

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.495 OF 2016

1. Bhika Bhaguji Khakal, 2. Sunil @ Bhagwan Bhika Khatal, 3. Jagan Raghunath Zalte, 4. Prabhakar Gangaram Madke, 5. Sanjay Prabhakar Madke, 6. Ganesh Prabhakar Madke, 7. Prakash Trambak Kolhe, 8. Sanjay Dagu Kolhe, 9. Karbhari Sakharam Gunjal, 10. Nitin Nivrutti Gunjal, 11. Arun Gulab Madhe, 12. Sanjay Sakharam Ahire, & 13. Nivrutti Rangnath Gunjal.	Appellants
Versus	
The State of Maharashtra	 Respondent

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WITH
INTERIM APPLICATION NO.4235 OF 2022
WITH
CRIMINAL APPEAL NO.495 OF 2016

1. Bhagyashri Nanasaheb Bhole, & 2. Nanasaheb Durgadas Bhole.	Applicants
<u>In the matter between</u>	
Bhika Bhaguji Khakal & Ors.	...Appellants
Versus	
The State of Maharashtra	...Respondent

Mr. Vikas B. Shivarkar, Advocate for the Appellants.
Mr. S.R. Agarkar, APP, for the Respondent-State.
Mr. Jayendra D. Khairnar, Advocate for the Applicants in IA/4235/2022
(orig.complainant & her husband)

CORAM : SARANG V. KOTWAL, J.

DATE : 1st FEBRUARY, 2023

ORAL JUDGMENT :

1. The appellants are the original accused Nos.1 to 13 in Special Atrocity Case No.3/2013 before the Special Court at Niphad, District-Nashik. Learned Trial Judge vide his judgment and order dated 13.7.2016 convicted all the appellants for commission of offences punishable under Sections 143, 147, 354, 451, 323 read with 149 of IPC and sentenced them to suffer SI for four years each and to pay fine of Rs.10,000/- each; and in default of payment of fine to undergo further SI for six months. The appellants were acquitted from the charges of commission of offence punishable under Section 506 read with 149 of IPC and under Section 3(1)(x)&(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act'). The appellants have challenged this judgment and order in the present appeal.

2. Heard Shri Vikas Shivarkar, learned counsel for the

appellants, Shri S.R. Agarkar, learned APP for the respondent-State and Shri Jayendra Khairnar, learned counsel for the original informant & her husband.

3. Before proceeding to discuss the facts in this appeal, it is necessary to mention that learned Advocate Shri Khairnar has filed I.A No.4235/2022 in the present Criminal Appeal No.495/2016 on behalf of the first informant and her husband. In this application, it is mentioned that the appellants and the applicants in this particular interim application have settled their disputes. There is a reference to R.C.C. No.46/2012 before the J.M.F.C.. Chandwad, Nashik arising out of C.R. No.21/2012 registered at Chandwad police station in respect of the same incident which is subject matter of the present appeal. In that particular case, the informant and her husband were the accused along with eight other accused. That counter-FIR was filed by the wife of the appellant No.1. Pursuant to the compromise between the parties that particular case was quashed by a Division Bench of this Court vide order dated 19.1.2023 passed in Criminal Writ Petition No.324/2023. In short, the contention of the informant

and her husband in this case is that in view of the settlement even in this appeal, the appellants in this case be acquitted or in the alternative their sentence be reduced. Since the I.A. No.4235/2022 is preferred by the informant and her husband, I have referred to the submissions made by learned Advocate Shri Khairnar appearing for the first informant and her husband in the present case before me. However, I have considered the appeal independent of the submissions made by Shri Khairnar.

4. The prosecution case is that the informant and her husband were residing at Raipur, Taluka-Chandwad, District-Nashik. All the appellants were also residents of the same village. There was some enmity between the two groups. The incident occurred on 26.2.2012 at around 7.30 a.m.. According to the first informant, about ten to twelve accused entered their house. She was taking bath. The accused dragged her outside. They assaulted the first informant and her husband. On this basis, the FIR was lodged at Chandwad police station. The informant and her husband took treatment for their injuries. The investigation was carried out. There were allegations of commission of offence

under the Atrocities Act. Therefore, it was investigated by the competent police officer and then the charge-sheet was filed. The case was tried before the Special Court resulting in the impugned judgment and order.

