



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

**CRIMINAL APPEAL NO. 800 of 2003
WITH
CRIMINAL APPLICATION NO. 2610 OF 2024**

1. Sadanand S/o. Yohan Avad,
Age : 57 years, Occu. : Labourer,
R/o. Dhakefal, Tq. Paithan,
Dist. Aurangabad.
2. Shamrao s/o Premchand Avad,
Age : 42 years, Occu. : Labourer,
R/o. Dhakefal, Taluka Paithan,
District Aurangabad.
3. Bhausahab s/o Sadanand Avad,
Age : 32 years. Occupation: Agriculture,
R/o Dhakefal, Taluka Paithan,
District Aurangabad.
4. Chaburao s/o Yohan Avad,
Age : 78 years. Occupation : Agriculture,
R/o Dhakefal, Taluka Paithan,
District Aurangabad.
5. Nirmalabai w/o Dharmraj Avad,
Age : 32 years, Occupation: Labourer,
R/o Dhakefal, Taluka Paithan,
District Aurangabad.
6. Laxman Mohan Bhavar,
Age : 32 years. Occupation : Agri
R/o Newasa, Taluka Newasa,
District Ahmednagar

... Appellants.

Versus

The State of Maharashtra,
Through P.S.I., M.I.D.C.,
Police Station, Paithan,
Taluka Paithan,
District Aurangabad.

... Respondent.

.....

Mr. N. K. Kakade, Advocate for Appellants.

Mr. S. S. Dande, APP for Respondent - State.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 17th FEBRUARY, 2025

PRONOUNCED ON : 24th FEBRUARY, 2025

JUDGMENT :

1. Appellants herein have taken exception to judgment and order dated 05.12.2003 passed by learned Ist Ad-hoc Additional Sessions Judge, Aurangabad in Sessions Case No.148 of 2002, holding appellants guilty for offence punishable under sections 147, 304-A r/w 149, 325 r/w 149 and 323 r/w 149 of Indian Penal Code (IPC) and sentenced them for imprisonment as well as fine.

FACTUAL MATRIX

2. Conspectus of prosecution case in brief is that, on 16.05.2001, daughter of informant had visited her father, requesting to carry presents for her husband and her brother-in-law on account of marriage of her brother-in-law. Accused Francis father-in-law of Martina also reached there and started abusing, thereby questioning why she came there. That time, another daughter of informant namely Alpha, who was pregnant had also come there. Previously, Alpha had lodged report against her husband and in-laws for commission of offence under section 498-A IPC. In all 21 accused came there and there was beating to both informant Peter as well as

Alpha. They both were taken to Government hospital. On 17.05.2001, informant Peter lodged report against accused resulting into registration of crime bearing No. 51 of 2001.

3. On completion of investigation accused persons were charge-sheeted and tried before learned Ad-hoc Additional Sessions Judge, Aurangabad, who, on appreciating oral and documentary evidence, held charges against present appellants proved, recording guilt for above offences.

Feeling aggrieved by the above, instant appeal has been preferred on various grounds mentioned in the appeal memo.

SUBMISSIONS

On behalf of Appellants :

4. Learned counsel for appellants criticized the judgment on the ground that, there is improper appreciation. According to him, 21 persons were named, but their roles are not defined and only accused nos.1, 2, 5, 15, 17 and 21 are picked up and chosen and held guilty. Learned counsel took this court through the evidence of informant, his daughter Alpha (PW4) and would submit that, their testimonies are rendered doubtful in view of answers given by them in cross examination. Learned counsel also took this court through the medical evidence and pointed out that alleged occurrence is of

16.05.2001, but doctor has not specifically attributed abortion due to alleged beating on such date, rather he pointed out that abortion is of 29.05.2001 and as such there is no nexus with the occurrence and charge under section 304-A IPC. He submitted that spot is not proved. That, independent witnesses have exaggerated the version and therefore, it is his submission that, learned trial court ought not to have straightaway accepted prosecution version as proved.

