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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.578 OF 2003

Sanjay s/o Radhakishan Basayye,
Age-39 years, Occu-Business,
R/o. Jadhav Mandi,
Aurangabad

-- Appellant/Accused

Versus

1. The State of Maharashtra,
Through the Police Station House,
Jinsy, Aurangabad,

2. Kailas Laxman Gaikwad,
Age-51 years, Occu-Business,
R/o Survey No.15, Indira Nagar,
Baijipura, Aurangabad,
Tq. and Dist.Aurangabad

-- Respondents

Mr.T.K.Sant, Advocate for the appellant.
Mr.V.M.Lomte, APP for the respondent/State.
Ms.Smita Chole (Kendre), Advocate for respondent No.2 (appointed)

(CORAM : SUSHIL M. GHODESWAR, J.)

DATE : 1 DECEMBER, 2025

ORAL JUDGMENT :

1. The appellant, by preferring this appeal, has challenged the order of conviction passed by the learned Sessions Judge under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of

Atrocities) Act, 1989, in Sessions Case No.314/2002 dated 08.08.2003.

2 This appeal was Admitted by this Court vide order dated 28.08.2003.

3. It is the case of the prosecution that on 15.06.2002, the informant / victim lodged report with Jinsi Police Station, Aurangabad. As per the said report, it came to be stated that on 15.06.2002, at around 9.30 a.m., some work as regards laying the cable pertaining to the Telephone Department was going on through the contractor and labourers. The informant states that Survey No.15 of Baijipura belongs to him and he resides there since last 35 years. On 15.06.2002, at about 9.30 a.m., when the work of said laying cable was going on, the appellant/accused came on the spot and started obstructing the labourers from doing the said work. Upon that there was virtual exchange of words between them. In pursuance to the said quarrel, the appellant alleged to have abused the informant by referring to his caste. He also further alleged to have abused his mother and sister. At that time, certain other persons namely Ramesh Mahajan, Sk.Jabbar, Atul Pawar, Sunil Ratnaparkhe, Gautam Ganraj, Prakash Gaikwad and

others were also present. On the basis of this complaint, Crime No.3044/2002 came to be registered and investigation was set into motion. The Investigation Officer, accordingly, conducted spot panchnama and recorded the statements of certain eye witnesses, who were present on the spot and also collected the photo copy of the caste certificate of the informant and after completing the investigation, accordingly filed charge sheet.

4. After pleading not guilty, the accused came to be tried. The charge vide Exh. 8 was framed against the appellant/accused. The prosecution has examined as many as 7 witnesses during the course of trial. After recording the evidence and hearing learned the Advocates for the parties, the learned Sessions Judge convicted the appellant for the offence punishable u/s 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, and sentenced him to suffer RI for six (6) months and to pay a fine of Rs.1,000/- (Rs.One Thousand Only). Against that judgment, the appellant has filed this appeal. The appeal is already Admitted and the sentence imposed by the learned Sessions Court is also suspended.

5. The learned Advocate Mr.Sant for the appellant submits that there is at all no concrete material available on record so as to convict the appellant for the offences charged against him. The basic attack is on the testimonies of the eye witnesses, who according to him, are the interested witnesses. He submits that in fact the informant had filed civil suit against the family members of the appellant for permanent injunction which was dismissed and hence they registered the FIR in question. Therefore, he contends that the FIR is nothing but in order to settle the personal grudge against the appellant and it is arising out of civil dispute between the parties. He contends that the area where the installation on laying cable was going on that is belonging to the ancestors of the appellant accused. The informant as well as interested witnesses are staying on the said property, have encroached upon the said property since last many years and therefore there is a dispute between the appellant and the informant as regards the said property. He further submits that in the case pertaining to the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, the prosecution is required to prove that victim is belonging to the Scheduled Caste. He submits that the informant having converted to the Buddhism is no longer member Scheduled Community as he

belongs to Buddhist religion and the caste to which the informant is belonging is falling under the Hindu religion. He further submitted that the caste certificate which is produced by the Investigating Officer is a photo copy and the original was never placed before the Court to arrive at a conclusion that the informant is belonging to the Scheduled Caste.

