

2025 LiveLaw (SC) 1178

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**DIPANKAR DATTA; J., AUGUSTINE GEORGE MASIH; J.
SLP (CRIMINAL) NO. 10759/2024; DECEMBER 08, 2025**

DADU @ ANKUSH & ANR. *versus* STATE OF MADHYA PRADESH & ANR.

Criminal Law – Evidence – Appreciation of Evidence – Hostile Witness – Settlement of Law – Supreme Court reiterated that the evidence of a witness who has been declared hostile cannot be rejected in its entirety - Such evidence must be subjected to closer scrutiny, and the portions consistent with either the prosecution or the defense's case may be accepted - Held that the High Court erred in ignoring the testimony of PW-4 solely on the ground of him being declared hostile. [Relied on *State of U.P. v. Ramesh Prasad Misra* (1996) 10 SCC 360; Para 19]

SC/ST (Prevention of Atrocities) Act, 1989 – Section 3(1)(xi) – Conviction Set Aside – Perverse Findings – Supreme Court found that the High Court's conclusion that the offence was committed "simply for the reason" that the complainant belonged to a Scheduled Caste was perverse - Neither the victim nor her brother stated during the trial that the alleged acts were committed because of their caste - Held that in the absence of such evidence, the conviction under the SC/ST Act cannot be sustained. [Para 20]

Criminal Procedure Code, 1973 – Section 374(2) – Contradictory Testimonies – Benefit of Doubt – Held, the discrepancies between the FIR and court depositions regarding the arrival of the accused, the lack of independent witnesses despite the incident allegedly occurring in a crowded locality, and medical evidence suggesting injuries were consistent with a fall rather than assault, created significant doubt - The defence's account of a scuffle at a Ganesh Puja pandal was found to be a probable alternative explanation - Convictions under Sections 323 and 354 IPC were set aside. [Paras 12, 14, 21-23]

For Petitioner(s): Mr. Samyak Jain, Adv. Mr. Rajat Sehgal, AOR.

For Respondent(s): Mr. B. P. Singh, D.A.G. Mr. Aditya Vaibhav Singh GA, Adv. Mr. Sarad Kumar Singhania, AOR Mr. Nakul Nirwan, Adv. Mr. Anil Gaur, Adv.

J U D G M E N T

DIPANKAR DATTA, J.

1. This appeal, by special leave, is at the instance of the two appellants, Dadu @ Ankush (A-1) and Ankit (A-2). It is directed against the judgment and order dated 18th January, 2024 of a learned Judge of the High Court of Madhya Pradesh at Jabalpur of dismissal of an appeal¹ under Section 374(2), Code of Criminal Procedure, 1973 preferred by the appellants.

2. Appellants stood trial in a case² registered on the basis of a complaint lodged by the respondent no. 2³ before the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989⁴. The Special Court convicted A-1 under Section 323,

¹ CrI. Appeal No. 7239 of 2019

² Special Case No. 200010 of 2016

³ victim

⁴ SC/ST Act

Indian Penal Code, 1860⁵ and sentenced him to rigorous imprisonment for 3 months together with fine of Rs.1000/- with default term. A-2 was convicted under Sections 354 and 323, IPC as well as Section 3(1)(xi) of the SC/ST Act. For the offences under Section 354, and Section 3(1)(xi) of the SC/ST Act, A-2 was sentenced to a year's rigorous imprisonment each together with fine of Rs.1000/-. For the offence under Section 323, IPC, he was sentenced to rigorous imprisonment for 3 months and fine of Rs.1000/-. The sentences were directed to run concurrently.

3. Appellants carried the conviction and sentence in appeal before the High Court which, by the aforementioned judgment and order, dismissed the appeal.

4. In the written complaint lodged by the victim giving rise to the First Information Report⁶, it was alleged as follows:

"I live in Sawargaon, Amba Ward, Padhurna. I study in class 11. My family consists of my mother, father, dadi and younger brother Pawan. On 04/10/2015 my mother, father and dadi had gone for hawking to Ambada market and around 10:30 at night my brother was in the Ganesh Utsav organized nearby our house. I was at home. Dadu Pendse of my locality came along with his friend Ankit Kevte and enquired from the gate of the house, if any one is there, I came out on which Dadu Pendse asked isn't there any one in the house, to which I replied that my father has gone to the market. On listening to his Ankit Kevta caught hold of my dupatta, I pulled back my dupatta and asked him to leave it, on which he caught hold of my neck with bad intention. I shouted and tried to run away due to which he scratched my neck. My brother Pawan came to save me upon listening my voice, on which both of them gave him beating and abused him. Ankit Kevte belongs to Teli cast and despite knowing that I belong to Schedule Cast (sic, Caste), he teased me, beaten and abused my brother. I have come to lodge the report along with my brother Pawan. I have lodged the report. Action be taken."

