


MHGO010003692020 	Presented on : 11.05.2020 Registered on : 11.05.2020 Decided on : 18.03.2026 Duration : 05-Y. 10-M. 7-D.
<u>IN THE COURT OF SPECIAL JUDGE, GONDIA.</u> (Presided over by R. N. Joshi)	
<u>Date of Judgment : 18.03.2026.</u>	
<u>SPECIAL CASE NO.41/2020.</u>	<u>EXH. NO.</u>
(Crime No.34/2020 of Police Station, Dawaniwada)	
<u>UNDER SECTIONS 324 R/W SECTION 34 OF THE INDIAN PENAL CODE AND SECTIONS 3(1)(r)(s) AND 3(2)(va) OF THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989.</u>	
<u>Prosecution</u>	The State of Maharashtra, through Officer in charge of Police Station, Dawaniwada, Dist. Gondia.
<u>Represented by</u>	Mr. V. M. Chute, APP for the State.
<u>Accused</u>	1. Nikhil S/o Arunlal Chikhlonde, Aged about 32 years, Occupation: Agriculture. R/o- Saytola, Ratnara, Tah. & Dist. Gondia.
	2. Rakesh @ Pintu S/o Surajlal Kharole. Aged about 34 years, Occupation: Driver, R/o-Saytola, Ratnara, Tah. & Dist. Gondia.
	3. Jitendra S/o Mulchand Lilhare, Aged about 31 years, Occupation: Driver, R/o- Pathantola, Ratnara, Tah. & Dist. Gondia.
	4. Noharlal @ Sachin S/o Meghlal Chikhlonde, Aged about 31 years, Occupation: Driver, R/o- Pathantola, Ratnara, Tah. & Dist. Gondia.
<u>Represented by</u>	Shri. G.S. Bapat, Advocate for accused persons.

Date of offence	:	02.02.2020
Date of FIR	:	06.02.2020
Date of Charge-sheet	:	11.05.2020
Date of framing of Charge	:	03.01.2025
Date of commencement of evidence	:	18.06.2025
Date on which judgment is reserved	:	16.03.2026
Date of Judgment	:	18.03.2026
Date of sentencing order if any	:	--

Accused Details :

Rank of the accused	Name of Accused	Date of Arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Sec. 428 of Cr. P. C.
1.	Nikhil S/o Arunlal Chikhlonde.	08.04.2020	08.04.2020 (On anticipatory bail)	Under sections 324 r/w section 34 of IPC against accused	Accused Nos.1 to 4 are acquitted of the offences punishable U/s. 324 r/w 34 of IPC	--	--
2.	Rakesh @ Pintu S/o- Surajlal Kharole.	08.04.2020	(On anticipatory bail)	Nos. 1 to 4 AND offence punishable u/s. 3(1)(r) (s) & 3(2) (va) of the sc & st (prevention of atrocities) act, 1989 against accused	U/s. 324 r/w 34 of IPC AND Accused Nos.1, 3 & 4 are acquitted of the offences punishable U/s. 3(1)(r) (s) & 3(2) (va) of the SC & ST (Prevention of Atrocities) Act, 1989.	--	--
3.	Jitendra S/o Mulchand Lilhare.	08.04.2020	(On anticipatory bail)			--	--
4.	Noharlal @ Sachin S/o Meghlal Chikhlonde.	08.04.2020	(On anticipatory bail)			--	--

LIST OF PROSECUTION/DEFENCE/COURT WITNESS.

A- Prosecution :-

Rank	Name	Nature of Evidence	Exh.
PW-1	Pyarelal S/o Rajaram Satpal.	Panch witness.	48
PW-2	Pramodkumar S/o Parasram Deshbhratar.	Informant	P-60
PW-3	Dhumreshwar @ Baba S/o Pramod Deshbhratar.	Injured	P-63
PW-4	Kundan S/o Vijay Tighare.	Witness	P-68
PW-5	Sankesh S/o Balkrishna Biranwar.	Witness	P-70
PW-6	Ganesh S/o Ramdas Dhumal.	P.S.O.	P-71
PW-7	Nitin S/o Vinayak Yadav.	I. O.	P-74

B - Defence Witness, if any : -- Nil

C - Court Witness if any -- Nil.

