

**State Vs. Avinash Naik and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/367894](http://sooperkanoon.com/367894)

**Court :** Mumbai

**Decided On :** Aug-26-2005

**Reported in :** 2006CriLJ609

**Judge :** N.A. Britto, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 323 and 324

**Appeal No. :** Cri. Misc. Appln. No. 124 of 2005

**Appellant :** State

**Respondent :** Avinash Naik and ors.

**Advocate for Def. :** Shivan Dessai, Adv.

**Advocate for Pet/Ap. :** S.N. Sardesai, PP.

**Disposition :** Application dismissed

**Judgement :**

ORDER

**N.A. Britto, J.**

1. The Complainant/State has sought heave to appeal against the acquittal of the accused under Sections 323, 324 r/w 34 I.P.C. vide

## JUDGMENT / ORDER

dated 31-12-2004 of the learned J.M.F.C, Mapusa.

2. It is the case of the prosecution that Shri Ibrahim Khatib, the S.D.P.O. of Mapusa had called the Complainant Subhada Sawant on 26-2-1999 at about 16.30 hours in connection with a complaint made by her against her husband and other in-laws and the said inquiry was entrusted to A-1/ Avinash Naik and A-2/ Smt. Ratan Fatarpekar in an adjoining room when A-1 / Avinash Naik and A-2/ Smt. Ratan Fatarpekar on the pretext of conducting an inquiry subjected the said Complainant-Subhada Sawant in furtherance of common intention to humiliation, ill-treatment and torture and assaulted her and inflicted 10 burn injuries with lighted cigarettes on her hand and back, between 16.30 to 20.00 hours and threatened to arrest on flimsy grounds. The said complainant-Subhada Sawant was dealt in that manner because she had published a matter relating to her complaint in the daily 'Tarun Bharat' dated 13-2-1999. It was also the case of the prosecution that A-3/ Gajanan Sawant, the brother-in-law of the Complainant also assaulted her with slaps in the presence of the other accused persons.

3. The prosecution had examined as many as 20 witnesses in support of the charge. The learned J.M.F.C. referred to the evidence of PW5/Subhada Sawant as well as that of her sister PW4/Darshana Bandekar and acquitted all the accused, interalia, observing that their evidence could not be accepted to justify a conviction. The learned J.M.F.C. also found that there were unsatisfactory features in the case of the prosecution which created a doubt regarding the evidence of the said PW4/Darshana Bandekar as well as PW5/ Subhada Sawant and further found that the case of the prosecution was inherently incredible and was not in accordance with the normal conduct of the said witnesses and, therefore, proceeded to acquit the accused.

4. It appears that the said PW5/Subhada Sawant had got married on 15-6-1997 to one Dharma P. Sawant, resident of Calvi, Aldona and their marriage turned out not to be a happy one and it is seen from the evidence of PW19/Mahesnwar Naik that the said PW5/Subhada Sawant had filed a complaint on 23-5-1998 against her said husband and her in-laws which was settled on 24-10-1998 and they had

undertaken to live peacefully. It appears that thereafter another complaint was filed at Porvorim Police Station where A-2/ Smt. Ratan Fatarpekar was working and this complaint was dated 23-6-1998 and as stated by PW15/Sunil Gad, her brother, the said complaint was refused to be entertained by A-2/ Smt. Ratan Fatarpekar which probably compelled PW5/Subhada Sawant to go the Press and get a report published on Tarun Bharat on 13-2-1999 and as a Result of which Shri Khatib the S.D.P.O had called A-2/Smt. Ratan Fatarpekar as well as PW5/Subhada Sawant for inquiry at Mapusa Police Station and the said inquiry was entrusted to one Police Officer by name Smita Naik, as stated by PW3/Anand S. Sawant and PW2/Head Constable Naik, and who have not been cross-examined by the prosecution in spite of the fact that it was the case of the prosecution that the said inquiry was entrusted to A-1 /Avinash Naik who was working as an U.D.C. at the S.D.P.O. Office and A-2/Smt. Ratan Fatarpekar who had no concern with Mapusa Police Station as she was attached to Porvorim Police Station.

5. Although, the incident took place on 26-2-1999 at the Police Station, the complaint/FIR came to be filed directly to the D.G.P. only on 3-3-1999. A perusal of the said FIR gives an impression that It was filed with more emphasis regarding corruption by A-2/Smt. Ratan Fatarpekar rather than the causing injuries to PW5/Subhada Sawant. A perusal of para e of the said FIR shows that it was directed against A-1/ Avinash Naik, A.G. Haldankar who has not been implicated as an accused, A-2/Smt. Ratan Fatarpekar and A-3/Gajanan Sawant with an allegation that all of them arrogantly behaved with her and badly tortured her with cigarette fire and slaps. However, before the Court P.W.5/Subhada Sawant stated that A-2/Smt. Ratan Fatarpekar who is the relation of her husband took a glass full of water and threw it on her face saying 'Chediye' and thereafter A-1/ Avinash Naik went inside and came back smoking a cigarette and put burn injuries on her right hand saying that 'Chediye with this hand you written about day light corruption' and as A-1/ Avinash Naik put the burn injuries on her right hand with a cigarette, A-2/Smt. Ratan Fatarpekar caught hold of her right hand and told her to remove her mangalsutra and as she refused to remove the same A-1/ Avinash Naik put burn injuries on her back with cigarette. The version given by P.W.5/ Subhada Sawant is materially different from the version given by her in her F.I.R. which was filed after a gap of 5-6 days. In cross-examination P.W.5/Subhada Sawant

admitted that had not stated in her said F.I.R. that A-2/Smt. Ratan Fatarpekar had either held her hand or thrown a glass full of water on her face and, therefore, these facts Stated by her ought to have been considered as exaggerations in her story unworthy of any credibility. As far as A-3/Gajanan Sawant is concerned she did not attribute to him any criminal act or any overt act having been done by him to her at the time of the alleged incident. On this count alone, A-2/Smt. Ratan Fatarpekar and A-3/ Gajanan Sawant had deserved an acquittal.

6. As per PW5/Subhada Sawant the incident took place in a room outside which there is a corridor where her sister PW4/ Darshana Bandekar, and an employee of her brother, namely, PW10/Lalob Rathod were standing. As per PW2/Nalk, this room is at about 8 ft. from the place where S.D.P.O. sits. Although, the alleged incident took place on 26-2-1999 between 4.30 and 8.00 p.m., after coming out of the Police station, PW5/Subada Sawant did not narrate about the either to PW4/Darshana Bandekar, her sister, or for that matter PW10/ Laloo Rathod or to her uncle who as per PW10/ Laloo Rathod was also present at the Police Station. Not only that, she chose not to go for any medical treatment until the filing of the complaint to the D.G.P, 5-6 days later. There has been no acceptable explanation for the delay in lodging the said complaint/ FIR. PW5/ Subhada Sawant has tried to explain the delay by stating that A-1/ Avinash Naik and A-2/Smt. Ratan Fatarpekar had Informed her that the next days would be a Saturday and Sunday and thereafter it would be Purnima. It is impossible to believe that her very assailants would tell her not to lodge a complaint after she was assaulted or ill-treated because the following days would be holidays. As far as PW15/Sunil Gad, her brother, is concerned, he has stated that he did not lodge the complaint on 27-2-1999 as there was a transport strike. This was not the case of PW5/ Subhada Sawant. According to PW15/Sunil Gad he did not lodge a complaint on 28-2-1999 because it was a holiday. He has admitted that he was: aware that the Police Station was open all 24 hours of the day. Although, he stated that there was some reason for them not to approach the Police Station on 1-3-1999 and 2-3-1999, he has chosen not to disclose any reason, Since the FIR was filed with considerable delay, the same would not be free from suspicion, A number of contradictions, omission and exaggerations have been brought out in the cross-examination of PW5/Subhada Sawant. PW5/Subhada Sawant interalia admitted that she had not