5. In the alternative, it is his submission that, even otherwise matter was between two families, who are related. That, due to matrimonial disputes, relations were strained, but subsequent to FIR, matter has been amicably settled between the parties. That, informant as well as his daughter, who is said to be victim, who have also deposed in the very examination-in-chief to that extent and so learned counsel seeks matter to be compounded as now harmonious relations between parties are said to be restored.

In support of such contentions, he seeks reliance on the rulings of the Hon'ble Apex Court in the cases of ***Mahesh Chand and Anr. v. State of Rajasthan***, AIR 1988 SC 2111 and ***Jalaluddin v. State of U.P.*** 2001 AIR SCW 2266.

On behalf of Respondent – State :

6. Learned APP opposed on the ground that there is convincing, trustworthy and reliable evidence of informant, who himself was injured. That, there is corroboration from another victim daughter (PW4). That, medical evidence supports ocular and injured account. That, there is evidence of independent witnesses and therefore, according to learned APP, there is no infirmity in the findings and conclusion recorded by learned trial Judge. He suggested that, matter being non compoundable, parties offerings in appeal for compounding the offence, cannot be considered. Thus, on both above counts, he has opposed.

EVIDENCE ON RECORD

7. On re-appreciating the entire evidence, it is emerging that, prosecution case is rested on oral evidence of 11 witnesses. Apparently, evidence of informant PW1, his daughter PW4 Alpha, PW9 Anita and PW10 Mahesh are of relevance and significance on the point of occurrence. Coupled with it evidence of medical experts PW7 Dr. Chavan and PW8 Dr. Goyal is also relevant. Rest are the panchas and Investigating Officer.

8. For proper appreciation and comprehension, it would be fruitful to reproduce the very testimonies of relevant witnesses i.e. informant PW1, his daughter PW4 Alpha, PW7 Dr. Chavan, PW9

Anita and PW10 Mahesh in verbatim as has been stated in witness box in trial court.

9. **PW1** Peter informant is the father of victim. Relevant portion of his evidence at Exhibit 28 is as under:-

“I know all the twenty-one accused present before the Court today. The incident occurred on 16.05.2001. On that day, there was a marriage ceremony of the son of Francis Yohan Avad, at Dhakefal. Said Francis is the father-in-law of my daughter. The house of Francis is in front of my house and at distance of about 50 feet. My daughter by name Martina is given in marriage to Abasaheb, who is the son of Francis. My another daughter by name Alpha is given in marriage to the cousin-brother-in-law of Martina and Manesh is the name of her husband. The marriage of Amar Francis Avad was to take place on 18.5.2001. But, on 16.5.2001, there was marriage ceremony, known as Haldi, at the house of Francis.

2. *On 16.5.2001, my daughter Martina came to me and told me that, as there is a marriage of her brother-in-law, I should bring the presents to my son-in-law Abasaheb and his brother Manesh, by way of new-clothes. I told Martina that, I did not receive any invitation card, for the said marriage. therefore, I will not give any such presents to her husband and his brother. When this talk of myself and Martina was going on, her father-in-law. i.e. Francis came to my house. He started abusing to me why Martina had come to my house, when my daughter Alpha had filed a case u/s. 498-A of the IPC against Sukhanand Yohan*

Avad and his son. Said Sukhanand is the real brother of Francis. When this abusing and talk were going on, my another daughter Alpha was also present, at that place, Alpha was carrying pregnancy of 5 months, at that time. When this abusing was going on, rest of the accused came to the spot and they attacked on myself, my wife, my pregnant daughter Alpha and my son Vicky Peter Ghule. Accused Francis, Chaburao, Vilasrao, Shamrao, Sadanand have beaten me. Accused Shamrao, Bhausahab, Anton, Vimalbai, Shantabai, Sarubai & Nirmalabai have beaten to my daughter Alpha. Because of this beating, I had become unconscious. The people gathered there have separated the quarrel. The guests, who had come to attend the ceremony, had taken myself for treatment, to the government hospital at Dhakefal. Alpha was taken to the same hospital, myself and Alpha were referred to ghati hospital for further treatment. Bleeding had started to Alpha. We both were discharged from ghati hospital, on the next day. On 29.5.2001, Alpha was feeling severe labour-pains, so, she was brought to ghati hospital, Aurangabad. There was an abortion of Alpha in the ghati hospital. This abortion has taken place, because of beating given to her on the day of the incident.