5. During trial, the prosecution examined nine witnesses including the informant, her husband, their relative, the panchas, the medical officer and the investigating officers. The defence of the appellants was of total denial.

6. The informant was examined as PW-1. She has deposed that she and her husband were residing in Raipur since past six years. She belongs to a Scheduled Caste. Her husband was running a grocery shop. On 26.2.2012 at about 7.30 a.m., she was taking bath. All the accused-appellants entered their house. They dragged her out of the bathroom and they assaulted PW-1 and her husband. Their relative PW-3 Hargaonkar and others rescued them. She has further deposed that after the incident she went to Chandwad police station and lodged the FIR. The FIR is produced on record at Exhibit-46. She identified the appellants

before the Court except Nitin and Arun who were not present on the day of her deposition. But, she had named them. She has further deposed that the police gave her a requisition letter for reference to the hospital. She went to Chandwad Rural Hospital for treatment. The Medical Officer examined both of them and gave the certificate. The police came to her house. She showed the spot of incident. The spot panchnama was conducted. Her supplementary statement was recorded on 12.3.2012.

In the cross-examination, she deposed that she did not take treatment in the local hospitals of Raipur or at the nearby village Talegaon. Her husband owned a motor-cycle and a car. There were many houses around her house in Raipur. She admitted in her cross-examination that her clothes were not torn in the incident, but the clothes worn by her husband were torn. The incident was going on for about one and half hours. Her bangles were broken in the scuffle. The bangles broke outside the bathroom. She did not receive any bleeding injury. Her husband received a bleeding injury. The aforementioned Hargaonkar (PW-3) was her husband's maternal uncle. He was a resident of

Parbhani.

7. The FIR is produced on record at Exhibit-46. The proforma is produced on record at Exhibit-47. The offence was registered vide C.R. No.19/2012 at Chandwad police station. The record shows that the information was given to the police station at 2.45 p.m. on 2.3.2012 and the FIR was lodged at that time itself. In the FIR her story is entirely different. She has stated that on 26.2.2012 at 7.30 a.m. the accused No.2 Bhagwan, accused No.1 Bhika, accused No.3 Jagan and accused No.4 Prabhakar came to their house. They were angry because they thought the informant's husband was responsible for breaking the marriage of the accused No.1 Bhika's daughter. They assaulted the first informant with kicks, fist blows and a belt. She was dragged outside the bathroom and she was assaulted, thus committing the offence of outraging her modesty. Then she wore her gown. She came near her shop. At that time, the other accused assaulted her husband with kicks, fist blows and belts. Then they damaged the articles in the shop. This story is materially different from her deposition. In the FIR, the incident is described as having taken

place in two parts and different accused are implicated for those two parts separately. Thus, it is quite clear that the FIR does not corroborate her deposition.

8. The informant's husband was examined as PW-2. He has deposed that at the time of incident he was in his house and PW-1 was taking bath in the bathroom. All the accused came to his house and then assaulted both of them i.e. PWs-1 & 2 with fist, kick blows and with belts because they were under the impression that Bhika's daughter's marriage was called off because of PW-2. The accused dragged PW-1 from the bathroom and assaulted her. His maternal uncle Hargaonkar rescued them. After that PW-1 lodged a report at Chandwad police station. Both of them were referred to a hospital at Chandwad. He also identified the accused before the Court. The accused Nitin and Arun were not present in the Court when his deposition was recorded.

In the cross-examination, he was confronted with an important sentence from his police statement. He had stated before the police that, after the incident, PW-1 & PW-2 took advice

from their relatives and then PW-1 lodged her FIR. He denied having made that statement before the police. This particular portion was also put to the investigating officer and hence is properly proved by the defence. He had not stated in his police statement that the accused had assaulted him on the reason that he was the cause for breaking the marriage of Bhika's daughter.

9. PW-3 Baban Hargaonkar was examined as one of the eye witnesses. He has deposed that the incident had taken place on 26.2.2012 at about 7.00 a.m. in the house of the first informant. He was returning back to the house of the first informant from outside. He saw that the informant was not wearing her blouse and the accused were dragging her and her husband out of the house and then they started assaulting them by means of chappals and fist and kick blows. They were abusing PW-1 with reference to her caste. PW-3 tried to rescue them. One of the accused slapped PW-3. The other villagers came there and then they rescued PW-1 & PW-2.