LIST OF PROSECUTION/DEFENCE/COURT EXHS.

A- Prosecution :-

Sr. No.	Exh.No.	Description
1.	35	Charge against accused.
2.	P-62	Portion marked 'A' of the contents of statement U/s.164 of Cr.PC. informant Pramodkumar Deshbhratar (PW-2).
3.	69	Statement U/s. 164 of Cr,P.C. witness Kundan Tighare (PW-4)
4.	P-72	Report.
5.	P-72-A	Portion marked 'A' of the report of informant Pramodkumar Deshbhratar (PW-2).

6.	P-73	Printed FIR.
7.	P-75	Order of the Superintendent of Police, Gondia dated 06.02.2020.
8.	P-76	Wireless message.
9.	P-77	Forwarding letter of SDPO, Tirora.
10.	P-78	Forwarding letter of SDPO, Tirora.
11.	P-79	Information letter to the panchas.
12.	P-80	Information letter to the Panchas.
13.	P-81	Spot panchnama.
14.	P-82	Seizure panchnama of blood samples.
15.	P-83	Seizure panchnama of stick.
16.	P-84	Seizure panchnama of bamboo stick.
17.	P-85	Copy of Aadhar card of informant.
18.	P-86	Portion marked 'A' of the statement of Sankesh Balkrishna Biranwar (PW-5)
19.	P-87	Portion marked 'A' of the statement of Kundan Vijay Tighare (PW-4)
20.	P-88	Forwarding letter to Tahsildar.
21.	P-89	Forwarding letter to SDO, Gondia.
22.	P-90	Forwarding letter correspondence about caste of injured Dhumreshwar Deshbhratar.
23.	P-91	Forwarding letter to the J.M.F.C., Tirora for recording statement U/s.164 of Cr.PC. of injured, informant and witnesses.
24.	P-92	Seizure panchnama of clothes of accused Nos. 3 and 4.
25.	P-93	Seizure panchnama of clothes of accused No.2 Rakesh.
26.	P-94	Seizure panchnama of clothes of accused

		No.1 Nikhil.
27.	P-95	Forwarding letter to R.F.S.L, Nagpur.
28.	P-96	Acknowledgment receipt of RFSL., Napgur.
29.	P-97	Forwarding letter to R.F.S.L, Nagpur.
30.	P-98	Acknowledgment receipt of RFSL., Napgur.
31.	P-99	Letter to Medical Officer for weapon query.
32.	Article-A	Caste Certificate of informant Pramodkumar (PW-2).
33.	Article-B	Caste Certificate of injured Dhumreshwar Deshbhratar (PW-3).
34.	Article-C	Forwarding letter to District & Sessions Judge, Gondia for recording statement U/s.164 of Cr.P.C. of injured., informant and witnesses.
35.	Exh.100	Evidence Close Pursis.

B- Defence :

Sr. No.	Exh. No.	Description
1.	Exh.65	Medical Report of injured PW-3 Dhumreshwar (Admitted by defence).
2.	Exh.66	Discharge card (admitted by defence)
3.	Exh.67	Medical report of Kundan Vijay Tighare (Admitted by defence).

C- Court Exhs. :

Sr. No.	Exh. No.	Description
1.	Exhs.101 to 104	Statements u/s 313 of Cr.P.C. of accused Nos.1 to 4 respectively.

D- Material Objects :

Sr. No.	Material Object	Description
1.	Exhs.P-83 & P-84	Two wooden sticks.
2.	Exh.51	Clothes of injured

J U D G M E N T
(Delivered on 18th March, 2026)

The accused Nos.1 to 4 are facing charge for the offence punishable under Sections 324 r/w 34 of the Indian Penal Code (hereinafter referred to as 'IPC') and accused Nos.1, 3 and 4 are additionally facing charges for the offences punishable under Sections 3(1)(r), 3(1)(s), and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act').