3. *After discharge, I had been to Paithan MIDC PS, on 17.5.01 and I lodged the complaint, it is the same now shown to me, contents are true, it is marked at Exh.29. However, on my complaint, the police have registered the offence, ten days thereafter.*

4. *The case, instigated by my daughter Alpha, ended in compromise. At present, Alpha is living with her husband and his family. I had sustained the injuries on my chest and head, due to*

the beating. Alpha was admitted for 2 days, in the ghati hospital, when her abortion took place.

10. **PW4** Alpha is the victim. In her testimony at Exh.33 she deposed as under :-

“My marriage with Manesh took place about 5 years back. Two yrs. after marriage, I have filed a cri-case in the Court at Paithan, u/s. 498-A of the IPC, against my husband, and five others.

2. *The incident has occurred 2 years back, from today. On that day, there was a Haldi function, concerning the marriage of my cousin brother-in-law and the function was held at the house of in-laws, namely, Sukhanand Avad and Anusaya Avad. At that time, I was carrying pregnancy of five months. On that day, at about 12 noon or 1 pm, I was standing with my father-complainant. The house of my father and that of my in-laws are opposite to one another & there is a road between the two houses. At that time, my sister Martina had come to us, to talk. At that time, Madan Avad, Nirmalabai D. Avad Bhausaheb, Nirmala Bhausaheb Avad, Anusayabai, Vimalbai Avad, Shantabai Avad, Anton Avad, Baban Avad, Sarubai, Vilas Awad, and one Bhawale, in all 21 persons had come to our house. These persons had beaten to my father with fist and kick blows. I was also beaten by them with fist and kick blows on my stomach. My father had taken me to the govt hospital at Dhakefal. From that hospital, in a govt. vehicle, I was being taken to ghati hospital, A'bad. But, on the way, my abortion had taken place. I was inpatient in ghati hospital, for 2 days. All the persons named above are present today, in the Court hall.”*

11. **PW7** Dr. Chavan is the Medical Officer, who examined PW1 informant and PW4 Alpha, narrated the injuries and identified the injury certificates. In his testimony, he deposed as under :-

“On 16.5.01, I was on duty as a casualty medical officer at ghati hospital, Aurangabad. On that day, the patient by name Alfa Manesh Avad was referred to me from Dhakefal Rural Hospital and I had examined her on that day. I noticed the following injuries on her person:

- 1. contusion over abdomen, swelling over abdomen with P.V. bleeding with linliacking membrane.*
- 2. multiple contusion all over body, i.e. chest, abdomen, back, and both the hands.*

The injuries were caused within 12 hours by any hard and blunt object. Injury No.1 was grievous whereas No.2 were simple in nature. The patient had given the history of assault by many persons on 16.5.01 at 12: 30 noon.

2. The same patient Alfa was admitted on 29.5.2001. The patient had a history of P.V. bleeding.

The abortion had taken place, in fifth month pregnancy. The abortion has taken place after trauma of 16.5.2001. The patient was discharged on 30.5.2001. Dead male child was removed after curating. I have brought today with me the original MLC register and the entries of exam. of said patient on 16.5.01 and 29.5.01 are mentioned therein. Accordingly. I have issued the two injury certificates, contents are true. I identify my

signatures and are marked at Exhs. 38 and 39. The bleeding noticed in the case of injured Alfa is possible, if she is given fist and kick blows on her abdomen.

3. *On 16.5.01, the patient by name Peter Paul Ghule was referred to me by Dhakefal PHC, and I examined him on that day. The patient had the following injuries:*

- 1. contusions over the abdomen and backside, with swelling over the abdomen, with severe pains, on abdomen and chest.*
- 2. looseness and fracture of left pre-mor tooth,*
- 3. contusion over the chest with severe pains,*
- 4. linear abrasion over right elbow joint.*

Injuries were caused within 12 hours before examination. Injury Nos.1, 3 and 4 were simple in nature, whereas No.2 was grievous.

