

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 305 OF 2008

Gopal S/o Sukhdeorao Raut,

Aged about 42 years, Occ. Agriculturist,

R/o. Sawarkhed, Post Medshi,

Tq. Patur, District Akola.

.. APPELLANT

...Versus...

State of Maharashtra,

Through Police Station Patur,

Tq. Patur, District Akola.

.. RESPONDENT

Shri V.N. Vyas, Advocate for the Appellant.

Shri Amit Chutke, APP for the Respondent - State.

CORAM : MRS. SWAPNA JOSHI, J.

DATED : 05th March, 2020.

ORAL JUDGMENT :-

This appeal takes an exception to the judgment and order dated 07.05.2008 delivered by the learned Adhoc Additional Sessions Judge-1, Akola in Sessions Trial No. 30/2007, thereby convicting the appellant (hereinafter referred to as "the accused" for the sake of brevity) for the offence punishable under Section 7(1)(d) of the Protection of Civil Rights Act and for the offence punishable under Section 506 of the Indian Penal Code. For the offence punishable under Section 7(1)(d) of the Protection of Civil Rights Act, the accused was sentenced to suffer rigorous imprisonment for the period of one month and to pay a fine of Rs.500/- and in default to pay the fine amount, sentenced to suffer rigorous imprisonment for 10 days. Whereas, for the offence punishable under Section 506 of the Indian Penal Code, he was sentenced to suffer rigorous imprisonment for the period of one month and to pay a fine of Rs.1,000/- and in default to pay the fine amount, sentenced to suffer rigorous imprisonment for 10 days. Both the sentences were directed to run concurrently.

2. The prosecution case in nutshell can be summarized as under:

The complainant PW1-Ambadas Haribhau Lokhande was Sarpanch of Village Sawarkhed. On 05.12.2006, the work of tree plantation through the Gram Panchayat was going on by the side of the road in Sawarkhed Village. The labourers PW2- Dilip Dayaram Lokhande and PW3- Bharat Ambadas Lokhande were present at that place. The said tree plantation was going on near the Hanuman Temple. At about 1.00 O'clock in the noon the accused-Gopal Sukhdeo Raut by caste 'Mali' came at that place and said to the complainant PW1-Ambadas Lokhande, "O Mangtya do not plant tree here" . The complainant PW1-Ambadas Lokhande requested that not to abuse him and asked him to go away from that place and allow them to work. On this, the accused lifted a pick-axe lying nearby and rushed towards the complainant PW1-Ambadas Lokhande to assault him. He was in inebriated condition. PW2-Dilip Lokhande and PW3-Bharat Lokhande were working under complainant PW1- Ambadas Lokhande convinced the accused, but the accused said to the complainant PW1-Ambadas Lokhande that, "The Government does not change the roster. I myself shall change the roster by killing you within 12 hours." The accused further in insulting manner said to the complainant PW1-Ambadas Lokhande that, "This Government by way of giving reservation to the Scheduled Castes, has brought the time to put the shoes from the feet on the head." Then, the complainant PW1-Ambadas Lokhande proceeded to the Police Station to lodge his complaint vide Exh.27.

3. On the basis of the said complaint, PW7-DY.S.P Avinash Ambhore registered the offence vide Crime No.3087/2006 at Police Station against the accused. On 06.12.2006, PW5-DY.S.P. Prabhakar Satam visited the place of incident and prepared spot panchnama (Exh.33). He then recorded the statement of witnesses. After completing the formal investigation, charge-sheet came to be filed in the Court of Judicial Magistrate First Class and the case was committed to the Court of Sessions. The learned trial Judge after recording the evidence and hearing both the sides convicted the accused, as aforesaid.

4. I have heard Shri V.N. Vyas, learned Advocate for the appellant-accused and Shri Amit Chutke, learned APP for the State. With their able assistance, I have gone through the record and proceedings of the case.

5. The learned Advocate Shri V.N. Vyas, vehemently argued that the learned trial court has not assessed the evidence led by the prosecution witnesses in its proper perspective and has erroneously convicted the accused. It is submitted that the learned trial Judge based on the same allegations made by the prosecution witnesses has acquitted the accused under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the ground that no utterances were made within public view. The learned Advocate also pointed out that the objects and reasons for the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with a view to prevent atrocities against the members of the Scheduled Castes and the Scheduled Tribes and to provide for Special Courts and exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and in respect of the commission of offence against Scheduled Castes and Scheduled Tribes. In these circumstances, it is submitted that no offence is made out against the member of Scheduled Castes in the present case. In that situation, there is no question of any commission of offence punishable under the Protection of Civil Rights Act, 1955. According to the learned Advocate for the accused, the object of the Protection of Civil Rights Act states that under Article 17 of the Constitution of India, "Untouchability" is abolished and its practice in any form is forbidden. It is submitted that when the accused was acquitted of the provision of 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 then, he could not be convicted under the provision of the Protection of Civil Rights Act, 1955.

