



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.37 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
DILIP JAGANSING PARDESHI AND OTHERS

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Advocate for Appellant : Mr. A.A. Jagatkar, Assistant Public Prosecutor

Advocate for respondents: Mr. Amol Gandhi, Advocate h/f. mr. P.S.

Mehta, Advocate for respondents Nos. 1 to 4, 5 to 11 and 13.

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CORAM: K.K. SONAWANE, J.

DATED : 2ND DECEMBER, 2019.

ORAL ORDER :

. The prosecution is seeking leave under Section 378(1) (b) of Cr.P.C. to present an appeal against the impugned judgment and order of acquittal of the respondents/accused passed by the learned Additional Sessions Judge, Jalgaon in Special SC ST case No. 72 of 2008 under Sections 143, 147, 148, 452, 323, 504 and 506 r/w. Section 149 of IPC and under Section 3 (1)(x) of the SC and ST (Prevention of Atrocities) Act.

2] According to the prosecution the first informant Yogesh Navgire and all the accused were residing in Ranjangaon village and had acquaintance with each other. The family members of the first informant were belonging from Hindu “Mang” community whereas the accused are from the upper caste Hindu community. It has been alleged that there were strain relations in between the first informant Yogesh and accused Ashok Pardeshi on account of earlier incident of abusing and assault occurred on 26.2.2007 and 27.2.2007. The complainant also given complaint to the police about the incident. It has been contended that on 28.2.2007, when his father and brother had been to the city for work and he was at home, that time, the accused arrived in front of his house and asked for what reason he filed police report against them. They started assaulting him by kick, stick and fist blows. Accused - Ashok abused him on his caste by uttering the words “मादरचोद साले मांग, हे माजलेले आहेत”. Therefore, the first informant rushed to the police station and filed report. Pursuant to FIR (Exh.95) police registered the crime and set the investigation in motion. I.O. recorded statements of witnesses acquainted with the facts of the case. I.O. Collected relevant documents including injury certificate etc. After completion of investigation, I.O. preferred the charge sheet against respondents-accused before the learned trial court for the offence punishable under the IPC as well as under the SC & ST (Prevention of Atrocities) Act, 1989.

3] The learned trial court framed the respective charges against accused and proceeded to record the evidence of prosecution witnesses to evaluate the guilt of the accused. The prosecution examined in all 10 witnesses to prove the charges against the accused. The learned trial court appreciated the entire oral and circumstantial evidence on record and arrived at the conclusion that the prosecution miserably failed to prove the charges levelled against the respondents/accused beyond all reasonable doubt. Therefore, the learned trial court exonerated all the respondents-accused from the charges pitted against them. Being dissatisfied with the impugned finding of acquittal of the respondents, the prosecution – State of Maharashtra is intending to prefer an appeal to redress its grievances. Therefore, the prosecution State of Maharashtra seeks leave under Section 378(1)(b) of Cr.P.C. to present an appeal against the impugned judgment and order of acquittal of respondents/accused passed by the learned trial court.

4] The learned APP appearing on behalf of applicant – State submits that the learned trial court did not appreciate the evidence on record in its proper perspective and recorded the finding of acquittal of the respondents-accused erroneously. The impugned order is liable to be quashed and set aside and therefore, leave under Section 378(1)(b) of Cr.P.C. is necessary.

5] The learned counsel for the respondents-accused, on the other hand, supported the findings of acquittal expressed by learned trial court. He submits that the learned trial court has correctly appreciated the entire oral and circumstantial evidence adduced on record and recorded the finding of acquittal. There is no propriety to interfere with the said finding and hence, the prayer to grant leave under Section 378(1)(b) of Cr.P.C. be rejected.

6] Having given anxious consideration to the arguments advanced on behalf of both sides, it reveals that the finding of acquittal expressed by the learned trial court appears just, proper and reasonable. The evidence of the prosecution witnesses are not upto the mark to bring home the guilt of the respondents/accused for the charges pitted against them. There are material discrepancies and contradictions in the evidence of the prosecution witnesses.

