant.

Mr. N. D. Batule, APP for Respondent No.1 – State.

Mr. M. K. Bhosle, Advocate for Respondent Nos.2 to 12.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 13th FEBRUARY, 2024

PRONOUNCED ON : 21st FEBRUARY, 2024

JUDGMENT :

1. Original complainant is hereby questioning the judgment and order of acquittal dated 18.11.2017 passed by learned Special Judge, Nanded in Special Atrocity Case No. 1 of 2016, by which respondents are acquitted from offence under sections 143, 147, 323, 506 read with section 149 of Indian Penal Code (IPC) and under sections 3(1)(x) and 3(1)(iii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “*SC & ST Act*”).

2. Apprising this court about the genesis of the offence, the sum and substance of the arguments advanced by the learned counsel for appellant is that, occurrence is of 07.07.2015, which was further fall out of an incident of desecration of the statue of

Dr. Babasaheb Ambedkar on 06.06.2015. It is pointed out that, accused nos. 1 to 3 deliberately gave dash to the motorcycle of son of informant. He sustained injuries. There were abuses hurled on caste basis. Mother has lodged report, on the strength of which crime was registered for commission of offence under the provisions IPC as well Atrocities Act. It is pointed out that, after filing of charge-sheet, all three accused are made to face trial and according to him, prosecution has adduced seven witnesses, out of which three were eye witnesses including injured. That, treating doctor is also examined, but learned trial court has failed to appreciate such evidence. Minor omissions are held as material omissions. Even, reliable witnesses were held to be interested witness.

3. Consequently, according to learned counsel there is improper appreciation, resulting into acquittal and hence he prays to re-appreciate the evidence and set aside the impugned judgment by allowing the appeal.

Learned counsel for the appellant, in order to substantiate his contentions, placed reliance on the following rulings :

(i) *Lakshman Singh v. State of Bihar, (2021) 9 SCC 191*

(ii) *State of M.P. v. Mansingh and Ors., (2003) 10 SCC 414*

4. In answer to above, learned counsel for accused respondents would submit that prosecution had miserably failed to establish the charges. That, ocular account was not supported by medical evidence. There were exaggeration and improvements in the testimonies of witnesses apart from material omissions and inconsistencies in the prosecution witnesses. Only interested witnesses were examined, but their testimonies need not inspire confidence. That, informant has hearsay information. Moreover, it is pointed out that informant herself admitted that accused nos. 4, 8 and 11 were themselves members of Scheduled Castes and Scheduled tribes community, and therefore, ought not to have charge-sheeted for offence under the provisions of SC & ST Act.

5. Consequently, according to him, evidence being weak, learned trial Court has correctly appreciated the evidence. That, there is no infirmity or perversity in the same so as to disturb the sound and reasoned findings and consequently he prays for dismissal of the appeal.

6. On considering the above submissions and on re-appreciating the evidence of prosecution, it seems that, present

respondents were made to face trial on accusation of commission of offence under sections 143, 147, 323 and 506 read with section 149 of IPC and under Sections 3(1)(x) & 3(1)(iii) of SC & ST Act. Case of prosecution is rested on evidence of 07 witnesses and their role and status are as under :

PW1 Suresh, panch to spot panchanama; **PW2** Renuka is the informant, **PW3** Shantanu injured and son of informant PW2 Renuka; **PW4** Akash acquaintance of PW3 Shantanu; **PW5** Dr. B. Mahesh; **PW6** Akash Patil companion of injured and **PW7** SDPO Yogeshkumar Gupta is the Investigating Officer.

7. As this court is called upon to re-analyze and re-appreciate the evidence, said exercise is undertaken and here evidence of PW2 Renuka informant, PW3 Shantanu her injured son, PW4 Akash, PW5 Dr. B. Mahesh and PW6 Akash Patil are relevance.

8. Evidence of PW2 Renuka informant goes to show that, incident took place with her son, who had been on motorcycle towards bus stand and at such time she was in the house. Whatever information she has is on being told by her son, who was allegedly by his friends, namely Sukhshant, Akash, Ankush and Akash Patil. Therefore, apparently report is on hearsay information.

9. PW3 Shantanu victim gave evidence that, on 07.07.2015, when he was returning on motorcycle with his friends, someone came from backside, kicked him and so he fell down. According to him, accused nos.1, 2 and 3 beat him by fists and kicks blows and also abused him on caste basis and thereafter also urinated on him. His friends lifted him to the house.

While under cross, he has answered that incident took place at around 7.00 p.m. and it was dark at such time. He denied being stating falsely about kicked, he falling and accused urinating on his person. Then he is questioned about his parents to be member of Gram Panchat and Sarpanch respectively. He admitted that, Ankush and Sukhshant are his nephew of his mother and distant relative, respectively.

10. **PW4** Akash claims that, at the time of incident he had been to bus stand, Wazra. According to him, after chitchating and returning to the house, that time accused came on motorcycle and gave dash to motorcycle of PW3 Shantanu. Accused Satish and Kapil beat Shantanu and they were joined by others namely Ganesh, Gajanan, Manoj, Pravin, Arvind, Madhukar and Dipak and they all hurled on caste abuse and accused Satish and Kapil urinated on the person of PW3 Shantanu.

In cross he answered that, he was ahead of PW3 Shantanu at the time of incident. According to him, except accused and himself, no other person was present at the spot, but admitted that it is a busy road. He answered that, PW3 Shantanu did not sustain any bleeding injury. He answered that, he did not see accused prior to the incident. Rest is all denial.

11. PW6 Akash deposed that, when after chitchating, they were returning home, accused nos.1 and 2 came on motorcycle and gave dash from backside, as a result of which, PW3 Shantanu fell down and he was beaten by accused persons. He named several persons for also coming there and uttering abuses and accused nos.1 and 2 urinating on PW3 Shantanu.

12. If we visit evidence of PW5 Dr. B. Mahesh, we find him deposing that on examining of PW3 Shantanu, he noticed blunt trauma on abdomen, which was simple injury. In cross he admitted that injury is possible due to fall on hard and rough surface.

ANALYSIS

13. Therefore, on appreciating the above evidence, it is clearly emerging that, PW3 Shantanu, PW4 Akash and PW6 Akash Patil were all together, but they are not found to be consistent.

PW3 Shantanu speaks about someone giving kick from behind. He does not speak of dash being given which is narrated by PW4 Akash. PW3 Shantanu names accused Nos.1 to 3 for giving fists and kicks blows, but PW4 Akash names only accused Satish and Kapil.

14. PW6 Akash Patil also names only accused Nos.1 and 2 for coming on motorcycle and giving dash to PW3 Shantanu. He has named several other persons regarding which neither PW3 Shantanu nor PW4 Akash spoke about it.

15. It is difficult to believe that all accused at one and the same time in chorus hurled on caste abuse. PW4 Akash has admitted that, accused were strangers as he did not see them in the village prior to the incident. If this is evidence, then aspect of knowingly hurling caste abuse itself comes under shadow of doubt. Medical evidence is about possibility of injury on account of fall also.

16. Therefore, the above discussed evidence does inspire confidence. Resultantly, no fault can be found in the manner of appreciation reached at by learned trial Judge. Hence, finding no merits, I proceed to pass the following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)