6. In this regard, Article 17 of the Constitution of India describes the Abolition of untouchability as under.

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law."

7. Thus, the untouchability is punishable under the provision of Section 7(1)(d) of the Protection of Civil Rights Act, 1955, which reads as under.

"Section 7(1)(d):- Insults or attempts to insult, on the ground of "untouchability", a member of a Scheduled Caste, shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees."

8. It is contended that, since the learned trial court has come to the conclusion that the accused has not insulted to the complainant PW1-Ambadas Lokhande on the ground of caste, then, on the same set of facts, there cannot be any insult on the ground of untouchability of the complainant by the accused. The learned Advocate for the appellant-accused further contended that there is no corroboration to the version of PW1- Ambadas Lokhande with regard to the allegations of untouchability, as such. So also PW2-Dilip Lokhande and PW3- Bharat Lokhande are interested witnesses and they are nephew and son of the complainant PW1- Ambadas Lokhande respectively, so also, they were not enrolled as labourers of Gram Panchayat as can be seen from the testimony of PW1- Ambadas Lokhande. In view thereof, their presence at the place of incident is doubtful. It is further submitted that no independent witness has been examined in that regard to substantiate the case of the complainant PW1- Ambadas Lokhande. It is further submitted that although the Police Station was at a distance of 5 to 6 Km, still there is a delay of 6 hours in lodging the First Information Report, in these circumstances, it is submitted that the accused is entitled for benefit of doubt.

9. Per contra, the learned APP supported the judgment passed by the learned trial court and submitted that although the offence is not proved under the Provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, however, the allegations made by the complainant PW1-

Ambadas Lokhande shows that the accused has insulted the complainant PW1-Ambadas Lokhande on the ground of untouchability. According to learned APP, the trial court has properly assessed the evidence of the prosecution witnesses and has rightly convicted the accused.

10. In order to consider the rival contention of both the sides, it would be advantageous to go through the evidence of the relevant witnesses, more particularly, complainant PW1- Ambadas Lokhande, PW2-Dilip Lokhande and PW3-Bharat Lokhande.

11. The testimony of complainant PW1-Ambadas Lokhande shows that on 05.12.2006, PW1-Ambadas Lokhande alongwith others was planting trees under the scheme of Sant Gadge Baba Swachhata Abhiyan, besides Hanuman Temple. PW2-Dilip Lokhande and PW3-Bharat Lokhande were also working with him. They were digging ditches for planting tree on daily wages. At that time the accused arrived at the spot and he said to PW1-Ambadas Lokhande "O Mangtya Ithe Zad Lavu Nakos". There on, PW1-Ambadas Lokhande requested him not to abuse and allow them to do their work. However, the accused picked the Tikas (pick-axe) lying on the spot and raised it to assault PW1-Ambadas Lokhande. Thereafter, the accused threatened to PW1-Ambadas Lokhande by saying that "the Government do not change roster and he will change roster by killing him within 12 hours." The labourers then caught the accused. At that time he stated that "the Government has given reservation to the Scheduled Caste and compelled to take footwear on head." At that time the accused was in inebriated condition. PW1-Ambadas Lokhande then lodged his complaint (Exh.27).

12. In the cross-examination, PW1-Ambadas Lokhande admitted that the wife of accused and his brother are in opposition to PW1-Ambadas Lokhande in the Gram Panchayat and the only family of the accused is of 'Mali' community in Village Sawarkhed. It appears that, there was political rivalry between the accused and the complainant PW1-Ambadas Lokhande. According to PW1-Ambadas Lokhande, the population of his Village was near about 400 and there may be 77 families in the said Village. However, no independent witness has been examined by the prosecution. PW1-Ambadas Lokhande admitted that PW3-Bharat Ambadas Lokhande is his son and PW2-Dilip Dayaram Lokhande is his nephew.

13. The testimony of PW2-Dilip Lokhande is on the same lines. He has not stated that, the accused said that "the Government has given reservation to the Scheduled Caste and compelled to take footwear on head". Thus, PW2-Dilip Lokhande as well as PW3-Bharat Lokhande failed to state the third utterance allegedly made by the accused. Significantly, there is an improvement in the testimony of PW3-Bharat Lokhande to the effect that the accused said that he will change roster within 12 hours and when accused picked up pick-axe, they caught him.

