

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

APPEAL NO. 1048 OF 2023

RAHUL SHIVAJI GHODKE

..APPELLANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Mr. Shubham Sane h/f Adv. Priyal Sarda, for Appellant.

Ms. Sakshee P. Chavan, for Respondent No.2.

Mr. A.R. Patil, APP for the State.

Mr. Jalindar Nalkul, Dy. S.P. Barshi present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 11, 2024

ORAL JUDGMENT :

1. Heard Mr. Shubham Sane, learned counsel for the appellant, Mr. Patil, learned APP and Ms.Chavan, learned counsel appointed to represent the respondent no.2-informant.

2. The date of the incident is 05/06/2023. The FIR is dated 06/06/2023 for the offences punishable under sections 506 and 34 of the Indian Penal Code, 1860 and under sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "Atrocities Act"). It is the

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allegation of the first informant who is the wife of the appellant's father's brother that when the respondent no.2, her husband and son had been to the village where the ancestral lands are situated, upset that the respondent no.2 who belongs to the Scheduled Caste community had married the appellant's uncle who belongs to the upper caste, the appellant abused the first informant in the name of her caste. This incident allegedly happened in the ancestral home of the Ghodke family of which the appellant as well as the respondent no.2 are a part.

3. Learned APP as well as Ms.Chavan- learned counsel for respondent no.2, vehemently opposed the appeal. My attention is invited to the statement of the respondent no.2. It is submitted that the statement clearly reveals that there are specific allegations made against the appellant of having abused respondent no.2 in the name of her caste. It is further submitted that these abuses though in the four walls of the ancestral house, were hurled in the presence of witnesses whose statements have been recorded corroborating the allegations of the complainant. It is further submitted that the appellant who is the nephew of the

respondent no.2, has threatened to kill her and has humiliated her in the name of her caste only because she married the appellant's uncle who belongs to the upper caste. Learned counsel then invited my attention to the provisions of section 18 of the Atrocities Act to submit that having regard to the nature of the accusations, the bar under section 18 of the Atrocities Act is clearly attracted in the present case. It is next submitted that on 02/06/2023 one NC was recorded by the respondent no.2's husband against the appellant for having assaulted him.

4. I have heard learned counsel and perused the materials on record. From the materials, it is seen that there is dispute between the family of the appellant and that of the respondent no.2 over the right of way. The marriage of the respondent no.2 with the appellant's uncle was solemnized 12 years prior to the date of the incident. On 02/06/2023, the appellant had also registered a non-cognizable complaint against his uncle i.e. respondent no.2's husband for having assaulted the appellant. Thus, there are cross cases registered by the appellant as well the respondent no.2's husband against each other on

02/06/2023. The present incident is of 05/06/2023.

5. Learned APP on instructions informed that the charge-sheet has already been filed against the appellant in the present case. The investigation is thus complete. Prima case, in my opinion, having regard to the dispute which the branch of the appellant and that of the respondent no.2 who are closely related to each other have over the right of way, the possibility of a false implication cannot be ruled out. In such circumstances, according to me, the bar under section 18 of the Atrocities Act will not be attracted. The incident has happened in the ancestral home and not in public view. The witnesses in whose presence the incident has taken place are from the Ghodake family, related to the appellant as well as the respondent no.2, siding one or the other family member depending on their interest. The appeal therefore deserves to be allowed.

6. In the event of arrest of the applicant in connection with FIR No. 336 dated 06/06/2023 registered with Vairag Police Station, Solapur, the applicant – Rahul Shivaji Ghodke be released on bail on his furnishing P.R. Bond in the sum of Rs.15,000/- with one or more sureties in the like amount.

7. The applicant to co-operate with the investigation and shall report to the concerned police station as and when called and attend the trial regularly.

8. I appreciate the valuable assistance rendered by Ms. Sakshee P. Chavan, learned Advocate to have effectively represented the respondent no.2 while opposing this appeal.

(M. S. KARNIK, J.)