



Diksha Rane

36. APEAL 1412-23.doc

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1412/2023

SANTOSH WAMANRAO BHAREKAR ..APPELLANT
VS.
STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

**WITH
CRIMINAL APPEAL NO.1414/2023
(NOT ON BOARD; TAKEN ON BOARD)**

RAHUL SHIVAJIRAO JADHAV ..APPELLANT
VS.
STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

Adv. Satyavrat Joshi i/b. Adv. Samay Pawar for the appellant
in Appeal/1412/2023.

None for the appellant in Appeal/1414/2023.

Ms. S. D. Shinde, APP for the State.

Adv. Sushan Mhatre for the respondent no.2 in both appeals.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 10, 2024.

ORAL JUDGMENT :

1. Heard learned counsel for the appellant in Criminal Appeal No. 1412/2023. None appeared for the appellant in Criminal Appeal No.1414/2023. Heard learned APP for the State. I have requested Mr. Sushan Mhatre to represent the respondent no.2 - complainant in both appeals which he

graciously agreed.

2. After hearing learned counsel Mr. Satyavrat Joshi in Criminal Appeal No.1412/2023, the other connected Criminal Appeal No.1414/2023 by co-accused Rahul Shivajirao Jadhav who is having more or less a similar role is also heard, as the fate of Santosh's appeal will decide that of Rahul's appeal as well.

3. The appellants are the accused in respect of the C.R.No.169/2023 registered with Koregaon Park Police Station, Pune, on 8/10/2023 under Sections 354, 323, 506 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 3(1)(r), 3(1)(s), 3(1)(w) of the The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter 'the Atrocities Act' for short).

4. The incident happened sometime between 4.00 a.m. and 5.00 a.m. in the morning. The accused, who are three in number, had been to one Pub in Koregaon Park. One of the accused is the wife of Santosh. The respondent no.2-complainant was also present in the Pub. When the complainant came across the appellant Santosh and other accused, a quarrel took place. The complainant alleges that

these appellants abused her in the name of her caste and further assaulted her. It is alleged that the appellants Santosh and Rahul spat on her. The bouncers present at the Pub intervened to separate the quarrel.

5. Mr. Mhatre, learned counsel for the respondent no.2 as well as learned APP submitted that the incident happened in full public view and there is no reason to disbelieve the version of the respondent no.2. It is submitted that the appellants abused the complainant in the name of her caste, spat on her and hence, the ingredients of alleged offence under the Atrocities Act is clearly attracted. It is the submission of learned APP as well as Mr. Mhatre that bar under Section 18 of the Atrocities Act will apply in the present case.

6. I am informed by learned APP that during the pendency of these appeals, the charge-sheet has been filed. Though there were several persons present, in none of the statements of the witnesses there is reference about the appellants abusing the respondent no.2 in the name of her caste. The statements of the bouncers who were present were also recorded. Though there is a reference to the

quarrel having taken place and abuses hurled, there is nothing to indicate that the abuses are in the name of the caste. The incident is captured on C.C.T.V. footage of the Pub. Learned APP, on instructions of the investigating officer fairly submitted that it cannot be deciphered from such video recording that the abuses have been in the name of the caste. From the statement of the prosecutrix, it appears that the appellant Santosh and the respondent no.2 were well known to each other. It is the allegation of the prosecutrix that the appellant Santosh on prior occasions had tried to befriend her and be intimate with her. Thus there appear to be no independent witnesses to corroborate the version of the prosecutrix.

7. As indicated earlier, even the charge-sheet has been filed. In this view of the matter, in my opinion, in the facts and circumstances of the case, the bar under Section 18 of the Atrocities Act will not be attracted.

8. The appeals are allowed.

9. In the event of arrest of the appellants - Santosh Wamanrao Bharekar and Rahul Shivajirao Jadhav in C.R.No.169/2023 registered with Koregaon Park Police

Station, Pune, be released on their furnishing P.R. bonds in the sum of Rs.20,000/- each with one or more sureties in the like amount.

10. The appellants shall report to the investigating officer as and when called.

11. The appellants shall attend the trial regularly.

12. The appellants shall furnish their contact numbers and residential addresses to the Investigating Officer and shall keep him updated, in case there is any change.

13. It is made clear that the observations made are prima facie, in nature, limited to deciding the present appeals and shall not influence the trial Judge while deciding the trial on its own merits.

14. The appeals are disposed of accordingly.

15. I appreciate the assistance rendered by Mr. Sushan Mhatre, the learned counsel, who appeared on behalf of the respondent no.2-complainant in both the appeals.

(M. S. KARNIK, J.)