2. The wheels of prosecution were set in motion, as per the prosecution case, on the basis of an oral report lodged by PW-2 Pramod Parasram Deshbhratar, which was reduced into writing at Police Station Dawaniwada by PW-6 Ganesh Ramdas Dhumal, A.P.I. As per the report of PW-2, the allegations are to the effect that, on 02.02.2020 at about 03.30 p.m., while he was proceeding from his village Ratnara to Gondia, at Babasaheb Ambedkar square, he received a phone call from Chainlal Lihare who informed him that, his son Dhumreshwar @ Baba was lying unconscious near Jay Petrol Pump, Ratnara, as someone had

assaulted him. The informant reached there, at that time, one Sanjeev Manikchand Wasnik and wife of informant Sau. Baisa had put their son Dhumreshwar in an auto and proceeded to K.T.S. Hospital, Gondia. He followed them. His son was admitted at K.T.S. Hospital, Gondia Ward No.1. After 3 hours, his son regained consciousness. Thereafter, he asked his son as to who assaulted him and why? Upon which, his son informed him that, he along with his friend (PW-4) Kundan Tighare and Sonu Rane were proceeding to petrol pump of Ratnara on motorcycle for filling petrol, at that time, when Kundan Tighare went out for urinal and when Sonu Rane was filling petrol in the motorcycle, he was standing near the gate. At that time, Nikhil Arunlal Chikhlonde (A-1), Sachin Meghlal Chikhlonde (A-4), Jitendra Mulchand Lilhare (A-3) and Rakesh @ Pintu Surajlal Kharole (A-2) came near him and without any reason, Nikhil, Sachin and Jitendra stated, “साले महे—या, धेडया यहाँ पर क्या कर रहा है” ? in this way, abused him and Nikhil Chikhlonde (A-1) and Jitendra Lilhare (A-3) assaulted him by means of stick near the left ear, left ear and on the eyebrow of the right eye, due to which, he sustained bleeding injury. (A-1)Nikhil Arun Chikhlonde, (A-4) Sachin Meghlal Chikhlonde, (A-3) Jitendra Mulchand Lilhare and (A-2) Pintu Surajlal Kharole assaulted him by kicks and fists blows and thereafter all the four ran away. He further stated that he belongs to the ‘Mahar’ caste. Thereafter, he went

home and had a discussion with his family members and consequently there was delay in lodging the report. The accused persons abused on the caste and assaulted his son, hence, the report.

3. On the basis of the report, PW-6 Ganesh Ramdas Dhumal registered crime No.34 of 2020 for the offences punishable under sections 324 r/w 34 of IPC and sections 3 (1) (r)(s), and 3(2)(va) of the Atrocities Act. The report in respect of the incident which occurred on 02.02.2020 was lodged on 06.02.2020 at about 18.49 hours and accordingly, crime came to be registered on 06.02.2020. The information of the crime had reached to the Police Station on 06.02.2020 at 18.49 hours.

4. After considering the fact that, the caste of the accused persons except one is different than the informant who belong to Scheduled Caste, as the offence was also under the Atrocities Act, the investigation was headed over to SDPO Nitin Vinayak Yadav (PW-7) of SDPO, Tirora, by the order of the then Superintendent of Police as per Exh.P-75 and wireless message at Exh.P-76.

5. During the course of investigation, in the presence of panchas, he prepared the spot panchnama of the place of occurrence as per Exh. P-81. He also had got the video recording

of the proceeding of spot panchnama and seized the memory card of the same in presence of panchas as per Exh.P-82. From the spot of incident, he seized a wooden stick as per Exh.P-83. He also seized one stick from injured Dhumreshwar Pramod Deshbhratar (PW-3) as per Exh.P-84. He seized the clothes of injured viz. green colour T-shirt, blue colour lower pant and black colour T-shirt as per Exh.P-51. He also seized the caste certificate of the informant (PW-2) and injured (PW-3) as per articles- 'A' and 'B'. He recorded the statements of the witnesses. He also verified the caste of the injured and informant by sending a letter (Exh.P-89) to the Sub-Divisional Officer, who confirmed the same. As per the letter (Exh. P-90), the injured and the informant belong to the 'Mahar' caste, which is a Scheduled Caste. He got the statements of the witnesses recorded before the learned Judicial Magistrate First Class under Section 164 of the Cr.PC., for which he issued a letter at Exh. P-91. He seized the green colour full sleeves shirt of accused No..3 Jitendra and black colour check shirt of accused No.4 Noharlal Chikhlonde on 11.02.2020 as per panchnama (Exh.P-92) in presence of panchas. He had also seized the half sleeves blue coloured shirt of accused No.2 Rakesh @ Pintu Kharole as per panchnama (Exh.P-93). He also seized the black colour shirt and sky colour jeans pant of accused No.1 Nikhil Chikhlonde as per panchnama (Exh.P-94). He got collected the blood samples of injured Dhumreshwar

