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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.755 OF 2022

Varsha Bibishan Kambale

APPELLANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

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Mr. R. V. Gore, Advocate for the appellant

Mr. R. B. Dhaware, APP for respondent - State

Mr. Someshwar Birajdar, Advocate for respondents No.2 to 8 & 13

Mr. Yashwant P. Jadhav, Advocate for respondents No. 9 to 12

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th OCTOBER, 2024

ORDER :

1. This appeal, filed under section 372 of the Criminal Procedure Code, challenges judgment and order of acquittal dated 1st September, 2022, passed by learned Special Judge, Osmanabad in Special Case (Atrocity) No. 27 of 2019 (Old Special Case (Atrocity) No. 9 of 2013).

2. Prosecution case, in short, is that, there was a quarrel between informant's husband and Mahadu Pachange (Accused No.8), on account of running of tum tum. Therefore, Mahadu was having grudge against husband of informant. Informant's sister in law, Yashoda was Sarpanch of Gram Panchayat Kolsur, therefore, people from opposite party instigated Mahadu and due

to the instigation, on 28th February, 2013, villagers Sanju Patil and Venkat Patil assaulted her husband Bibishan, brother in law Arvind and Satyawar, in front of Maruti Temple. When the informant tried to intervene, threats and abuses were given referring to their caste.

3. On the same day, at about 5 to 6 p.m. accused No. 8, 9, 10, 11 and 12 came in front of house of the informant and abused her family members by referring to their caste. They trespassed in their house and assaulted informant with stick on hand and head. Thereafter, they beat husband of informant. When her brother in law Arvind, Satyawar, mother in law came to intervene, they were also assaulted by the accused persons. Threats were given to kill them. FIR lodged by the informant is registered at Crime No. 40 of 2013 with Omerga Police Station for offence punishable under sections, 143, 147, 148, 323, 452, 504, 506 read with 149 of the Indian Penal Code and under section 3 (1) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. On completion of the investigation, charge sheet was filed. Charge was framed against accused persons under sections 143, 147, 148, 323, 452, 504, 506 read with 149 of the Indian Penal Code and under section 3 (1) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. In support of its case, prosecution examined 10 witnesses.

Trial Court acquitted the accused, hence the appeal.

4. Heard learned advocate for the appellant, learned advocates for respondents and learned APP for the State. Perused the grounds raised in the appeal memo, notes of evidence made available by the appellant and the impugned judgment and order of acquittal.

5. Record indicates that there are material discrepancies / improvements in the evidence of prosecution witnesses. Prosecution witnesses are interested and belong to one family. The defence has brought on record enmity between accused and informant's family, on account of election for the post of Sarpanch and the assault on Mahadu (Accused No.8) by brother in law of informant. The stick allegedly used for assaulting the informant is not recovered. Injury certificate is not proved on record. Admittedly, on the previous day of the alleged incident, Accused No. 8 - Mahadu lodged a compliant against Prosecution Witnesses No. 2, 6 and 7 for assault on him by stick. In the said incident, accused No. 8 Mahadu sustained fracture to his hand. It is also brought on record that PW-7 Chandrakant got accused No. 8 Mahadu admitted in the hospital and incurred the expenses of his medical treatment. Prosecution has not brought on record any evidence to show that, at the time of first incident, when

abuses referring to the caste were given to family members of the informant, villagers and independent witnesses were present. The second incident admittedly has taken place inside the house of the informant, therefore, it cannot be said to be in public view.

6. In the light of above, it is clear that the prosecution has failed to prove charge against the accused persons.

7. The Trial Court has properly appreciated evidence and has passed a well reasoned order while acquitting the accused. View taken by the Trial Court is a possible view. No case is made out by the appellant to interfere in the impugned judgment and order of acquittal. The appeal being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE