
(1979) 03 BOM CK 0038

Bombay High Court

Case No: Criminal Appeal No. 608 of 1977

State of Maharashtra

APPELLANT

Vs

Prakash D. Patil and Others

RESPONDENT

Date of Decision: March 8, 1979

Acts Referred:

- Untouchability (Offences) Act, 1955 - Section 10, 6, 7

Hon'ble Judges: S.P. Kurudkar, J

Bench: Single Bench

Advocate: M.D. Gangakhedkar, P.P, for the Appellant; D.M. Rane, for respondent Nos. 14, 15, 17, 18 and 19, for the Respondent

Judgement

S.P. Kurudkar, J.

The State of Maharashtra has filed this appeal to this Court challenging the orders of acquittal passed by the Judicial Magistrate, First Class, Ichalkaranji in Summary Case No. 1167 of 1976 on March 22, 1977.

2. The charge-sheet came to be filed against 19 accused persons on the allegation that they have committed an offence punishable under sections 6 and 7(b)(c) of the Untouchability (Offences) Act, 1955. The complainant Bapu Sakharam Kamble lodged the complaint (Exhibit 42) at Vadgaon Police Station on 2-5-1976. The complaint disclose that the complainant belongs to Harijan Community residing in Harijanwada in the Village Vadgaon Taluka Hatkanangale, District Kolhapur. There are two public wells in that village Vadgaon. The well situate towards the northern side of the village is used by Swarana Hindus whereas well situated on the southern side of the village is used by Harijans. In the month of April, 1976, there was scarcity of water in the village and in fact well used by Harijans was almost dried. The Harijans, therefore used to draw water from the private wells situated in the village. The Police Patil and the Gram Panchayat realising the scarcity of water permitted the Harijans to fetch water from the well meant for Swaranas. According on April 18, 1976, at about 8-00 a.m. the complainant and some 15 to 12 persons from his

community went to the well of Swarana Hindus to fetch water. At that time persons from other communities were also fetching water from the same well. However, they did not obstruct the Harijans from fetching the water from the said well. It appears that, according to the complainant, since the Harijans started drawing water from the well meant for Swarna Hindus, the Swarana Hindus stopped taking water from that well. It is further alleged by the complainant that nobody even obstructed the Harijans from taking the water from the well meant for Swarna Hindus, the Swarana Hindus stopped taking water from that well. It is further alleged by the complainant that nobody even obstructed the Harijans from taking the water from the well meant for Swarana Hindus. However, the Swarana Hindus started non-co-operation movement with the Harijans in the village. Accordingly on April 28, 1976, at about 6-00 p.m. when the complainant had gone to Zenda Chowk of the village some 12 to 13 persons from the Swarana Hindu Community found visiting shop to shop informing the shop keepers and the flour mill owners not to sell any articles and grind the corn of the Harijans henceforth. They were telling that the Harijans must live only on water. Since this time the accused persons have stopped selling articles to the Harijans and also grinding the corns of Harijans in their flour mills. Some of the villagers have also blocked the Public roads leading to Harijanwada by fencing. The complainant in his complaint has given the names of the shop keepers who have stopped selling grocery articles to the Harijans and they are Prakash son of the Sarpanch and Basappa Lambe. It is also alleged in the complaint that some unknown persons have thrown a bundle containing intestine and legs of the sheep in the well meant for Harijans. The complainant requested the Police Officer to take necessary action in this behalf.

3. After the complaint was lodged, it appears that the investigating machinery was put into motion. The Investigating Officer (P.W. 11), Ramchandra Dattatraya Patil visited the village on 2-5-1976 and started investigation. On that date he recorded the statements of several witnesses and also drew some Panchanamas in regard to blocking of roads as well in regard to the bundle thrown in the well meant for Harijans. After completing the necessary investigation on the charge-sheet came to be filed against 19 accused persons for offence punishable under sections 6, 7(b)(c) and 10 of the Untouchability (Offences) Act, 1955.

