



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

CRIMINAL APPEAL NO. 629 OF 2004

- 1) Ashroba S/o Narayan Bedre
Age: 47 years, Occu.: Agri.,
R/o.Khali, Tq.Gangakhed,
Dist.Parbhani.
- 2) Devidas S/o Rambhau Soudagar
Age: 37 years, Occu.: Agri.,
R/o. As above.
- 3) Laxman S/o Kerba Khating
Age: 32 years, Occu.: Agri.,
R/o. As above.

..Appellants
(Original Accused)

Versus

- 1) The State of Maharashtra
- 2) Radhabai Navnath Savale
Age: 50, Occu.: Household,
R/o. Khali, Tq.Gangakhed,
Dist.Parbhani.

..Respondents

....
WITH

**CRIMINAL APPLICATION NO. 3764 OF 2024
IN APPEAL/629/2004**

- 1) Ashroba Narayan Bedre
Age: 70 years, Occu.: Agri.
- 2) Devidas Rambhau Soudagar
Age: 81 years, Occu.: Agri.,
- 3) Laxman Kerba Khating
Age: 50 years, Occu.: Agri.,
All R/o. Khali, Tq.Gangakhed,
Dist.Parbhani.

..Applicants
(Original Accused)

Versus

1) The State of Maharashtra

2) Radhabai Navnath Savale
Age: 74, Occu.: Household,
R/o. Khali, Tq.Gangakhed,
Dist.Parbhani.

..Respondents

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Advocate for Appellants/ Applicants : Mr. S.V.Mundhe

APP for Respondent no.1 -State : Mr.S.K.Shirse

Advocate for Respondent no.2 : Mr. Darshan Dinkarrao Pokharkar

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 09 SEPTEMBER, 2024

PRONOUNCED ON : 18 SEPTEMBER, 2024

JUDGMENT :-

1. By way of instant appeal, appellants are taking exception to the judgment and order passed by 2nd Adhoc Additional Sessions Judge, Parbhani in Special Case No.17 of 2002 by which guilt of the appellants for offence under Sections 354, 324, 342 read with 34 of the Indian Penal Code (IPC) has been recorded by the learned trial Judge vide judgment dated 10-09-2004.

During pendency of above appeal, Criminal Application No.3764 of 2024 was also filed with prayers for permitting compounding of offence by raising following prayers :

“(A) This Criminal Application may kindly be allowed by way of permitting the applicant to compound the offence which are pending before the Hon’ble Court.

(B) The judgment and order passed by the learned IInd Additional Sessions Judge, Parbhani in Special Case No.17/2002 may kindly be quashed by way of compounding the offence under Section 324, 342 and 354 r/w 34 of Indian Penal Code and for that purpose be please to acquit the present applicants/appellants in Crime No.297 of 1999 registered at Gangakhed Police Station, Dist.Parbhani.”

BRIEF FACTS LEADING TO THE TRIAL

2. PW3 Radhabai Navnath Savale lodged report with Gangakhed Police Station alleging that on 31-12-1999, she was returning after collecting wood from forest and was accompanied by her sister-in-law namely Kusum Dnyanoba Avhad and one another lady namely Kusumbai. When they reached near the field of accused Ashroba, they plucked chilli vegetable. At that time, accused Ashroba and Devidas came there. Initially, there was assault by stick on head of complainant, then Ashroba tried to disrobe her and accused Devidas touched her at inappropriate place. Even accused Laxman caught her hand and placed on his private part. They took Kusumbai in the standing crop and raped her. She reported the occurrence after her

husband returned back from Mumbai and on its basis, Crime bearing no.297 of 1999 was registered at Gangakhed Police Station. Victim being belonging to scheduled caste category, provisions of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short “SC and ST Act”)were also attracted.

PW14 Kashinath Laxmanrao Marwadikar and PW15 Krishna Tuka More carried out investigation and accused came to chargesheeted and tried before 2nd Adhoc Additional Sessions Judge, Parbhani vide Special Case No.17 of 2002. Vide judgment dated 10-09-2004, there was acquittal of all three accused from charge under Section 376 of the IPC and provisions of SC and ST Act, but they stood convicted for offence under Sections 324 read with 34, 354 read with 34 and 342 read with 34 of the IPC.

SUBMISSIONS

3. At the outset, learned Counsel for the appellants pointed out that matter has been amicably settled during pendency of appeal. Normalcy has been restored as complainant, witnesses and accused hail from same village. That there is intervention from villagers as well as relatives. That complainant herself is ready and willing for compounding the offence and therefore, in view of such supervening

circumstances, learned Counsel seeks permission to compound the offence by invoking Section 320 of the Code of Criminal Procedure (Cr.P.C.) as according to him, at the time of incident, all above offences for which conviction has been recorded were compoundable with permission of aggrieved person i.e. complainant. He pointed out that even Counsel on behalf of complainant has caused appearance and hence, prayers are sought to be granted.

