



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 574 OF 2023

Chandrakala W/o Madhav Kamble
VERSUS
The State Of Maharashtra And Another

.....
Mr. Ajinkya Reddy, Advocate for Applicant
Mr. D.J. Patil, APP for Respondent No.1 – State
Mr. Vivek Bhavthankar, Advocate for Respondent No.2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th SEPTEMBER, 2024

ORDER :

1. By this appeal filed under section 372 of the Code of Criminal Procedure, appellant/informant challenges the judgment and order of acquittal dated 08.05.2023 passed by learned Special Judge (Atrocities Act), Udgir in Special Case (Atrocity) No.01 of 2015.

2. Prosecution case in short is that, on 26.04.2014, while the husband of informant/victim had been to Latur and she was at her house with her daughter and son, at about 2.00 p.m., while the informant/victim was watching T.V. in her house, respondent No.2/accused entered her house coming down from the staircase. When informant/victim asked accused as to why he has entered in her house, accused tried

to take informant/victim inside the room and pressed her breast. At that time, informant/victim and her children started shouting and hence accused left from there. She, therefore, lodged FIR (Exhibit-23) on 29.04.2014 and offence under sections 452, 354-A, 506 of the Indian Penal Code and under section 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015 was registered at Crime No.30 of 2014. After completion of investigation, charge-sheet came to be filed and accused was charged for offences as stated above. After recording the evidence, trial Court has acquitted the accused by giving benefit of doubt. Hence, the present appeal.

3. Heard learned advocate for appellant/informant, learned APP for respondent No.1 – State and learned advocate for respondent no.2/accused. Perused grounds raised in the appeal memo, documents placed on record, notes of evidence made available by learned advocate for appellant and the impugned judgment and order of acquittal.

4. Learned advocate for appellant by relying on ***Hariram Bhambhi Vs. Satyanarayan and Anr., AIR 2021 SC 5610***, strenuously submits that the impugned judgment and order of acquittal is vitiated on account of non-affording opportunity of

being heard to the appellant at the time of passing the impugned judgment and order of acquittal in terms of section 15(A)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. He further submits that learned trial Court has wrongly appreciated the evidence on record. The evidence of victim is corroborated by FIR (Exhibit-23) and evidence of her daughter (PW-6) and there is sufficient material on record to warrant conviction to respondent No.2/accused.

5. Learned APP and learned advocate for respondent No.2/accused, on the other hand, supported the impugned judgment.

6. First argument of learned advocate of appellant that the impugned judgment is vitiated for not following the mandatory provision of section 15(A)(5) is misconceived and reliance placed by him on *Hariram Bhambhi* (supra) is misplaced. Admittedly, in the present case, since beginning victim was represented by the State and Public Prosecutor. During the course of trial and before passing the judgment, trial Court has heard learned Public Prosecutor, who was represented the victim and State. In this view of the matter,

argument of the victim that she was not heard, and therefore, impugned judgment is vitiated is not acceptable.

7. Decision in *Hariram Bhambhi* (supra), was rendered in the facts that bail application in murder case was allowed without issuing notice and hearing the complainant. In this case, it was held that provision of section 15A of the said Act is mandatory and orders cannot be passed without hearing the complainant/victim. Since in the present case, it cannot be said that the victim was not heard, this ruling is of no assistance to the appellant.

8. Record indicates that appellant has given admissions to the effect that, she and her husband were knowing accused before four years of the incident. Her husband and accused were working for Sists-Check-Inns Company Limited. Accused had invested Rs.50,000/- in her name. The accused used to visit their house for this work. It is further brought on record by the defence that house of the victim is situated in the market. The cloth shop, electrical shop and saloon are near her house. The grocery shop of Rajr Patil, seed shop of Vasant Jagalpure and tailoring shop of Konale are also adjacent to the victim's house. The incident has allegedly happened in the afternoon. Considering these aspects, it is doubtful whether

the incident as alleged by victim has taken place in the afternoon in a crowded locality.

9. There are material inconsistencies in the evidence of appellant and other witnesses including her daughter. There is delay in lodging FIR. All these aspects render the prosecution case doubtful.

10. Trial Court has properly appreciated the evidence on record and has rightly acquitted the accused by giving him benefit of doubt. View taken by the trial Court is a possible view, which is not liable to be interfered with in the facts of the present case. No case is made out by the appellant to interfere in the impugned judgment and order of acquittal. Appeal being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE