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Court : Mumbai Nagpur

Decided On : Aug-28-2014

Judge : S.B. Shukre

Appeal No. : Criminal Appeal No. 499 of 2007

Appellant : Umesh

Respondent : The State of Maharashtra

Judgement :

Oral Judgment :

1. This appeal is preferred against the judgment and order dated 1.11.2007 delivered in Sessions Trial No.109 of 2006. 2. Briefly stated, the prosecution case against the appellant is as under :

On the basis of complaint lodged against the present applicant and 15 other persons at about 14.45 hours of 19.11.2005 by one Fulchand Patil, offences punishable under Sections 143, 504, 506 read with Section 149 Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, the Atrocities Act) were registered by Police Station Ural, District Akola. It was alleged by the complainant that there was a Gram Sabha at village Andura on 19.11.2005 at about 11.00 a.m. and when the meeting started, the appellant together with other accused persons formed an unlawful assembly and abused the complainant on his caste and intentionally

insulted him by abusing him and also questioning his status and capacity to occupy a chair in the Gram Sabha. It was also alleged that this appellant, in particular, threatened the complainant that just as it happened in village Belkhed, the house of the complainant will also be set on fire.

After completion of the investigation, a charge sheet was filed against the applicant and the other 15 accused persons and charge for offences, as stated earlier, was framed by the learned Additional Sessions Judge. As the appellant and other accused pleaded not guilty to the charge, the trial of all the accused proceeded. After considering the evidence available on record and hearing both sides, learned Additional Sessions Judge found that since the investigation was not carried out by a competent officer, as required under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, it has been held to be mandatory provision of law, the offence punishable under Section 3(1)(x) of the Atrocities Act was not proved. The learned Additional Sessions Judge, therefore, acquitted all the accused including the present appellant of the said charge under the Atrocities Act. The learned Additional Sessions Judge also found that the evidence against all the other accused persons except for the present appellant, did not disclose commission of any offences by them and, therefore, she acquitted the other accused persons of all the remaining offence with which they were charged. The present appellant was also, for the same reason, acquitted of the offences punishable under Section 143 read with Section 149 of the Indian Penal Code. But, the learned Additional Sessions Judge was satisfied that there was sufficient evidence to bring home to the respondent his guilt for the offences punishable under Sections 504 and 506 of the Indian Penal Code. Accordingly the learned Additional Sessions Judge convicted the appellant for these offences by sentencing him to suffer Rigorous Imprisonment for 2 years for the offence punishable under Section 504 of I.P.C. and to suffer Rigorous Imprisonment for 5 years for an offence punishable under Section 506(II) Indian Penal Code. She also imposed a fine of Rs.2,000/- with default sentence to suffer Simple Imprisonment for two months. Both the sentences were directed to run concurrently.

3. Being not satisfied with the same, the appellant has preferred the present appeal.

4. I have heard Mr.Anil Mardikar, learned Senior Counsel for the appellant and Mr.V.A. Thakare, learned Assistant Government Pleader for the Respondent/State. I have carefully gone through the impugned judgment and order and also the evidence available on record.

5. Mr. Mardikar, learned Senior Counsel has taken me through the evidence adduced by the prosecution and submitted that when the alleged insult was on the caste lines and when it has not been proved, it is difficult to understand as to how the learned Additional Sessions Judge, Akola has convicted the accused for the offence punishable under Section 504 of the Indian Penal Code.

6. He further submits that even if it is held that the appellant had insulted the complainant-Fulchand Patil, still there is absolutely no evidence available on record which would show that the insult was made with an intention to provoke the complainant to commit breach of public peace or some cognizable offence. He further submits that the alleged threat of setting on fire the house of the complainant is also not satisfactorily established by the prosecution as the evidence led in this regard is discrepant and of doubtful nature.

7. Shri Mardikar, further submits that there was admittedly a previous complaint in respect of same incident lodged against the complainant by Sarpanch-Dnyaneshwar Rohankar at about 1.33 p.m. of the same day at Police Station Ural. He submits that in this First Information Report, the Sarpanch has alleged that the complainant-Fulchand Patil and his associates had created disturbances in the Gram Sabha by resorting to violent behavior. Accordingly, Police Station Ural registered offences punishable under Sections 143, 294 and 506 read with Section 149 Indian Penal Code against the complainant and his associates and it was against the background of this First Information Report, that the allegations made in the present First Information Report by the complainant against the applicant are required to be viewed.

8. Shri Mardikar further submits that although the complainant has taken specifically names of few persons, who have witnessed the incident, none of those persons whose names are appearing in the First Information Report has supported the version of the complainant and, therefore, the testimony of the complainant on

this aspect of the matter cannot be relied upon. In support of this argument the learned counsel has placed reliance upon the cases of **State of U.P. vs. Rajeshwar and others**, reported in **2013 CRI.L.J. 3103**, **Ram Chandra Singh vs. Nabrang Rai Burma**, reported in **1998 CRI.L.J. 2156**, **Noble Mohandass vs. State**, reported in **1989 CRI.L.J. 669**.

9. Shri V.A. Thakare, learned A.P.P. has submitted that although it is true that the First Information Report has been lodged against the complainant in respect of the same incident about one hour prior to the complaint lodged by Fulchand Patil against the appellant and other accused persons, that by itself would not be sufficient to say that the evidence of the complainant is not trustworthy and is required to be corroborated by other evidence. He further submits that when it comes to corroboration, there is sufficient evidence which supports the version of the complainant.

10. Shri Thakare further submits that the evidence has to be considered and examined in its entirety and it is not permissible in law to take out a few cases from the evidence of some of the witnesses and then come to a conclusion of innocence of the appellant. He submits that evidence of complainant is particularly supported by PW 3-Bhagwan Tayade, PW 6-Sanjay Patil and also PW 8-Vasanta Tayade, all of whom are referring to the incident of Belkhed and also giving of threat of setting on fire the house of the complainant by the appellant. He further submits that the threat given by the appellant is of very specific nature and, therefore, it is sufficient to prove the offence of criminal intimidation punishable under Section 506 (Part II) of Indian Penal Code. In support, he places his reliance upon the case of **In re A.K. Gopalan** , reported in **AIR (36) 1949 Madras 233**.

11. In order to appreciate the rival arguments, let us consider the evidence available on record. There are 12 witnesses examined by the prosecution in this case. Out of 12 witnesses, apart from the evidence of complainant PW 1-Fulchand Patil, the evidence of PW 2-Dnyaneshwar Gosavi, PW 3-Bhagwan Tayade, PW 5-Sheshrao Gavande, PW 6-Sanjay Patil, PW 7-Ganesh Jagtap, PW 8-Vasanta Tayade and PW 9-Sukhadeo Panzade is material.

12. The case of the prosecution is based upon the insult of the complainant on the caste lines and giving of threat by the appellant regarding setting on fire the house of the complainant. Insofar as the insult aspect is concerned, the learned Additional Sessions Judge has already found that it has not been proved and, therefore, acquitted all the accused persons including the present appellant. So, the fact of insulting the complainant by the appellant on caste lines has not been proved and if it has not been proved there would no question of giving of provocation to the complainant to indulge in or resort to some violent acts like committing breach of public peace or committing of an offence.

13. Inspite of the appellant being held not guilty for insulting the complainant on caste lines, the accused has been found guilty of the offence punishable under Section 504 of the Indian Penal Code. The requirement of this Section is two fold i) making of insult and ii) insulting with intention to provoke the person to or knowledge that the person will break the public peace or commit any other offence. As the first ingredient has been found to be not proved in this case and the finding given by the learned Additional Sessions Judge has reached its finality with no appeal against it having been filed, as rightly submitted by the learned counsel for the appellant, there would be no question of proving the second ingredient of giving of provocation by the appellant.

14. Even if it is assumed, just for the sake of argument, that the fact of giving of insult by the appellant has been established, still there being no evidence whatsoever showing that same was with a view to provoke the complainant into committing breach of public peace or some other offence, it cannot be said that the prosecution has succeeded in proving the guilt of the appellant for an offence publishable under Section 504 Indian Penal Code. In the case of Ram Chandra Singh vs. Nabrang Rai Burma (supra) the learned Single Judge of the Orissa High Court has found that mere abuses without intention to insult or cause breach of the peace is no offence. This view commends to me and in this case also there being no evidence showing that abuse or insult was with an intention to provoke the complainant to cause breach of peace or some other offence, no offence punishable under Section 504 of the Indian Penal Code is made out against the appellant.

15. In view of above, I find that learned Additional Sessions Judge has committed a serious error of law in not appreciating the material aspects of the evidence of the prosecution in the light of the essential ingredients of Section 504 Indian Penal Code. The finding recorded by the learned Additional Sessions Judge in this regard, therefore, deserves to be reversed.

16. Now, it has to be seen as to whether or not there is any sufficient evidence for proving the offence punishable under Section 506 (Part II) against the appellant. Upon perusal of the prosecution evidence, one can very well see that there is no reliable evidence brought on record in this regard by the prosecution. No doubt, PW 1-Fulchand Patil has stated in his evidence that the appellant had given threat to the effect that just as it happened at Belkhed, his house would also be set on fire by the appellant. But, such version of the complainant has to be seen with circumspection as there is a background of filing of F.I.R. in respect of same incident by Sarpanch-Dnyaneshwar Rohankar against the complainant. This F.I.R. has been filed, as stated earlier, at 1.33 p.m. on 19.11.2005, whereas the complainant has filed his F.I.R. against the appellant and other accused persons including Sarpanch-Dnyaneshwar Rohankar (accused No.2) at 14.45 hours on 19.11.2005.

17. At this juncture, I would like to refer to the observation of the Honble Supreme Court in the case of Rajeshwar and others (supra), which are relevant for appreciating the prosecution evidence in this case. In this case before the Honble Supreme Court, there was an old bitter enmity between the complainant party and the party of the accused persons. The Honble Apex Court, therefore, held that in the facts and circumstances, the view taken by the High Court that the prosecution witnesses did not appear natural and did not inspire confidence was reasonable or plausible and, therefore, the Honble Supreme Court refused to interfere with the Judgment of the High Court acquitting the respondent-accused.

