



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 323 OF 2019

Dattu S/o. Lahanu Borude,
Age : 62 years, Occu. : Agri.,
R/o. Khospuri, Tq. Nagar,
Dist. Ahmednagar.

... Appellant
(Orig. complainant)

Versus

1. The State of Maharashtra,
Through its Office in Charge,
MIDC Police Station, Nagar,
Dist. Ahmednagar.
2. Jalindar S/o. Govind Shirsath,
Age : 61 years, Occu. : Agri.,
3. Shantaram S/o. Govind Shirsath,
Age : 51 years, Occu. : Agri.,
4. Govind S/o. Madhav Shirsath,
Age : 75 years, Occu. : Agri.,
5. Kaushalya Jalindar Shirsath,
Age : 46 years, Occu. : Agri.,
6. Sushila Shantaram Shirsath,
Age : 36 years, Occu. : Agri.,

Resp. Nos.2 to 6 are resides at
R/o. Khospuri, Tq. Nagar,
Dist. Ahmednagar

... Respondents.
(Resp. Nos.2 to 6 are
Orig. Accused)

...

Mr. Arvind G. Ambetkar, Advocate for Appellant.

Mr. S. M. Ganachari, APP for Respondent - State.

Mr. Shaikh Ashraf Patel h/f. Mr. Abhijeet P. Avhad, Advocate for
Respondent Nos.2 to 6.

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 16th JANUARY, 2024

PRONOUNCED ON : 23rd JANUARY, 2024

JUDGMENT :

1. Getting dissatisfied by the judgment and order of acquittal passed by learned Additional Session Judge, Ahmednagar in Sessions Case No. 346 of 2016 dated 18.07.2017 thereby acquitting respondents from charges under sections 143, 147, 148, 324 read with section 149 of Indian Penal Code (IPC) and section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*SCST Act*), original complainant has preferred instant appeal praying to set aside the impugned judgment.

2. It is submitted that, complainant and respondent are agriculturist and are having agricultural lands adjoining to each other. There is a common ridge in between their land. There is dispute over the same. In backdrop of civil dispute, both are on cross terms. It is pointed out that, on 28.07.2016 accused Jalindar questioned complainant for removing grass and placing it on the bandh. Thereafter, there was quarrel, but accused pulled and dragged complainant causing hurt. That, accused humiliated him by making reference to his caste. That, complainant had adduced

his own evidence and had also adduced testimony of Meerabai an witness. Thus, there was sufficient corroboration. That, there is medical evidence suggesting injury and thereby prosecution had proved the case. That, complaint was lodged promptly, but learned trial court did not appreciate the evidence and held charges as not proved beyond reasonable doubt and straightway acquitted respondent from serious charges. Therefore, it is submitted that, evidence be re-appreciated and impugned judgment be set aside.

3. In response to above, learned counsel for respondent would point out that, there was already dispute existing on alleged bandh. There was abuse of process of law by leveling false allegations of caste abuse, even when there was no such incidence. It is pointed out that, there was no corroboration to the testimony of complainant. Learned trial court has disbelieved the eye witness account as both complainant and alleged eye witness were not consistent and were rather giving contrary versions. That, even incident had not taken place in public place and therefore, learned trial Judge rightly held that charges of SCST Act are not attracted. Hence, for all above reasons, he submits that, there being correct appreciation and no merits in the appeal, he prays to dismiss the same.

4. On hearing both sides and on re-appreciating and re-analyzing the evidence, it seems that, in trial court prosecution had adduced evidence of in all 05 witnesses. There is no dispute that respondent were charge-sheeted for commission of offence under sections 143, 147, 148, 324 read with section 149 of IPC.

5. On going through the record, it seems that, in support of its case, prosecution had examined in all 05 witnesses, i.e. **PW1** Dattu informant; **PW2** Meerabai an alleged eye witness; two police officials i.e. **PW3** PHC Ghode and **PW5** Dy.S.P. Anand Bhoite; and **PW4** Dr. Prashant Tandale and also relied on various panchanamas, injury certificate and caste certificate etc.

6. On carefully going through the evidence of complainant **PW1** Dattu, he is found to be deposing that, he was removing grass from the bazara crop and placing it on the bandh and that time, it is alleged that accused Jalindar came and questioned him for placing grass on the bandh and hit him with wooden log on left thigh. He also gave kicks and fist blows while uttering on caste basis. He also bite his index finger of left hand and therefore, he lodged report.