5. Paragraph 2 of the impugned judgment and order records the prosecution's case. We consider it appropriate to reproduce the same hereunder:

"2. The facts necessary for disposal of present appeal, in short, are that on 04.10.2015, the prosecutrix lodged a report that she was in her house and her brother had gone to attend a program of Ganesh Ji. At that time, the appellants came there and inquired as to whether there is anybody in the house or not. When the prosecutrix informed that her father has gone to the market, then the appellant No.2 caught hold of her chunni and with evil intention caught hold of her neck. When she tried to run away, the appellant No.2 scratched her neck. When her brother came running to save her, then he too was also assaulted and he was abused filthily. The police lodged the FIR, arrested the appellants, recorded the statements of the witnesses and after completing the investigation filed the charge-sheet for offence under Sections 354, 294, 323, 34 of IPC and under Section 3 (1) 11 of SC/ST (Prevention of Atrocities) Act."

6. In her examination-in-chief, the victim (as PW-1) deposed as follows:

"3. The accused Dadu present in the court, came to my house and asked if there was anyone in the house or not, to which I replied that no one is there. Then accused Dadu called someone from his mobile phone and after a while, the boy standing with the accused Dadu, also came to my house. I was standing on the staircase of my house suddenly when the boy standing with the accused Dadu pulled my dupatta. I screamed loudly and my brother Pawan who was 16 years old at the time of incident came to the house. The boy standing with Dadu also injured me on my back through nail marks. As soon as my brother Pawan came to rescue me, he was also beaten up by the both the accused present in the court. He got injuries on his head, hand and chest. Bleeding also oozed from head and chest."

⁵ IPC

⁶ FIR

7. From the written complaint giving rise to the FIR as well as the victim's deposition in court, it is clear that *qua* the victim, A-1 did not touch the victim. His role is confined to enquiring from the victim as to whether anyone was in her house or not. Insofar as A-2 being called on phone by A-1 is concerned, the version in the written complaint is at variance. Allegedly, A-2 had accompanied A-1. *Qua* her brother (PW-2), the victim deposed that both the appellants beat him and he received injuries on his head, hand and chest. Blood also oozed from his head and chest. Significantly, the victim did not depose in court that A-2, knowing that she and her brother belonged to Scheduled Caste, teased her and beat and abused him.

8. The victim's brother (PW-2) stepped into the box and deposed as follows in course of his examination-in-chief:

"2. The incident happened about 2-3 years ago. The incident took place at 8:00-8:15 pm at night when I was at the temple with my friends. My house is near the temple, I got the information about the fight happening in my house so I ran home and found the accused Dadu alias Ankush who is present in the court and another boy whose name came to be known as Ankit and my sister was there. Both the accused were teasing my sister. Accused Ankit had already pulled my sister's dupatta and there were nail marks on her back. When I intervened, both the accused beat me with their hands and with the wood kept near the stove, due to which I got injured on my nose and mouth and there was bleeding. The accused ran away after assaulting me.

3. There was no one else at my house except my sister. At the time of the incident, many people from the locality had come and had seen the incident. Thereafter I along with my sister reached the Pandhurna police station where she filed a report about the incident. After the report, ... and I were sent to Pandhurna hospital for medical examination and where both of us were medically examined and treated."

9. The evidence of PW-2 reveals that he was at the Ganesh temple when he got information about a fight happening in his house and, as such, he ran home to find A-1 and A-2 teasing the victim (her sister). From whom PW-2 obtained information is not disclosed. Though not being present at the relevant time, he deposed that A-2 had pulled the dupatta of the victim and scratched her back with nails. Upon intervening, the appellants beat him with a wood (kept near the stove) resulting in PW-2 suffering bleeding injury on his nose and mouth. It is also in his evidence that many people from the locality had come and had seen the incident.

10. From the evidence on record before the trial court, it is revealed that on the next day of the incident, the victim and PW-2 were examined by the medical officer (PW-5). Insofar as the injuries suffered by them are concerned, PW-5 stated as follows:

"1. ***

1. A scratch mark on the back of the neck with length 4 to 5 cm.

2. The said injury was simple in nature and seemed to have been caused by a hard and blunt object. It was occurred within 4 to 5 hours of testing. The report given by me Exhibit P-6 which bears my signature at point A to A.

3. ***

1. There was a scratch mark on his chest of size about 1 cm X 1/2 cm.

2. A scratch mark above the eyebrow of the left eye, of size about 1 cm in length.

4. According to my opinion, the above-mentioned injuries were simple in nature and seemed to be caused by a hard and blunt object. They were of within 4 to 5 hours of examination. The report given by me Exhibit P-7 bears my signature at point A to A."

11. In his cross-examination, PW-5 deposed as follows:

“5. It is correct to say that if a person falls or gets dragged on the ground, it is possible to get both the above-mentioned injuries in such a situation.”

