

Bombay High Court

Sanjaykumar vs The State Of Maharashtra on 28 February, 2011

Bench: S. S. Shinde

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crapl526.01

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 526 OF 2001

Sanjaykumar s/o Kishanlal Jain,
Age: 21 years, Occ: Business,
R/o. Selamba, Tq. Sangbare,
Dist.Bharuch (Gujrat State).

.. APPELLANT

Versus

The State of Maharashtra.

.. RESPONDENT

.....

Mr. Gaurav Deshpande, Advocate holding for
Mr. C.R. Deshpande, Advocate for the Appellant.
Mr. S.G. Nandedkar, A.P.P. for Respondent/State.

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CORAM : S. S. SHINDE, J.

DATE : 28TH FEBRUARY,2011.

ORAL JUDGMENT :

This appeal is filed by the accused-

appellant herein, challenging the judgment and order dated 29-11-2001 passed by the learned Additional Sessions Judge and Special Judge, Shahada in Other Sessions Case No.16 of 2000 (Old 2 crapl526.01 O.S.C.No. 258 of 1994).

2. The case of the prosecution can be briefly narrated as under:

Sukhlal Ahire, father of the complainant Sudam Ahire, who is now no more, used to sit in front of the shop of the complainant Sudam Ahire and carry on business of boot polishing. The complainant Sudam Ahire belongs to cobbler community which is recognised as a scheduled caste. All the accused belong to Jain community which does not fall either under Scheduled caste or under Scheduled tribe. It is further alleged that on 25-05-1994 at about 15-00 hours on the Sanjaykumar drove his vehicle through the articles used for the boot polish business belonging to Sukhlal Ahire and thereby caused damage of more than Rs.50/-. While said Sukhlal Ahire was making enquiry about the damage caused to him, to accused 3 crapl526.01 No.3, accused Nos.1 and 2 also came there.

3. It is alleged that all the accused not being members of either scheduled caste or scheduled tribe, intentionally insulted, with intent to humiliate, the complainant Sudam Suklal, his father Suklal Ahire and brother Hiranman Suklal Ahire, members of Scheduled Caste, in public place within public view, by giving them abusements in the name of their caste as "Sale, Chamar Mat Gaye hein". It is further alleged that all the accused voluntarily caused hurt to the complainant Sudam by giving him fist blows and by giving bite to his brother Hiranman. The accused gave them abusements in filthy language. It is alleged that accused No.3 by driving his vehicle through the articles used for the business of boot polish belonging to Suklal Ahire, caused him damage of more than Rs.50/-.

The witnesses present there separated the 4 crapl526.01 incident. The complainant then approached the police Outpost of village Khapar and lodged complaint Exh. 26. On basis of said complaint, offence came to be registered under Sections 3(1)

(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 323,324, 504, and 427 read with Section 34 of the Indian Penal Code, against the accused. The injured came to be referred to the Medical Officer for examination and treatment.

The Investigating Officer visited the place of occurrence and draw panchnama of scene of offence.

He collected medical certificate of the injures from the Medical Officer. The Investigating Officer recorded statements of the witnesses. He also obtained the caste certificate of the complainant Sudam Suklal Ahire and after due completion of investigation, he submitted charge sheet in the Court of the learned J.M.F.C. at Taloda.

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4. The offence punishable under Section 3(1)

(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 being exclusively triable by the Special Judge, the learned J.M.F.C. Taloda, committed the case to the Court of the Special Judge at Dhule. After establishment of this Court at Shahada, the case in hand came to be transferred and as such all the accused have been tried by this Court.

5. Charge Exh.17 came to be framed against the accused. The particulars of accusation were read over and explained to the accused in vernacular to which they pleaded not guilty. The defence of the accused is that, there are two groups in Jain community at their village Khapar.

Mohan Seth is the head of the rival group and at his instance, the complainant Sudam lodged false complaint against them.

6. After recording the evidence and hearing 6 crapl526.01 the Counsel for the parties, learned Additional Sessions Judge and Special Judge, Shahada held guilty the appellant herein for the offence punishable under Section 427 of the Indian Penal Code and convicted under Section 235(2) of the Code of Criminal Procedure. He is sentenced to suffer simple imprisonment for one month and to pay a fine of Rs.500/- (Rs. Five hundred only), in default of payment of fine, he has to undergo further simple imprisonment for a period of fifteen days. Hence this appeal.

7. Learned Counsel for the appellant submitted that the prosecution has utterly failed to bring on record any overtact on the part of the appellant-accused to cause wrongful loss or damage to the respondent. He further submitted that out of four witnesses, which were examined by the prosecution, one is the Investigating Officer and remaining three witnesses have turned hostile.

Nothing has been gathered from the spot, as 7 crapl526.01 revealed from the spot panchnama. He further submitted that unless the calculation is done, it cannot be said that the appellant-accused committed mischief and thereby caused loss or damage to the amount of Rs.50/- or upwards to the respondent. Learned Counsel for the appellant invited my attention to the impugned judgment and reasons recorded by the trial Court and submitted that the trial Court has not discussed any evidence and in absence of any discussion about the evidence brought on record, the trial Court has convicted the accused-appellant. Therefore, Counsel for the appellant would submit that the appellant-accused deserves to be acquitted.

8. On the other hand, learned A.P.P. for the respondent - State, relying on the reasons recorded by the trial Court and upon reading provisions of Section 427 of the Indian Penal Code, would submit that, mens-rea is not necessary to fulfill the ingredients of the Section 427 of 8 crapl526.01 the Indian Penal Code and therefore, the trial Court has rightly convicted the appellant-accused since he caused damage to the property of the respondent. Therefore, he would submit that the appeal may be dismissed.

9. I have given due consideration to the submission of the Counsel for the appellant and learned A.P.P. for the respondent-State. I have carefully perused the Record and Proceedings and also impugned judgment. It is not in dispute that complainant Sudam Ahire and injured Hiranman Ahire turned hostile. They were examined at Exhibit-25 and 29 respectively. They have stated before the Court that no such incident had happened and nobody gave them abuse in the name of their caste. Another witness namely P.W. 2 also did not support the prosecution case and did not state anything against the accused. P.S.I. Mr. Deshmukh, who is the Investigating Officer is not examined by the prosecution and also Medical Officer is not examined, and there is no evidence to the effect that the accused voluntarily caused hurt to complainant Sudam Ahire and his brother Hiranman Ahire and they received injuries.

10. Upon perusal of the spot panchnama, it does not support to the prosecution story. It is admitted position that, there is no any exercise to calculate the alleged loss sustained by the complainant.

11. In my opinion, the standard of proof required in criminal case has not been brought on record by the prosecution. When the prosecution witnesses turned hostile including the complainant, in that case, the trial Court was not correct in convicting the appellant-accused. In my opinion, there was no sufficient, cogent and clinching evidence to convict the appellant-

accused.

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12. Therefore, in my opinion, the impugned judgment and order passed by the trial Court is required to be interfered. Accordingly, same is quashed and set aside. Appeal is allowed. The appellant-accused is acquitted for the offence punishable under Section 427 of the Indian Penal Code. His bail bond stands cancelled. Amount of fine of Rs.500/- (Rs. Five hundred only) be returned to the appellant-accused. Appeal stands disposed of.

13. Original Record and Proceedings, if any, be sent back forthwith, to the concerned Court.

[S. S. SHINDE, J.] sut/feb11/criapl526.01