4. The defence of the accused is that of total denial. So far as accused Nos. 1 to 13 and 16 are concerned the order of acquittal came to be confirmed by this Court (Coram Shimpi, J.) on November 4, 1977. The present appeal came to be admitted only against the present respondents who are accused Nos. 14, 15, 17, 18 and 19. Out of these accused persons accused Nos. 14 and 15 are grocery dealers and accused Nos. 17 to 19 are owing flour mills in that village. Since the appeal filed by the State of Maharashtra is admittedly only in regard to these accused persons it would be material to scan the evidence adduced by the prosecution against these accused persons only.

5. The sum and substance of the prosecution against the grocery shop owners i.e. accused Nos. 14 and 15 is that they have refused to sell the grocery articles like coffee, tea, washing powder, rice, tobacco etc. to Babasaheb Mehtar (P.W. 5), Dinkar Taral (P.W. 6), Shantabai Kamble (P.W. 7), and Parwatibai Kamble (P.W. 8). Accused Nos. 17, 18 and 19 who run the flour mills refused to grind the corn brought by the prosecution witnesses 7,8 and 9. In addition to these material witnesses the prosecution has also examined some more witnesses including the complainant to show the treatment given the Swarana Hindus to the Harijan community in the village. The defence also examined two witnesses viz. Devappa Appa Marine (D.W. 1), and Pandurang Mahadeo Magdu (D.W. 2) to show that there are two parties in the village and each party tries to dominate the other and the present accused persons are supported by rival group.

6. The learned trial Magistrate after considering the evidence led by the prosecution and the defence in Summary Case No. 1167 of 1976 by his judgment and order March 22, 1977, acquitted all the accused persons holding that the prosecution has failed to establish any charge framed against them.

7. In support of this appeal Mr. M.D. Gangakhedkar the learned Public Prosecutor submitted that the order of the trial Magistrate is contrary to the evidence on record and the trial Magistrate has taken a too technical view of the evidence. According to Mr. Gangakhedkar the trial Magistrate ought to have applied the test of probabilities having regard to the nature of accusation against these accused persons. According to him except the evidence of the prosecution witnesses who belong to Harijan Community no other independent witness is available to be examined on the side of the prosecution and therefore, the evidence of the prosecution witness should not be discarded on the ground that they are interested witnesses. Mr. Gangakhedkar further pointed out that there is sufficient evidence on the record to show that in fact on the date of incident i.e. on 28th and 29th April, 1976 the prosecution witnesses had gone to the grocery shops of the accused persons as well as to the flour mills to purchase the grocery articles and get the corn grinded and these accused persons have refused to sell the grocery articles and grind the corns brought by the prosecution witnesses and in view of this refusal the present case must fall u/s 6 of the Untouchability (Offences) Act, 1955. In order to appreciate the contention of Mr. Gangakhedkar it would be material to assess the evidence of the prosecution witnesses who were denied the grocery articles as well as flour mill services. In regard to the Panchanamas and the evidence of panch witnesses on the record it appears that the road leading to Harijanwada was blocked and there was a fencing and from the well meant for Harijans a bundle containing rubbish was found. Assuming that somebody has thrown the rubbish in the well and the road leading to Harijanwada is blocked but the question persons could be connected with the said offence. The evidence on the record does not show that any of the accused can be held responsible for the offence of blocking the road and throwing the bundles containing rubbish in the well. Therefore, in my opinion,

on the two panchanamas would not establish any guilt against these accused persons.