(PW-3) from the Medical Officer and forwarded the muddemal of the crime along with the letter (Exh.P-95) of the Deputy Superintendent of Police to the R.F.S.L.,Nagpur. The same was deposited by the carrier Police Head Constable Mohan Tambekar, as per the receipt (Exh. P-96), issued by the R.F.S.L., Nagpur. As the blood samples of injured were returned as they were not having name and label by R.F.S.L., Nagpur, by complying with the requirement, filled in the name and again forwarded the same by letter (Exh.P-97) dated 26.2.2020, which was carried by Police Head Constable Manoj Bais on 03.03.2020 to R.F.S.L.,Nagpur, which was deposited by him, in which R.F.S.L.,Nagpur issued receipt (Exh.P-98). He had issued query letter to the Medical Officer in respect of the injury along with the weapon on 22.02.2020 as per Exh.P-99. He had arrested the accused persons. After receiving the Medical report and other documents as there was evidence, he formed the opinion under section 170 of Cr.P.C. and filed the final report under section 173 of Cr.P.C. popularly called as charge-sheet in the Court of Special Judge, Gondia.

6. Upon appearance of the accused and compliance under Section 208 of Cr.P.C. of supplying the copy of charge-sheet and documents to the accused, upon hearing the prosecution and the accused, the then Special Judge, Gondia, framed the charge as per Exh.35 against the accused persons for the offences

punishable under Sections 324 r/w Section 34 of IPC & Sections 3(1)(r)(s) & 3(2)(va) of Atrocities Act against accused Nos.1, 3 and 4. The charge was explained to the accused persons in vernacular. The accused persons pleaded not guilty and claimed to be tried. The pleas of the accused persons are at Exhs.36 and 37 of accused No.1, Exhs.38 and 39 of accused No.2, Exhs.40 and 41 of accused No.3 and Exhs.42 and 43 of accused No.4 respectively in both the languages viz. Marathi and English.

7. The prosecution examined in all seven witnesses, as mentioned above in the table. The prosecution also relied upon the documents referred to above. The accused persons have admitted the documents referred to in the table above.

8. The prosecution closed their evidence by filing Pursis at Exh.100. Accused persons were examined under Section 313 of Cr.P.C. and incriminating material was put to them as per Exhs.101 to 104 respectively to give them an opportunity to explain the incriminating material against them. From the cross-examination of the witnesses and the answers given under Section 313 of the Cr.P.C., the case of accused persons is of total denial and false implication, however, the accused persons did not lead any evidence in their defence.

9. Heard Learned APP Shri. V. M. Chute for the State/ Prosecution and learned Advocate Shri. G. S. Bapat for the accused persons.

10. The submissions on behalf of Learned APP are to the effect that, the witnesses did not support the prosecution for the reason that there is settlement between them. However, the Investigating Officer has proved the contents of the portion marked in their statements to have been narrated by them in the report as well as in their statements before the Police. From those statements as the contents are proved on record, the charge against the accused persons is established and prayed to convict them and hold them guilty.

11. On the other hand, learned advocate for the accused persons argued that, mere proof of the fact that some statement is made by particular witness would be admissible only to the extent that such statement was made, but the truthfulness of such statement will have to be proved by leading evidence which is substantive evidence in respect of the incident itself, which is not on record and prayed to acquit the accused persons.