stated in her complaint that Mr. Khatib had told her that she being a lady she had forgiven her or otherwise he would bang her. Although she and her brother stated that they met Tara Kerkar, a social worker from Vasco at whose advice they lodged the said complaint, prosecution has chosen not to examine the said Tara Kerkar. Although, PW5/Subhada Sawant admitted that the FIR was typed by her brother as per her say she could not explain as to why a number of relevant facts she had not mentioned to the said complaint. For example PW5/ Subhada Sawant did not mention in her complaint/FIR that A-1/ Avinash Naik had told her that she was a Kandani Vaishya and Chediye and that her sister could not be a person like her. Likewise, she had not start that A-1 /Avinash Naik had told her that she had filed a complaint to grab the property of her husband. She was unable to tell how many cigarettes were consumed when she was burnt with cigarette. She conceded that she had not mentioned in her FIR the number of burns of cigarettes given by A-1 /Avinash Naik. The delay in lodging the FIR and the omissions and contradictions in her evidence would certainly make her case highly suspicious, improbable and unworthy of any credit. On this aspect, Mr. Dessai, the learned Counsel of the accused has placed reliance on the case of Ramji Suriya Padvi v. State of Maharashtra : 1983 CriLJ1105 wherein the Apex Court has stated that inordinate delay involved in giving FIR to the police and other inherent inconsistencies in the evidence of the sole eye-witness are not sufficient to find the accused guilty. The delay in lodging the FIR as well as not going for medical, examination without any explanation assume great significance from a person like PW5/Subhada Sawant who previously had even chosen to go to the Press because A-2/Smt. Ratan Fatarpekar. was not taking action into her complaint. If at all there were injuries caused to her and alleged by her, all her family members knew; about the same on that very day itself yet none of them chose to file any complaint. In fact, nothing prevented PW5/ Subhada Sawant to revert back to Dy. S.P. Khatib and inform him how she was treated by the accused, to whom the inquiry was entrusted by him but PW5/Subhada Sawant chose to remain silent throughout for nearly 5-6 days and her silence can but only bring suspicion to the credibility of her case. PW5/ Subhada Sawant even before going to the police or for medical examination chose to go to the photographers, first to PW9/Leo Fernandes, where a photograph only of her injuries on her right hand, was taken

and thereafter again to PW8/ Vincent Almeida where a phonograph was taken of her hand as well as of her back and all this without any plausible explanation. The medical evidence of PW12/Dr. Girish Kamat as well as of PW13/ Dr. E. J. Rodrigues, the Chairman of the special Committee of doctors, does not help the case of PW5/Subhada Sawant. As per PW12/ Dr. Girish Kamat, he found same size of burn injuries, namely blebs of 1x1 cm. on the right forearm as also on the back. Although, PW12/ Dr. Kamat has spoken of the said injuries as blebs which means small blisters at the same time he has stated that after 72 hours the skin would be dry and form a brown crust and if PW5/Subhada Sawant was examined medically on 3-3-1999 it is difficult to accept that he saw any blebs on her. PW12/ Dr. Kamat was working as Casualty Medical Officer at the relevant time. PW13/ Dr. Rodrigues who was a Member of the specially constituted Committee opined that all the injuries could be caused by a third person as well as they could also be self inflicted. PW13/Dr. Rodrigues also stated that the age of the said injuries was of the age of 2-3 weeks, and this is not in conformity with the version of PW5/ Subhada Sawant or for that matter the prosecution. He also opined that the injuries were such that they were uniform which reflected that there were no signs of any resistance being offered by PW5/ Subhada Sawant at the time they were inflicted on her and this again would make the story of PW5/Subhada Sawant even more suspicious and improbable.

7. In my view, this is not a fit case to grant leave to appeal. The conclusion arrived at by the learned J.M.F.C. in acquitting the accused could not be faulted. Application dismissed.

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