8. Now the important evidence in this case of the complainant himself (P.W. 2). This witness has stated that the contents of the complaint at Exhibit 42 are correct and if we peruse the complaint at Exhibit 42 except a vague allegations against accused persons we do not find any specific incidence having been mentioned in the complaint. At about 8-00 p.m. according to this witness, he was standing at Zenda Chowk when admittedly it was dark night and at that time he saw that a group of 15 to 20 persons were telling the shop keepers not to sell grocery articles. In the complaint he has referred to the grocery shop of accused Nos. 14 and 15. In the complaint he has not referred to any of the accused Nos. 17 to 19 who refused to grind the corns brought by the prosecution witnesses. Only vague statements are made that such services were not made available to the Harijans. It may be noted that this complaint was filed on May 2, 1976 and it is stated by this witness that after due deliberations in the village on one or two occasions they would have decided to lodge such a complaint. If the deliberations were held prior to 2nd May, 1976 in the village which, according to this witness, were attended by several members of Harijans Community, in my opinion, the complainant would have known the names of the shop owners as well as the prosecution witnesses who ever denied the grocery articles and flour mill services on the ground that they belong to Harijan. The prosecution witnesses have also admitted that they have attended the deliberations which had taken place prior to 2nd May, 1976. But surprisingly no details are found in this complaint. It is true that the complainant need not state all the details but the question that falls for my consideration is whether the prosecution witnesses who have now come forward to allege a specific act against watch of the accused persons and such evidence can be said to be trust worth and reliable. The evidence of the complainant involves accused No. 14, Prakash D. Patil, and accused No. 15 Basappa G. Lambe. His evidence does not appeal to me for this reason that on 28-4-1976 at about 8.00 p.m. he saw that the grocery articles were not sold to the prosecution witnesses. If we read the evidence of three witnesses viz P.W. 3, P.W. 4 and P.W. 6 it would be clear that in fact they had gone to the shop of accused Nos. 14 and 15 at about 6.30 p.m. and at a that time shops were closed. Therefore, the evidence of the complainant, in my opinion, would not help the prosecution to establish that the accused Nos. 14 and 15 have refused to sell grocery articles to the prosecution witnesses Nos. 3, 4 and 5. The complainant has further stated he saw about 15 to 20 persons gathered in the village on the main road where the shops are situated and they were moving from one shop to another and telling them not to sell grocery articles to the Harijans. He, however admitted that he can identify some of the accused persons from their voices only. In the cross-examination he had to admit that he is not able to give the names of any of the accused persons who were moving from shop to shop and in my opinion, rightly because it was a dark night.

9. The next material witness is Mohan Yeshwant Kambale (P.W. 3). This witness states that on 28th April, 1976 when he went to the shop of accused No. 15 to purchase cigarette the accused refused to sell the same on the ground that they have stopped to sell the articles to the Harijans. This witness further says that on the very same date he saw accused Nos. 1 to 13 coming in the direction of the shop of accused No. 15 and telling him that he should not sell the grocery articles to the Harijans as they have spoiled the well water. In the cross-examination says that there was about 20 to 25 persons in the ground. These 20 to 25 persons were know to him as they are from the same village. He heard the mob telling accused No. 15 not to sell any articles to Maharashtra and shop should be closed and accordingly accused No. 15 closed his shop. The evidence of other prosecution witness is Rangrao Appanna Kamble (P.W. 4) and he has stated that on 28th April, 1976 he had been to purchase cigarette from the shop of accused No. 4 he refused to sell the same. This witness had deposed the same facts as Mohan Kamble (P.W. 3) has deposed. It is material to note that the next prosecution witness No. 4, Babasaheb Govind Mehtar as well as the prosecution witness No. 6, Dinkar Shankar Taral have given identical evidence saving that they had gone to the shop of accused No. 14 to purchase coffee and tobacco and the accused refused to sell. All these witnesses also referred to the group of 20 to 25 persons moving from shop and telling the shop keepers not to sell the grocery articles to the Harijans. If we read the cross-examination of these witnesses it is clear that none of these witnesses could name the persons who were moving in the mob or in group from shop to shop. These witnesses have also admitted that till their statements came to be recorded by the Investigating Officer on 3-5-76 they did not disclose to anybody about accused Nos. 14 and 15 who refused to sell the grocery articles. It is surprising to note that if the complaint was filed on 2nd May, 1976 and the deliberations were held prior to this complaint in the village by these witnesses yet they have not stated anything about the conduct of accused Nos. 14 and 15 about their refusal to sell grocery articles on 28th and 29th April ,1976 to the Harijans. In my opinion this conduct on the part of the prosecution witnesses is very much unbelievable because the very object of the meeting convened by the complainant and several members of the Harijan Community was to discuss the non-co-operation movement started by the Swarana Hindus. It appears to me very difficult to accept the evidence of the prosecution witnesses when they admit not to have stated anything about the conduct of accused No. 14 and 15 to anybody in the village or in the meetings that they held. Really speaking these prosecution witnesses must have been hurt by the insulting treatment at the hands of the accused persons and they were bound to make hue and cry in the village. If they had really gone to the shop of accused Nos. 14 and 15 to purchase the grocery articles on 28th and 29th April, 1976 and if the grocery articles were refused to them as they have spoiled the well meant for Swarana Hindus, in my opinion, all these details would have come in the complaint at Exhibit 42. The very absence of these details would lead to this conclusion that in fact an incident might not have accrued at all between 28-4-1976 to 2-5-1976. The