In the cross-examination, he deposed that PW-1 was

his niece. In the cross-examination, he could not explain as to why he has not mentioned in his police statement that one of the accused slapped him or that the accused assaulted PWs-1 & 2 with chappal. He could not explain as to why his police statement did not mention that the accused abused PW-1 with reference to her caste. He also could not explain as to why it was not mentioned in his police statement that the accused dragged PW-1 & PW-2 out of their house and assaulted them.

10. PW-4 and PW-5 were the headmasters of the schools where the different accused had studied. They had produced the caste certificates in respect of those accused. However, since the appellants are acquitted from the charges of commission of the offences under the Atrocities Act and since there is no challenge to that acquittal; the evidence of PW-4 and PW-5 is not important.

11. PW-6 Anna Gunjal was a pancha for spot panchnama. It is produced on record at Exhibit-66. The spot panchnama did not mention anything indicating the occurrence of the incident. The broken pieces of bangles were also not seen at the spot. The

spot panchnama was carried out on 3.3.2012.

12. PW-7 Raghunath Gajre was examined as an eye witness but he did not support the prosecution case and he was declared hostile.

13. PW-8 Dr. Sushilkumar Shinde was attached to Sub-District Hospital, Chandwad on that date. On 26.2.2012, he examined PW-2 and found following injuries :

- “1] Grazes on back of right side. Approximate size 6 cm x 4 cm. It was simple in nature and may be caused due to hard and blunt object.
- 2] Grazes on right side of the chest having size of 8 cm x 4 cm, simple in nature and may be caused due to hard and blunt object.
- 3] Swellings on right side of the chest. It was also a simple injury and may be caused due to hard and blunt object.
- 4] Multiple abrasions on right side of cheek. It was also a simple nature and may be caused due to hard and blunt object.”

The injuries were simple in nature. The medical certificate is produced on record at Exhibit-69. He deposed that PW-2 was referred to his hospital as per the requisition letter from the police. On 2.3.2012, he examined PW-1 and found blunt trauma to abdomen, lower back and both thighs. The injuries

were simple in nature.

14. PW-9 Samadhan Pawar was Sub-Divisional Police Officer attached to Manmad Sub-Divisional Office at the relevant time. Chandwad police station was under his jurisdiction. He had investigated C.R. No.19/2012 of Chandwad police station. He had recorded statements of the witnesses. ASI Gahile and Aher had recorded the informant's FIR and the supplementary statement. They had already carried out spot panchnama before he took over the investigation. He obtained the caste certificates of different persons and filed the charge-sheet.

In the cross-examination, he has specifically deposed that the incident had taken place on 26.2.2012, but, no complaint was filed in respect of the incident till 2.3.2012. In the complaint, it was not mentioned that the accused had abused PW-1 or two PW-2 with reference to their caste. The statements of PW-2 and PW-3 were recorded on 3.3.2012. He then proved the contrary portions from the statements of PW-2 & PW-3.

. This, in short, is the evidence of the prosecution.

15. The defence of the accused was of total denial and also that a false case was filed against them as a counter-blast to the complaint lodged by Bhika's wife against the informant and her group.

16. Learned counsel for the appellants submitted that the prosecution has failed to prove its case beyond reasonable doubt. He submitted that there is clear indication from the evidence of PW-2 that the FIR was lodged after deliberation with the relatives. There is unexplained delay in lodging the FIR. The incident had taken place allegedly on 26.2.2012 and the FIR is lodged on 2.3.2012. It was lodged after deliberation with the relatives and, therefore, it is quite clear that the appellants are falsely implicated. There are important omissions in the police statements of PW-2 and PW-3. Their police statements were also recorded belatedly on 3.3.2012. It is not clear as to how PWs-1 & 2 had gone to the hospital at Chandwad for their treatment though there were other hospitals in the vicinity of their village. There are no other corroborative pieces of evidence.

17. Learned counsel for the original first informant and her husband, in fact, submitted that the appellants be acquitted but he did not make any submissions on the merits of the case.