7] PW-2 Yogesh Navgire was the first informant in this case. He lodged the FIR. He stated that on 28.2.2007, when he was at his house, that time, accused persons arrived in front of his house and started abusing to him. The accused assaulted him by means of stick/fist etc. They also hurled abuses on caste. Therefore, he filed report to the police (Exh.95). In order to fortify the contentions of the PW-2 First informant Yogesh, prosecution examined PW-4 Vijay

Navgire and PW-5 Santosh Navgire, PW-6 Rakesh Navgire. All these witnesses are real brothers of PW-2 Yogesh Navgire etc. PW-4 Vijay stated that on 28.2.2007, in the morning at about 9.00 a.m, the respondent/accused Ashok visited to his house. At that time, his brother and father were not present in the house. However, wife of his brother and mother were busy in the domestic work. His younger Brother Santosh and sister were present in the house. The respondents/accused Ashok reprimanded his brother Santosh. Thereafter, he heard shouts. He came out of the house and saw that all the accused were armed with weapon like sticks etc. They started assaulting PW-4 Vijay, his brother Santosh as well as wife of his brother, grandmother and also his sister etc. he also hurled casteist abuses by uttering the words “मादरचोद साले मांग, हे माजलेले आहेत” Thereafter, the villagers thronged on the spot. The accused/respondent - Kamalbai flung an aluminum rod through window of her house, whereas, the other accused pelted pieces of bricks from the window.

8] PW-5 Santosh deposed that on 28.2.2007, the respondents-accused Ashok gave threats of life to him. Thereafter, when he was in the house, that time respondents-accused arrived in front of his house and hurled abuses on his caste. The respondents-accused were armed with sticks and other weapons. The respondents/accused instigated the other accused for assaulting

family members of PW-5 Santosh. Thereafter, they barged into the house and assaulted his brother, his wife and sister as well as mother by sticks, kicks and fists. He received injuries to his right hand palm. The respondents-accused also caused damage to the household articles as well as instrument of Banjo Band. PW-6, another brother of Yogesh stated in the similar fashion about the assault by the respondents/accused and causing injuries to them, they hurled casteist abuses, saying “मांगट्या मातला ” etc.

9] The scrutiny of evidence of these eye witnesses of the incident reveals that the entire evidence of these witnesses appear to be omnibus and stray in nature. They did not describe overt act of each of the respondents/accused in this case for assaulting their family members and caused injuries by weapons like stick or by kicks and fists etc. PW-4 Vijay, PW-3 Manoj and PW-5 Santosh did not disclose about the presence of first informant PW-2 - Yogesh at the scene of occurrence during relevant period of incident. The entire evidence adduced on record on behalf of prosecution appears to be casual and superficial in nature. It would prima-facie hard to believe that the respondents/accused hurled casteist abuses to insult or humiliate the first informant and his family members on their caste within a public view. Admittedly, the respondents/accused and family members of the first informant were at logger-heads with each other on account of earlier dispute of altercation. In such circumstances, it

would prima-facie unsafe to fasten the guilt on the respondents-accused at the instance of prosecution witnesses. It would also difficult for the prosecution to prove the charges as envisaged under the IPC. Moreover, the ingredients of Section 3(1)(x) of the SC and SC (Prevention of Atrocities) Act also cannot be made applicable to the factual scenario of the present matter perceived from the evidence of the prosecution witnesses on record. In such circumstances there is no propriety to grant prayer of the prosecution to grant leave to proceed further for filing an appeal against the impugned judgment and order of acquittal passed by the learned trial court. It would be an futile effort and dissipate the precious time of the court. The ultimate possibility of conviction of the respondents-accused in this case is totally bleak. Therefore, prayer for grant of leave as contemplated under Section 378(1)(b) of Cr.P.C. to file an appeal deserves to be turned down for want of merits into the matter. Hence, the application seeking leave to appeal stands rejected. No orders as to costs.

(K.K. SONAWANE)
JUDGE

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