4. *The patient Peter Ghule came to ghati hospital on 29.5.2001, as he was transferred by the Medical Officer, Paithan. On that day, I examined him and he was having burning pains in chest and tongueless sensation, having a drug-re-action, and the patient was under treatment in medical ward, from 2 am to 5 am on 29.5.2001. The entries of exam of the said patient were also made in the MLC register. Accordingly, I have issued the medical certificates of Peter, its contents are true and I identify it. Certificates are marked at Exhs. 40 and 41.”*

12. **PW9** Anita is the niece of informant Peter. In her testimony at Exh.45, she deposed as under :-

“The complainant Peter Paul is my maternal-uncle. On 8.5.2001, alongwith my children, I had come to Dhakefal, due to summer vacation. PW.4 Alfa, on that day, was in the house of the complainant. Alfa had lodged a complaint with the police at Paithan against her husband and his family members, as she had to face some family-difficulties, therefore, she was staying with her father-complainant. I lived with the complainant, for 20-22 days, after 8.5.2001.

2. *There was some function, at the house of Francis Avad, on 16.5.2001, as, on next day, the marriage of his son was to take place. Martina is another daughter of the complainant. She was passing from the house of the complainant, so, I had called her. When I was talking with her, in front of the house of the complainant, her father-in-law abused the complainant. The complainant also came out of house and asked Francis, as to why, he was abused and exchange of words started between the two. On noticing that quarrel, all the guests, gathered for the meals, rushed towards the house of complainant, There persons were armed with weapons like bat and had beaten to the complainant, so also to Alfa @ Archana, with bat, chappals, fist and kick blows. Alfa was beaten on her stomach. Baban, Sham and Sadanand Avad, Bhausahab Avad, Laxman Bhawar, Manesh Avad, Chaburao Avad, and others have beaten to the complainant and Alfa. Both the complainant and Alfa were later taken to the govn. hospital at Dhakefal, which is quite near the house of the complainant. From there, they were referred to ghati hospital. Bleeding to Alfa had started, because she was beaten on waist and abdomen with kicks and chappals and fist-blow and at that time, she was pregnant. All the persons, who are named above, are present in the court hall, as accused.”*

13. **PW10** Manesh is the nephew of informant Peter. In his testimony at Exh.46, he deposed as under :-

“The complainant Peter is my maternal uncle. On 12.5.2001, I had come to village Dhakefal and was living there till 16.05.2001. On 16.5.2001 at about 12 noon, I was sitting on a cot, under a nim-tree, in front of the house of the complainant. Martina had come to see her father- complainant. She had just reached near the door of house and was followed by her father-in-law by name Francis. He questioned Martina, as to why she was going to the house of the complainant, giving an abuse to the complainant. Complainant was standing there and he asked Francis, as to whom, he was abusing. Exchange of words started between the two. I saw that, the complainant was being beaten by Shamrao, Madan, Francis, Vilas and others. Archana @ Alfa was pregnant and she was also beaten. The complainant and Alfa both had fallen on the ground. I tried to intervene, but, was unable to walk and was using crutches, at that time. The complainant and Alfa were sent to hospital, at Dhakefal.”

14. Examination-in-chief of PW1 informant and PW4 daughter Alpha are already reproduced in aforesaid paras. Now, let us see whether there is force in the submission of learned counsel that their substantive evidence is not consistent, general and omnibus against all 21 accused persons and as such their testimonies cannot be relied.

15. On going through the cross examination of **PW1** informant, it is noticed that, more particularly in paragraph no.7, there are material omissions on the point of his daughter Martina approaching him for new clothes for her husband and her brother-in-law; about he conveying her about not receiving invitation about marriage; about his wife and son also to be beaten by accused; not specifically stating accused Francis, Chaburao, Vilasrao, Shamrao and Sadanand beating him. He admitted about not specifically naming Shamrao, Bhausahab, Anton, Vimalbai, Shantabai, Sarubai and Nirmalabai beating his daughter also. He also admitted about informing at the time of complaint about any bleeding to his daughter Alpha.