14. Thus, the evidence on record shows that the testimony of PW1-Ambadas Lokhande is not fully corroborated with the testimony of PW2-Dilip Lokhande and PW3-Bharat Lokhande on the aspect of utterances made by the accused that, "the Government has given reservation to the Scheduled Caste and compelled to take footwear on head" . In any case, PW2- Dilip Lokhande and PW3-Bharat Lokhande are in relation with each other and although the population of Village Savarkhed was near about 400 persons, it is surprising that the statement of none other witness except PW2-Dilip Lokhande and PW3- Bharat Lokhande were recorded by the Investigation Officer PW5-DY.S.P Prabhakar Satam.

15. Investigation Officer PW5-DY.S.P. Prabhakar Satam has categorically admitted in his cross-examination that he had not recorded the statement of any other witnesses except the witnesses examined by the prosecution i.e. complainant PW1- Ambadas Lokhande, PW2-Dilip Lokhande and PW3-Bharat Lokhande. Thus, the prosecution has failed to examine independent witness on the aspect of the alleged incident.

16. So far as the Provision under Section 7(1)(d) of the Protection of Civil Rights Act, 1955 is concerned, in order to attract the said provision, it has to be shown that words so uttered had effect of insulting complainant on the ground of untouchability and those words were allegedly uttered by the accused to encourage the audience to practice untouchability or the accused himself practiced untouchability. It is to be seen whether the accused had insulted or attempted to insult the complainant on the ground of untouchability.

17. The learned APP has properly assisted the Court by pointing out the correct portion of law through the authorities discussed herein below.

18. In the case of M.A. Kuttappan v. E. Krishnan Nayanar and another, reported in 2004 CRI.L.J. 1770, it is observed by the Hon'ble Apex Court that in order to attract the provision of Section 7(1)(d) of the Protection of Civil Rights Act, it has to be shown that words so uttered had effect of insulting complainant on the ground of "untouchability".

19. In the case of Dr. Narendra Bhojram Patil Vs. State of Maharashtra, reported in 2010 Cri.L.J. 2762, it is held that mere utterance of any word on the caste of complainant is not sufficient to prove the offence under Section 7(1)(d) of the Protection of Civil Rights Act, 1955 and something more is necessary and in that case this Court has observed that the offence in question taking place inside the house and that offence being not in public view, the proceedings were quashed.

20. In the instant case, the accused has allegedly used the word "Mangtya". Mere utterance of the word "Mangtya" on the caste of complainant is not sufficient and something more is necessary to attract the provision of 7(1)(d) of the Protection of Civil Rights Act, 1955. In the instant case, the learned trial court has observed in para 22 and 23 of the judgment as under:

"22. So far as the legal position, in respect of commission of the offence by the accused is concerned, in the case of Pradnya Pradip Kenkare, reported in 2005 ALL M.R.(Cri) 194, referred supra it is observed by his Lordship that:-

"Incident of insult or intimidation has to occur in a place accessible to and in presence of the public. However, expression public view is interpreted by his Lordship as under:- Expression public view has been prefixed by preposition "within" which in fact follows the expression "in any place".

In other words the expression relating to location alleged the offence is clarified by the requirement of being within public view. The Act of insult or Intimidation must be visible and audible to the public in order to constitute such act to be an offence under Section 3(1)(x) of the said Act. The word view refers to the 'public', prefixed by the expression 'in any place within'. The word public not only relates to location define by the word place also, to the subjects witnessing the incidence of insult or intimidation to the Member of Schedule Caste or Tribe therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provisions of law".

23. In the present case though the evidence on record substantiate that the complainant witnesses were planting trees at public place near Hanuman Temple surrounded by the houses, however, witnesses have stated that, except them and the accused, no one else were present on the spot. Thus, though the place of the incident is accessible to the public, the utterance of insulting words on account of caste to the complainant to humiliate him, being not taken place in the presence of members of public or within the public view, there is no question of attributing the offence under Section 3(1)(x) of the Prevention Scheduled caste and Atrocities Acts."

21. Surprisingly, on the same set of facts, the learned trial court has acquitted the accused observing that the said offence was not committed within a public view. Then, on the other hand, the learned trail court erred in holding that the offence of untouchability punishable under Section 7(1)(d) of the Protection of Civil Rights Act, 1955 is made out. It is so because the

offence of untouchability also has to be committed within public view as per judgment of Dr. Narendra Bhojram Patil discussed supra.

22. The learned trial Judge has observed that the offence under provision of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has not been attracted since it was not occurred within a public view. It is thus clear that the prosecution has not proved that the present incident had taken place within a public view. As discussed above, although the complainant PW1-Ambadas Lokhande claimed that there was a programme of plantation of trees near Hanuman Temple which was surrounded by the houses, the evidence of witnesses does not in any manner show the presence of public or as such audience at the place of incident. In view thereof, there is no proof that the words were encouraging the audience to practice untouchability or the accused himself was practicing untouchability.