PW2 Meerabai, who is wife of **PW1** Dattu, deposed in

her evidence at Exh.21, that on relevant day, her husband was cutting grass and she was in the house. She heard voice and therefore, came out of the house and saw accused beating her husband with wooden log and lifting him and flinging him on the valve of the pipeline twice and even bite index finger of her husband. She further deposed that, again accused Jalindar lifted her husband and dashed on the electric poll and dragged him. Accused i.e. Shantaram, Govindrao, Kaushalya and Sushila also came there and assaulted by fist and kicks blows. According to her, accused abused on the basis of caste.

7. Now the other important witness is PW4 Dr. Prashant Tandale, who is examined at Exh.24 and according to him, on examination, he noticed three injuries on the person of PW1 i.e. contusion over left thigh, contusion below right eye and abrasion on back. He identified certificate at Exh.25 issued by him.

Remaining two witnesses are PW3 PHC Vitthal Ghode and PW5 Dy.S.P. Anand Boite, respectively.

8. Therefore, on minute scrutiny of the evidence of PW1 Dattu and PW2 Meerabai, it is clear that, they and accused party are adjoining neighbours having agricultural lands adjacent to

each other. There is further no dispute that civil proceedings are pending on account of common ridge.

9. As regards to occurrence dated 28.07.2016 is concerned, there are allegations of beating by only accused Jalindar by wooden log and thereafter lifting and throwing on valve of a pipeline. Admittedly, occurrence which took place at 9:30 a.m. is reported around 5:00 p.m.. Version of PW2 Meerabai - wife seems to be exaggerated one and improvised. Injuries admittedly noticed by doctor are two contusions and one abrasion. Had there being truth in the accusation of being lifted and thrown on a valve of pipeline, injury would have been of different nature. Medical expert admitted that, he did not mention size, age and nature of injury. He has also admitted that, he did not mention the cause of injury.

10. It has come in the cross of both PW1 Dattu and PW2 Meerabai that, accused Jalindar had reported and lodged compliant earlier to the complaint filed by PW1 Dattu i.e. around 12 noon itself on account of injuries suffered by him. Evidence of PW1 Dattu and PW2 Meerabai further goes to show that, they called their son, collected caste certificate and thereafter in the evening, they have lodged report and consequently their FIR is not

prompt. Defence has come with a specific case of counter-blast on account of lodgment of complaint by accused. Be it so. Firstly, there is delay in lodging FIR, secondly PW1 Dattu and PW2 Meerabai, husband and wife are not consistent and lending support to each other for the reasons stated above. Even medical expert's evidence, more particularly, cross shows that, details of nature and size of injuries are not reflected in the certificate. Even MLC number is not reflected on the certificate.

11. There are also allegations of caste abuse. Complainant claims to be belonging to "Chambar" caste, which admittedly falls in scheduled caste category. Whereas, accused are said to be belonging to "Vanjari" community which falls in NT category, but are not either SC and ST.

Learned counsel for respondent specifically pointed out that, as regards to caste abuse is concerned, husband and wife PW1 Dattu and PW2 Meerabai are contradictory each other and are not consistent, secondly incident has not taken place in public and thirdly there is no intention and humiliation to demean PW1 Dattu.

In the light of above submissions, if we minutely go through the evidence of PW1 Dattu and PW2 Meerabai, as rightly

pointed out by learned counsel for accused, PW1 Dattu and PW2 Meerabai are not consistent as regards to caste abuse is concerned. Their depositions conspicuously are distinct. Secondly, alleged incident has taken place in the field of complainant. There is no material that, it was adjoining to a public way and as such visible to others. No one is shown to be present around or in the vicinity. Therefore, apart from variance in the alleged caste abuse, occurrence is not shown to have been taken place in public place or view, so as to attract the provisions of SCST Act. Therefore, evidence on this count also cannot be considered to fasten the guilt for caste abuse.

12. Therefore, the sum total of above discussion is that, there is previous animosity. Both side seems to have indulged into assaulting each other. Accused party has lodged prompt complaint, whereas complaint by PW1 Dattu is apparently delayed one and hence seems to be a counter-blast. Evidence of PW1 Dattu and PW2 Meerabai regarding occurrence is inconsistent. Medical evidence does not support their version. Evidence regarding caste abuse also is unworthy of credence for the reasons stated in aforesaid paragraph.

Consequently, charges cannot be said to be proved beyond reasonable doubt.

13. On going through the judgment under challenge and on re-appreciation of entire evidence, in the considered opinion of this court, learned trial Judge has correctly appreciated available evidence. Findings reached at are supported by sound reasons. It is the most possible view that could emerge even on appreciation. Resultantly, there is no merit in the appeal and hence I proceed to pass following order :-

ORDER

- (i) The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)