16. **PW4** Alpha victim in paragraph no. 3 of cross examination, stated that, in criminal case filed by her, later on there was compromise. She answered that, she is unable to remember name of accused and who beat her father. She was beaten by Nirmala, Bhausahab and Bhawale. According to her, incident lasted for one and half hour. She answered that she does not remember whether she stated to the police about her abortion taking place. She is unable to assign why such material is not appearing in her statement.

17. In the cross examination of **PW9** Anita, in paragraph no.4, there are omissions about Alpha bleeding due to beating.

18. In the cross of **PW10** Manesh, he stated that, at the time of incident, he was having fracture injury to his leg, but he had accompanied complainant up to the hospital of Dhakephal. Rest is all denial.

19. Conviction is recorded under sections 147, 304-A r/w 149, 325 r/w 149, 323 r/w 149 IPC.

Above sections are invoked by applying 149 IPC, and therefore, it would be equally important to also deal as to when said sections gravitates and it further said to be brought home.

20. Keeping above factors into, here, going by the chronology of events as narrated by PW1 informant, it is emerging that, on 16.05.2001, his daughter Martina approached him to suggest that he should bring new clothes for her husband as well as brother-in-law. Martina is not examined here. Be it so. When father and daughter Martina both were talking, it is alleged that, father-in-law Francis reached there, abused and he questioned his own daughter-in-law Martina for visiting her parent's house, when PW4 Alpha had filed proceedings under section 498-A IPC against Sukhanand (who is brother of Francis) and his son. When abuses and talks were going on, Alpha also came there and thereafter he has alleged that rest of

the accused came on the spot and they attacked him, his wife and pregnant daughter Alpha.

21. He initially named five persons, Fancis, Chaburao, Vilasrao, Shamrao and Sadanand for beating him, but with what and where, has not been specified by him. Then he again named Shamrao, Bhausahab, Anton, Vimalbai, Shantabai, Sarubai and Nirmalabai for beating her daughter Alpha. Thus, in all 11 persons are specifically named, but specific roles have not come in his evidence.

22. Another injured PW4 Alpha is also examined and according to her, when her sister Martina had come to her father's place and talks were going on, she claims that, Madan, Nirmalabai, Anusayabai, Vimalbai, Shantabai, Anton, Baban, Sarubai, Vilas and Bhawale came, beat her father with fist and kick blows and also beat her with fist and kick blows on the stomach.

23. As stated above, PW1 Peter informant in his cross examination, in paragraph no.7, has already admitted that, he did not report in the complaint that his wife and sons were also beaten. This thus amounts to improvement. He also specifically admitted about not naming accused Fancis, Chaburao, Vilasrao, Shamrao, Sadanand, Bhausahab, Anton, Vimalbai, Shantabai, Sarubai and

Nirmalabai for beating her daughter. He also admitted about not reporting any bleeding due to beating.

24. Apparently, 21 persons were charge-sheeted, however, learned trial Judge recorded conviction and held guilty only six persons, i.e. Sadanand, Shamrao, Bhausahab, Chaburao, Nirmalabai and Laxman. Learned trial court seems to have taken into account testimonies of informant PW1 and his daughter PW4. However, in above cross names of some of the accused are admitted by informant himself for not being named in the complaint. Therefore, the moot question arises is on what basis out of 21, only 6 persons are held guilty that too by applying section 149 IPC, when explicitly evidence of informant and his daughter carries allegations in omnibus manner.

25. Here, conviction is recorded for section 304-A IPC, but again it is noticed, more particularly from the evidence of PW7 Dr. Chavan that, on 16.05.2001, he certified injuries to be simple in nature except injury no.1 to PW4 and injury no.2 of PW1 to be grievous and rest injuries is to be simple. Abortion of PW4 is shown to be done on 29.05.2001 i.e. after two weeks. But, amongst 21 accused only 06 are held guilty.