12. Having considered the evidence led by the prosecution, there appears to be a discrepancy as to whether A-2 accompanied A-1 when A-1 came to the house of the victim and enquired about the availability of her family members.

13. While the FIR version is that the A-2 had accompanied A-1, in court, she deposed that A1 had called A2 on phone whereafter he arrived. This discrepancy, however, may not be too material for the purpose of a decision on this appeal because of other more glaring discrepancies which we propose to highlight now.

14. However, what has struck us is the deposition of PW-2 that many people from the locality had come and seen the incident. Not only did PW-2 not name any person from the locality who had seen the incident, not a single witness from the locality was examined who had seen the incident. No post-occurrence witness, having heard of the incident, was also examined.

15. That apart, the evidence of PW-5 does suggest that the injuries which were suffered by both the victim and PW-2 could have been possible if someone falls or gets dragged on the ground. It is also noteworthy that the injuries found on the person of both the victim and PW-2 were simple injuries which, according to PW-5, seem to have been caused by a hard and blunt object. PW-2 had referred to a wood by which he was struck by the appellants but such wood was not recovered and exhibited.

16. Although the victim had deposed of being injured by A2 on her back through nail mark, the same (nail mark) does not find mention in the deposition of PW-5. It is also noteworthy that while PW-2 deposed that he was injured on his nose and mouth and there was bleeding, no injury on the nose and mouth appear to have been found by PW5. That PW-2 suffered injury on his nose and mouth is belied by the deposition of the victim, who deposed that PW-2 was bleeding from the head and chest.

17. It is in the evidence of the victim that when A-2 pulled her dupatta, she screamed loudly prompting PW-2 to rush to the house. PW-2, however, did not say that he rushed to the house on hearing the victim's scream. He said, someone had informed him of a fight in his house. If the statement of the victim is contrasted with the statement of PW-2, we find it improbable that victim's loud screams could only reach the ears of PW-2 and no one else's considering that a large number of members of the public were present for the Ganesh Puja celebrations (as per the version of PW-2 himself).

18. At this stage, it is also apposite to highlight that as per PW-2, many people from the locality had come and seen the incident, hence, it would appear strange that none from the locality was produced in the court as a prosecution witness. While it is within the realm of possibility, the fact that no member of the public rushed to rescue the victim when she was being teased by the appellants is also a circumstance to find the testimony of PW-2 unbelievable. We have, therefore, come to the ineluctable conclusion that PW-2 has not been truthful.

19. It is also important to note the deposition of PW-4. Though related to the victim and PW-2, he deposed that the pandal of Ganesh Puja was overcrowded and peoples' feet were touching each other due to which PW-2 felt that A-1 and A-2 had stepped on PW-2's feet. This resulted in a scuffle breaking out between A-1 and A-2 on the one hand and PW-2 on the other. Though PW-4 was declared hostile after he made the above statement, he was subjected to cross-examination by the Public Prosecutor. Notably, it is in his evidence that it was wrong to suggest that PW-2 was assaulted by A-1 and A-2. The High Court did

not refer to the evidence of PW-4 simply on the ground that he had turned hostile, in ignorance of the law relating to appreciation of the evidence of a witness who has been declared hostile. A profitable reference may be made to the decision of this Court ***in State of U.P. v. Ramesh Prasad Misra***⁷ wherein it was held that it is settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of either the prosecution or the accused. It would rather have to be subjected to closer scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The mere rejection of the evidence of PW4 in the manner aforesaid is contrary to the law laid down by this Court.

20. The High Court further observed that from the statements of the appellants recorded under Section 313 Cr. PC, it was clear that they knew PW-1 belonging to Scheduled Caste. An abrupt finding was recorded that *“it is clear that the offence was committed by the appellants simply for reason that the complainant was belonging to scheduled caste.”* Curiously, there appears to be no statement in court in course of trial by the victim that A-2 committed the alleged offence only because of the victim being a member of Scheduled Caste. No such statement was even made by PW-2. The finding returned by the High Court is, thus, perverse.

21. In our view, the defence has been successful in placing a probable and believable account of a scuffle having broken out between PW-2 and the appellants at the Ganesh Puja pandal, which might have prompted PW-2 to set up a false story of commission of offence on the victim. Such scuffle could have resulted in PW-2 falling on the ground and suffering injuries which were ultimately found on his person by PW-5.

22. Insofar as the victim is concerned, as noted above, she has not attributed any offensive act to A-1. Her version of A-2 pulling her dupatta and the appellants beating PW-2 also do not inspire confidence, in view of the aforesaid discussions. What remains is the scratch on the back of her neck. We do not see reason to hold, in view of the evidence of PW-5 and our above findings, that A-2 ought to be held guilty of an offence under Section 323, IPC.

23. The conviction and sentence of the appellants being indefensible, stand set aside. They are set free and discharged from their bail bonds.

24. The appeal, thus, stands allowed.

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⁷ (1996) 10 SCC 360