6. He further invited the attention of this Court to the testimony of P.W.No.6 namely Namdeo Manik Chavan whose evidence is recorded at Exh.24. On perusal of the said testimony, it reveals that he is a labourer, who was very much present at the spot and doing his work. According to the said witness, the appellant/accused came on the said spot and he has not heard anything as regards giving abuses by referring to the caste of the informant. He heard the appellant/accused uttering the only word 'हलकट' to the informant. He further submitted that even the testimonies of other eye witnesses are compared together, it would reveal to this Court that they are not supported to each other as regarding the main aspect of this incident. He, therefore, submits that the prosecution has eventually failed to prove its case beyond reasonable doubt as such the instant appeal deserves to be allowed.

7. Per contra, the learned APP vehemently opposed the instant appeal. He states that the testimony of independent witnesses who were present on the spot are sufficient to convict the appellant for the offences he charged with. According to him, eye witnesses are not belonging to community, to which informant is belonging and therefore there is more weightage to such witnesses who are belonging to the communities other than the community of informant.

8. He further submits that in view of the judgment of this Court in **Sandipan Bhagwant Thorat Vs. Ramdas Bandu Athavale [2002(1) Bom.C.R.168]**, though the members of Scheduled Caste Community may have been converted to the Buddhism, still they are regarded as members of Scheduled Caste and as such, the claim of the learned Advocate for the appellant that since after conversion to Buddhism, the informant is not belonging to Scheduled Caste, is incorrect. He, therefore, submits that the prosecution has proved its case beyond reasonable doubt and therefore appeal be rejected with costs.

9. I have also heard the learned advocate for respondent No.2 Ms.Smita Chole (Kendre), who was appointed by this Court vide order

of this Court dated 17.11.2025. After going through the record of the matter in such a short span of time, she fully prepared with the matter, submitted that the appellant is involved in serious crime and there is a testimony of independent witnesses, which cannot be disregarded. The learned Sessions Judge has rightly convicted the appellant and there is no valid reasonable ground available against the appellant as regards setting aside the judgment passed by the learned Sessions Court and therefore the learned Advocate for respondent No.2, by adopting the submissions of the learned APP, prayed for rejection of the instant appeal.

10. After hearing the learned Advocates for the respective parties and on going through the evidence, it is crystal clear that the learned Sessions Court has considered the testimonies of eye witnesses. After perusing the testimonies of eye witnesses, particularly of P.W.Nos. 2, 3, 4 and 5, it is crystal clear that their testimonies as regards abusing the victim on the basis of caste, are not corroborative to each other. All the statements if perused, it reveals that on the aspect of abusing, they have given different versions. There is also important facet in this case that the testimony of P.W.No.6, a labourer who is the sole independent

witness in this case, has stated that he has heard only the word 'हलफट' uttered to the informant and he has not heard anything apart from that. Though the said witness is later on in cross examination has admitted, he does not understand the Hindi language, however the testimony of this witness, cannot be thrown aside as he is only independent witness available on the spot. Therefore the case of the prosecution fails. The other eye witnesses admittedly are interested witnesses for the reason that they are staying on the property which is claiming to be belonging to the appellant. Therefore, for the purpose of supporting the complainant, they can be said to have deposed in favour of complainant before the Court. Therefore, their testimony is unacceptable and hence I pass the following order :-

ORDER

[a] Appeal is allowed and the judgment and order of conviction passed by the learned Additional Sessions judge dated 08.08.2003, passed in Sessions Case No.314/2002 is hereby quashed and set aside. Bail bonds, if any, stand cancelled.

[b] The appellant/accused stands acquitted from all the charges, for which he was convicted by the learned Sessions Court.

[c] Fine amount, if deposited, be refunded to the appellant/accused

as per rules.

[d] Record and proceedings be sent back to the concerned Court immediately.

11. The High Court Legal Aid Sub Committee to quantify and pay the fees payable to the learned Advocate Ms.Smita Chole (Kendre), appointed for respondent No.2.

(SUSHIL M. GHODESWAR, J.)