23. Significantly, the word "untouchability" is not defined under the Protection of Civil Rights Act, 1955. There is no cogent, consistent and convincing evidence on record that the accused has used the words "The Government do not change roster and he will change roster by killing him within 12 hours" and "The Government has given reservation to the Scheduled Caste and compelled to take footwear on head". As there is no corroboration of any independent witnesses in that regard, so also the allegations made by the complainant PW1- Ambadas Lokhande that the accused has used the words "O Mangtya Ithe Zad Lavu Nakos" and the accused threatened by saying that "the Government do not change roster and he will change roster by killing him within 12 hours", in that regard, as discussed above, simply mere utterance of word "Mangtya" by the accused to the complainant PW1-Ambadas Lokhande, is not sufficient to attract the provision of 7(1)(d) of the Protection of Civil Rights Act, 1955, as discussed in the judgment by this Court in the case of Dr. Narendra Bhojram Patil (cited supra) and something more is necessary.

24. Thus, as discussed above, so far as the first allegation is concerned the utterance of words, "O Mangtya Ithe Zad Lavu Nakos", does not comes within a purview of 7(1)(d) of the Protection of Civil Rights Act, 1955. So also the third utterance i.e. "The Government has given reservation to the Scheduled Caste and compelled to take footwear on head" , as is not supported by the testimony of PW2-Dilip Lokhande and PW3-Bharat Lokhande, and as, it is proved that it was not within a public view, there is no question of using those words encouraging audience to practice untouchability or the accused himself practicing untouchability. Further, it is the matter of fact that there was no audience at the place of

incident, there is no question of utterances being audible to anyone. So also, since, there is no corroboration to the testimony of PW1-Ambadas Lokhande and the oral report (Exh.27) was lodged by the complainant PW1-Ambadas Lokhande about six and half hours after the incident, itself creates a serious doubt about the occurrence of the incident.

25. In the testimony of PW3-Bharat Lokhande an improvement is pointed out to the effect that when the accused picked up pick-axe, they caught him. The said improvement goes to the root of the case and creates a serious doubt about the accused picking up pick-axe and PW2-Dilip Lokhande and PW3-Bharat Lokhande catching hold of him. So also as discussed above, the version of PW1-Ambadas Lokhande that the accused picked up pick-axe lying on the spot and raised it to assault him and thereafter, he threatened to PW1-Ambadas Lokhande, appears to be doubtful and is not corroborated by the cogent and consistent evidence. It is therefore doubtful whether the accused threatened PW1-Ambadas Lokhande or not. Thus, the entire case of the prosecution comes under the shadow of doubt. More particularly, when no independent witnesses were examined and only the relation witnesses were examined, who are interested in the outcome of the case, as the accused had political rivalry with the complainant PW1-Ambadas Lokhande, and PW2-Dilip Lokhande and PW3-Bharat Lokhande are the relatives of PW1-Ambadas Lokhande.

26. In the case of Dnyanoba s/o. Annasaheb Kale Vs. State of Maharashtra, reported in 2006 ALL MR(Cri) 1070, it is held that if the version of complainant is vague and cryptic and is not supported by oral, documentary or circumstantial evidence, the entire case of prosecution is suspicious and no reason for not accepting the defence taken by the accused and in that case the accused is entitled for benefit of doubt.

27. In the instant case also, the testimony of PW1- Ambadas Lokhande is not supported by any cogent, consistent and independent evidence. Surprisingly, although there was a programme of plantation of trees, no independent person was examined by the prosecution. In view thereof, the entire prosecution case comes under the shadow of doubt. The appellant-accused is, therefore, entitled for benefit of doubt.

28. In view of the above facts and circumstances, the learned trial Judge should have assessed the evidence led by the prosecution witnesses in its proper perspective. Thus, in my view, the Judgment and order passed by the learned trial court needs to be quashed and set aside. Hence the following order:

ORDER (1) Criminal Appeal No. 305/2008 is allowed.

(2) The impugned judgment and order dated 07.05.2008 delivered by the learned Adhoc Additional Sessions Judge-1, Akola in Sessions Trial No. 30/2007 for the offence punishable under Section 7(1)(d) of the Protection of Civil Rights Act, 1955 and for the offence punishable under Section 506 of the Indian Penal Code, is hereby quashed and set aside.

(3) The appellant-accused is acquitted of the offence punishable under Section 7(1)(d) of the Protection of Civil Rights Act, 1955 and also of the offence punishable under Section 506 of the Indian Penal Code.

(4) The bail bonds of the accused shall stand cancelled.

29. Criminal Appeal is disposed of accordingly.

(MRS. SWAPNA JOSHI, J.) S.D.Bhimte