26. Apparently, conviction is recorded by trial Judge for

commission of offence under section 304-A IPC, however, on perusal of impugned judgment, it is noticed that, in paragraph no. 20 of the judgment, the learned trial Judge has observed, *the present accused also possibly cannot have any intention to cause the abortion to Alpha by their beating. Even the knowledge of their beating, with fist and kick blows was likely to cause such abortion, amounting to culpable homicide to foetus, cannot be attributed to the accused.*" Having recorded such finding and opinion, when *mens rea* is considered as an essential component for attracting section 304-A IPC, the above findings do not reconcile with the opinion reached at by learned trial Judge that offence of 304-A IPC is made out. Requirement of *mens rea* to be essential, is dealt by the Hon'ble Apex Court in the cases of ***State of Maharashtra v. Mayer Ham George***, AIR 1965 SC 722; ***Nathulal v. State of M.P.***, AIR 1966 SC 43; ***Naresh Kumar v. State of Haryana***, 2024 (3) SCC 573; ***Jyotsna Sharma v. State of Uttarakhand***, MANU/UC/0084/2022; ***Lalit Mohan Bhagat v. State of Uttarakhand***, MANU/UC/0249/2022.

27. There is conviction for offence punishable under section 325 of IPC. PW7 Dr. Chavan, medical expert deposed that, PW4 Alpha suffered one grievous injury i.e. P.V. bleeding. But, again, who amongst the 21 or who amongst the 6 actually is responsible, is not getting clear. Merely by invoking section 149 IPC, out of 21 only 06

cannot be selected and held guilty unless it is shown that such 06 persons also carried same common object in committing the crime. Going back to the chronology of events, incident seems to have erupted suddenly i.e. only when Martina went to meet informant. Arrival of Alpha was not expected. However, she too has come on the scene. If section 149 IPC is to be invoked, then it is expected to be of prosecution that all 21 accused were aware that incident of beating taking place and they indulging in the same. The Hon'ble Apex Court in numerous judgments has held that, to convict person under section 149 of IPC, prosecution has at the threshold to establish sharing of common object and then becoming part of unlawful assembly. Each of the such person booked must be shown to be aware that the offence is likely to be committed and further to achieve the common object, they all became part of unlawful assembly. To this extent, the Hon'ble Apex Court recently in the case of ***Naresh v. State of Haryana***, MANU/SC/1094/2023, clarified legal position for invoking section 149 IPC. This crucial aspect is missing in the case in hand and therefore, by applying above section, chosen few cannot be held guilty.

28. Therefore, in the light of above discussion, even commission of offence of two major sections 304-A and 325 are not proved beyond reasonable doubt.

29. Learned counsel has in alternative made submission that now matter is resolved. Parties are relatives and harmony and peace has been restored and they all unanimously on indulgence of other relatives have decided to compound the allegations. Learned counsel has placed on record above referred rulings, wherein Hon'ble Apex Court has observed that, when matters are compromised and even offences are non-compoundable, permission to compound can be granted.

30. However, for above reasons, on meticulous re-appreciation of evidence and for the reasons stated above, on merits itself case of prosecution is shaky and charges not being proved beyond reasonable doubt, benefits goes to appellants. Hence, I proceed to pass the following order :-

ORDER

(I) Criminal Appeal stands allowed.

(II) The conviction awarded to appellants, namely, (1) Sadanand S/o. Yohan Avad, (2) Shamrao s/o Premchand Avad, (3) Bhausahab s/o Sadanand Avad, (4) Chaburao s/o Yohan Avad, (5) Nirmalabai w/o Dharmraj Avad, (6) Laxman Mohan Bhavar in Sessions Case No.148 of 2002 by the learned Ist Ad-hoc Additional Sessions Judge, Aurangabad on 05.12.2003 for the offence punishable

under sections 147, 304-A r/w 149, 325 r/w 149 and 323 r/w 149 of Indian Penal Code, stand quashed and set aside.

(III) The appellants stands acquitted of the offence punishable under sections 147, 304-A r/w 149, 325 r/w 149 and 323 r/w 149 of Indian Penal Code.

(IV) The bail bonds of the appellants stand cancelled.

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

VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

VII) Criminal Application No. 2610 Of 2024 is also disposed of.

(ABHAY S. WAGHWASE, J.)