18. As stated earlier, in this case also, admittedly a previous F.I.R. has been lodged against the complainant and his associates by the Sarpanch, who was made an accused in the F.I.R. lodged by the complainant against the appellant and other accused persons. This previous F.I.R. indicates that there was a dispute

between the complainant party and the party of the appellant. Therefore, in this case also, the complainant would have to be examined with care and caution and some corroboration would be necessary.

19. The complainant in his evidence has taken the names of Sheshrao Gavande, Ganesh Jagtap, Dnyaneshwar Gosavi, Vasanta Gavange and Sunil Bhagwan Tayade as the persons who had witnessed the incident of giving of threat to the complainant. Out of these five persons, prosecution examined only two persons, namely, Dnyaneshwar Gosavi (PW2) and Sheshrao Gavande (PW5). Both these witnesses have not at all supported the story put forward by the complainant. They are not saying anything on the aspect of giving of threat by the appellant. It is only PW 3-Bhagwan Tayade and PW 6-Sanjay Patil, who are saying that the appellant had given the threat of setting ablaze the house of the complainant. But these witnesses have not been specifically named in the F.I.R. by the complainant and, therefore, their evidence cannot be accepted as it is and some corroboration would be required. But, that is not forthcoming from any other witnesses, who were present at the time of incident.

20. The evidence further shows that even PW 8-Vasanta Tayade does not say anything about giving of threat of setting on fire the house of the complainant. He only states that the appellant had said that atmosphere like Belkhed would be created. This threat cannot be stated to be specific and real one and directed against the complainant himself. That apart, there is no reliable evidence clarifying the Belkhed incident; the appellant meant the same incident and the complaint also understood it to be so. In order to bring home the offence punishable under Section 506 Indian Penal Code, it is necessary that the threat given is real and the person giving the threat means it. The words so uttered by PW 8-Vasanta Tayade have general connotation and could not be considered to be as falling within the definition of criminal intimidation in Section 503 Indian Penal Code.

21. In the case of Noble Mohandass vs. State (supra) Madras High Court has observed that the threat that is alleged to be given must be real one and should not be just a mere word, not meant by the person uttering the word. The view so taken by the learned Single Judge of Madras High Court accords with the view

taken by me in this case.

22. Of course, learned A.G.P. for the Respondent/State has submitted that the threat given to the complainant by the appellant was the real one and, therefore no interference with the finding given by the learned Additional Sessions Judge in respect of proving of offence punishable under Section 506 Indian Penal Code can be made.

23. I am not inclined to accept the argument of learned A.P.P. In the case of In re A.K.Gopalan (supra) relied upon by learned A.P.P. the learned Single Judge of Madras High Court has held that when the speech of the accused showed that there was a threat specifically given to the Police Officers stationed in Malbar, the ingredients of criminal intimidation as defined under Section 503 were fulfilled and that whether or not any member of police force was frightened was immaterial. In the instant case, uttering the words that atmosphere like Belkhed would be created, as stated by PW 8-Vasanta Tayade, cannot be termed as holding out a specific and real threat to the complainant. These words are spoken generally and do not indicate that the appellant meant by what he said. Therefore, the case of In re A.K. Gopalan would have no application to the facts of the present case.

24. Thus, I find that there is no reliable evidence adduced by the prosecution establishing beyond reasonable doubt that the applicant had given threat of setting on fire the house of the complainant. The evidence of PW 1-Fulchand Patil-complainant having regard to the background of previous dispute, was required to be corroborated by an independent evidence, but evidence of independent witnesses was not there to support the allegations made by the complainant. Even PW 9-Sukhadeo Panzade, the Village Development Officer of Gram Panchayat does not support the case of the complainant. He has not stated anything about particular threat allegedly given by the appellant. He was an important witness of the prosecution, he being Village Development Officer of Gram Panchayat and being present very much in the Gram Sabha when the alleged incident took place. When an independent and important witness like PW 9-Sukhadeo Panzade also does not support the version of the complainant, the whole rug under the feet of the prosecution is pulled out and prosecution case crumbles on the ground. In

other words, there is no evidence whatsoever available on record from which it can be concluded that the prosecution has reasonably proved the guilt of the appellant for an offence punishable under Section 506 (II) of Indian Penal Code. The learned Additional Sessions Judge has again committed serious illegality in not considering and appreciating the prosecution evidence properly in the background of the previous dispute and need for corroboration of the evidence of the prosecution witnesses. The impugned judgment and order finding the appellant guilty of an offence of criminal intimidation, therefore, cannot be sustained in law and interference with it would be warranted.

25. In the result, the appeal succeeds and the impugned judgment and order dated 1.11.2007, passed by the Additional Sessions Judge, Akola to the extent that it records a finding of guilt against the appellant for offences punishable under Sections 504 and 506(II) of Indian Penal Code and awards sentences to him for these offences, is quashed and set aside.

26. The appellant is acquitted of the offences under Sections 504 and 506 of the Indian Penal Code.

27. Bail bonds are discharged.

28. Fine amounts deposited in the Sessions Court be refunded to the appellant.

29. Appeal is allowed in these terms.

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