In support of his contention regarding powers of this Court to compound offence by invoking Section 320, he seeks reliance on *K.K.Sreedharan and Ors. v. State of Kerala and Anr.*, reported in 2012 AIR SCW 436 and *Bharti v. State of Haryana and Anr.*, reported in 2014 AIR SCW 561.

4. Record shows that this Court on 09-08-2024 itself noted all submissions made by learned Counsel of appellants that there are chances of settlement between the parties and adjournment was sought and same was granted. Thereafter, again time was sought on 30-08-2024 and necessary amendments were made. Part submissions were heard by this Court on 02-09-2024 as Mr.Pokharkar, learned Counsel representing complainant / respondent no.2 was absent due to personal difficulty and matter was treated as part heard. On 09-09-2024, Mr.Pokharkar, learned

Counsel tendered Vakalatnama on behalf of complainant/ respondent no.2.

5. In Criminal Application No.3764 of 2024, paragraph 3 carries text that “matter has been amicably settled between the parties and as such offence be compounded”. In paragraph 4, it is contended that at the time of incident, offence under Sections 324, 342 and 354 of the IPC were compoundable with permission of the Court i.e. prior to amendment in the Cr.P.C. in 2009.

6. On going through the Cr.P.C. i.e. at pre-amendment of 2009, it is apparent that by virtue of Section 320 of the Cr.P.C. offences punishable under the IPC were permitted to be compounded by the person mentioned in the third column. Here on trial, conviction has been recorded for offence under Sections 324, 342 and 354 of the IPC. On visiting the table, apparently such offences are permitted to be compounded by persons, who are hurt, who are confined or restrained and by the victim of assault / criminal force.

7. Perused the above rulings i.e. ***K.K.Sreedharan and Ors.*** (supra). The ratio laid down is as under :

“Compromise petition – Compounding of offence – Accused convicted under Ss.143, 147, 447, 342 and 427 read with 149

of Penal Code – Except for offences under Ss.143 and 147, all other offences are compoundable – Hence, as parties have compromised their dispute – Sentence of accused reduced to that already undergone.”

Here conviction is for 342 of the IPC and as stated above, said offence is compoundable.

8. In the ruling of **Bharti** (supra), permitting compounding of offence under Section 354 of the IPC, the Hon'ble Apex Court in paragraph 4 has observed as under:

“4. In the year 2000 when the offence was committed, Section 451 of the IPC was compoundable with the permission of the Court by the person in possession of the house trespassed upon. At that time Section 354 of the IPC was also compoundable with the permission of the Court by the woman assaulted to whom the criminal force was used. By the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 354 of the IPC was made non-compoundable. The question is, therefore, whether in view of the compromise this Court should permit compounding of the offence.”

9. Even otherwise, going by date of occurrence, said offence was also permitted to be compounded by victim. Here by virtue of criminal application to which victim and her Counsel both are signatories, it is expressed that there is amicable settlement and both

sides have thereby prayed for permission to compound the offence.

10. In view of Section 320 (5) of the Cr.P.C., this Court is competent to compound the aforesaid offences. Section 320(5) reads as under :

“320 Compounding of offences –

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.”

11. To sum up, here appeal was against offence under Sections 324, 342, 354 read with 34 of the IPC. The year in which the occurrence took place, at that point of time, Code provided compounding of above offences by invoking Section 320 of the Cr.P.C. Resultantly, in the above backdrop, impugned judgment needs to be set aside. Accordingly, I proceed to pass following order :

ORDER

(I) The conviction awarded to appellants (1) Ashroba S/o Narayan Bedre (2) Devidas S/o Rambhau Soudagar and (3) Laxman S/o Kerba Khating in Special Case No.17/2002 by the learned 2nd Adhoc Additional Sessions

Judge, Parbhani on 10-09-2004 for the offence punishable under Sections 324, 342 and 354 read with 34 of the IPC stands quashed and set aside.

(II) Appellants are acquitted from the offence under Sections 324, 342, 354 read with 34 of the IPC.

(III) The bail bonds of appellant stand cancelled.

(IV) The fine amount deposited, if any, be refunded to the appellants after the statutory period.

(V) Criminal Appeal No.629 of 2004 and Criminal Application No.3764 of 2024 are disposed of accordingly.

(ABHAY S. WAGHWASE)
JUDGE