learned trial Magistrate has considered the evidence of these prosecution witnesses carefully and cautiously and has recorded a finding that the evidence of these witnesses does not inspire any confidence in him. The learned trial Magistrate has discarded the evidence of these witnesses on the ground that they do not appear to have gone to the grocery shops to purchase the grocery articles and the same must not have been denied to them on the ground that they belong to Harijan community. It is also a finding of the learned trial Magistrate, on appreciation of evidence that none of the prosecution witnesses could give the names of the other customers who were present at the time when they had gone to purchase the grocery articles. The learned trial Magistrate, in my opinion, rightly disbelieved the evidence of the prosecution witnesses.

10. The next set of witnesses consists of two women and a man who had gone to the flour mill belonging to the accused Nos. 17 and 18 for grinding the corn. Shantabai Gopala Kambale (P.W. 7) in her evidence says that she had gone to the flour mill belonging to accused Nos. 17 and 19, but however, both these accused persons refused to grind the corn brought by her. According to these witnesses there were several persons present in the flour mill of accused Nos. 17 and 19 and both these accused persons flatly refused to grind the corn. In the cross-examination she had, however, admitted that flour mills are remained closed on the day of Amavasya. The situation appears to be that on the date when she had gone to the flour mill it was Amavasya day and the flour mill were closed. At that time many customers were present but she could not name any one of them. The other prosecution witness is Parvatibai Kambale (P.W. 8) who had gone to the flour mill of accused No. 17. She has also admitted in the cross-examination that at the time when she had gone to the flour mill of accused No. 17 there were number of customers present but, however, she could not name any one of them. Dhondu Vishnu Kambale (P.W. 9) says that he had gone to the flour mill of accused No. 18 but this accused refused to grind the corn brought by him saying that since the Harijans have spoiled the well meant for Swarana Hindus and, therefore, no services would be rendered to them. This witness in his cross-examination has admitted that he is not acquainted with any of the persons who were present in the mill when he reached there. It was also suggested to this witness that he is deposing falsely at the instance of the leaders of the community. This witness has also admitted that he does not know if later on the Harijans were being sold the articles from the shop. The learned trial Judge on going through the evidence of these witnesses has disbelieved their testimonies on the ground that the evidence of these witnesses appear to be cooked up because they were not able to tell even a single name of the persons who were present at the time when they had gone to the flour mills. As stated earlier the appropriate time for these witnesses to express the grievance would be the time when the meetings were called in the Harijanwada prior to the lodging of the complaint on 2nd May, 1976. It has come a record i.e. in the evidence of the complainant as well as in the evidence of several witnesses that there were

two to three meetings held in that Harijanwada and in that meetings all the grievances were considered. But it is surprising that none of these witnesses have come forward to tell a particular incident that had occurred between 28th and 30th April, 1976 either on the ground that the grocery shop owners have refused to sell the grocery articles to them or on the that the flour mills owners refused to grind the corn brought by them. In my opinion, therefore, the very conduct of these witnesses show that they were not telling truth in the Court but, however, they were deposing at the instance of some leaders.

11. Mr. D.M. Rane the learned Counsel appearing on behalf of the accused persons submitted that this Court is dealing with the order of acquittal and, therefore, this Court should not brush aside the reasoning of the learned trial Magistrate on some light grounds. According to Mr. Rane the Supreme Court has time and again said that if two views are possible and the view taken by the trial Court on the whole does not seem to be unreasonably then this Court should not interfere with the order of acquittal and substitute its own view and findings. After having gone through the oral documentary evidence on the record, I am of the opinion that the view taken by the learned trial Magistrate cannot be said to be wholly unreasonable but on the contrary the evidence on the record is not sufficient and satisfactory to come to the conclusion that the prosecution has proved the offence for which the accused persons were prosecuted. In opinion the order of acquittal passed by the learned trial Magistrate is perfectly valid and legal and needs no interference.

12. In the result the appeal fails. Bail bonds of the accused stand cancelled.