18. Learned APP Shri Agarkar, however, submitted that there is no reason to disbelieve the evidence of PW-1, PW-2 and PW-3. Their version is supported by medical certificates. Shri Agarkar, therefore, supported the impugned judgment and order.

19. I have considered these submissions. Shri Shivarkar rightly submitted that there is unexplained delay in lodging the FIR. The incident had taken place on 26.2.2012 and the FIR is lodged on 2.3.2012. The police statement of PW-2 mentions that the FIR was lodged after deliberation with their relatives. This portion was put to him in his cross-examination and it was also proved through the evidence of the investigating officer. In the context of this case, lodging of the FIR belatedly assumes importance.

20. There are clear indications of exaggeration and possible implications of more persons. The FIR itself does not

corroborate PW-1's deposition as mentioned earlier. The description of the incident is totally different in her deposition and in her FIR. Therefore, at every stage there is some improvement made by PW-1 about the story. In this situation, it becomes very difficult to find out which of the accused have actually committed the offence and which accused are implicated falsely. Once such doubt is created, that benefit of doubt must be given to all the accused.

21. The investigating officer is very clear in his evidence that the FIR was lodged on 2.3.2012 and before that nobody had approached the police station. The learned Judge has erred in observing that since PW-2 had gone to the hospital on 26.2.2012 with a requisition from the police that means they had approached the police on that date. If that was so, there should have been some statement recorded on 26.2.2012 and it should have been treated as the FIR. However, that statement is not forthcoming. Therefore, even if it is assumed that PW-1 & PW-2 had approached the police station on 26.2.2012 itself, then their first narration to the police is suppressed and therefore, it is a case in which

adverse inference needs to be drawn against the prosecution case.

22. PW-1 has deposed that after the incident they went to Chandwad police station and lodged the complaint, but, the complaint does not show the date of 26.2.2012; instead it shows the date of 2.3.2012. She has further narrated that the police gave her the requisition letter and had referred her to the hospital and then she had gone to Chandwad Rural Hospital for treatment. Her medical certificate shows that she was examined on 2.3.2012. The requisition letter also shows the same date i.e. 2.3.2012. Thus, it is clear that she had approached the police station on 2.3.2012 and then she was sent for medical examination.

23. The medical certificate shows that both PWs-1 & 2 had suffered simple injuries. There was also a cross-FIR filed at the instance of wife of the accused No.1. It was also under Sections 354 and 323 of IPC along with other offences. Thus, it does appear that there was some incident in which PWs-1 & 2 had suffered simple injuries.

24. However, based on the above discussion, I am of the

opinion that there is a serious doubt created about the participation of a particular accused. There is clear exaggeration and over-implication in this case. Therefore, the Court cannot be sure as to which accused were actually present and committed this offence. In this situation, the benefit of doubt must go to all the accused. There is no other corroborative piece of evidence.

25. The evidence of PW-3 is extremely unreliable. He had not mentioned the important aspects which he had deposed before the Court, in his police statement. PW-1 has admitted that her clothes were not torn; the clothes of her husband were torn. But those clothes were not produced either in the Court or even during investigation. The investigating officer has admitted that the investigation had not revealed that the clothes of PW-2 were torn. Thus it is a clear case of exaggeration and over-implication.

26. Therefore, I do not find it safe to sustain the conviction and sentence recorded against the appellants. The appellants, therefore, deserve to be acquitted. Hence, the following order :

:: O R D E R ::

- i. The appeal is allowed.
- ii. The impugned judgment and order dated 13.7.2016 passed by the Judge, Special Court at Niphad, District-Nashik in Special Atrocity Case No.3/2013 is set aside.
- iii. The appellants are acquitted from all the charges which they faced in Special Atrocity Case No.3/2013 before the Judge, Special Court, Niphad. The fine amount, if deposited, be returned to the appellants.
- iv. The appellants shall execute bail bonds to the satisfaction of the Trial Court under the provisions of Section 437A of Cr.P.C.
- v. Criminal Appeal is accordingly disposed of. With disposal of the appeal, Interim Application No.4235/2022 does not survive and it is also disposed of.

PRADIPKUMAR
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(SARANG V. KOTWAL, J.)