12. In view of rival submissions perused the record, evidence adduced and documents produced, upon which

following points arise for my determination, which I have answered for the reasons hereunder :-

Sr. No.	Points	Findings
1.	Whether the prosecution proved that accused Nos. 1 to 4 on 02.02.2020 in between 03:00p.m. to 03:30 p.m. at the gate of Ratnara Petrol pump, Ratnara, Taluka and District Gondia, in furtherance of their common intention, assaulted the son of informant namely Baba @ Dhumreshwar S/o Pramod Deshbhratar, aged 20 years, R/o- Ratnara, Taluka and District Gondia, by means of wooden stick, kicks and fists blows on his left ear, left side of ear and eyebrow of right eye by saying “साले महे—या, धेडया यहाँ पर क्या कर रहा है” ? thereby committed an offence punishable under section 324 r/w 34 of IPC ?	In the negative.
2.	Whether the prosecution proved that on the same date, time and place, accused Nos.1, 3 & 4 not being the members of Scheduled Castes or Scheduled Tribes, having knowledge that, Baba @ Dhujmreshwar S/o Pramod Deshbhratar belongs to Mahar Caste, which is recognized as Scheduled Caste, intentionally insulted him or with intent	In the negative.

to humiliate him, abused by the name of his caste by uttering obscene words such as “साले महे—या, धेडया यहाँ पर क्या कर रहा है” ? when he had gone to fill petrol in the motorcycle along with his friends, which is within public view and thereby committed an offence punishable under Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ?

3. Whether the prosecution proved that on the same date, time and place, accused Nos.1, 3 and 4 not being members of Scheduled Castes or Scheduled Tribes, committed an offence under Sections 324 of IPC against injured Baba @ Dhumreshwar S/o Pramod Deshbhratar a member of Scheduled Caste and thereby ... **In the negative.**
committed an offence punishable under Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ?
4. Whether any other offence is proved by the prosecution against the accused ... **No.**
persons ?
5. What order ? **Accused are ... acquitted.**

: REASONS :

13. As point Nos.1 to 3 being interconnected with each other, to avoid the repetition of evidence, they are taken together for discussion.

AS TO POINT NOS.1 TO 3:-

14. As the present case and Special Case No.37/2020 are counter cases, though, they are tried separately, they are to be decided simultaneously on the same day. The evidence in each case has to be considered independently, on the basis of the material available on record of the particular case. Keeping the above principles in mind, I have perused the record.

15. The testimony of PW-1 Pyarelal Rajaram Satpal, before the Court is to the effect that, he was called in front of Ratnara Petrol pump and Police obtained his signature as a panch. He further testified that, this incident occurred on 07.02.2020. He categorically denied that, any inspection of spot was done before him. He also denied that, any panchnama was reduced into writing in his presence, though, he identified his signature on Exh.49. He also testified that, the memory card containing the video recording of the spot was prepared in his presence as per Exh.50. Further, according to him, the police

seized clothes and a stick in his presence, including a blue coloured pant, a green coloured T-shirt and black coloured banian, as recorded in panchnama Exh. 51. According to him, nothing else was seized in his presence, but, he identified his signatures at Exhs.52 to 57 on various panchnamas. Though, he was cross-examined, nothing could be elicited from his cross-examination. Therefore, except for the spot panchnama and recovery of the memory card, his evidence is of no use to the prosecution.

16. PW-2 Pramodkumar Parasram Deshbhratar is the informant. According to him, the incident occurred on 02.02.2020. He was at Gondia where he received a phone call from a person in village. He received information that, his son was lying on road. The said person also informed him that, his son was lying on road where work of road was going on at village in the area of Phontoli. Therefore, he went there, but, at that time, his son was not present there. He learnt that, his son was taken to K.T.S. Hospital, Gondia. Therefore, he went to K.T.S. Hospital, Gondia, where his son was admitted. He further testified that, the people who were associated with his son outside the hospital, informed him that, his son was lying on the side of the road. Therefore, he lodged report at Police Station, Dawaniwada. He did not support the prosecution before the Court.

17. In his cross-examination conducted on behalf of the learned APP, he denied the contents of the report, including the allegation that his son had informed him that the accused persons had abused him on caste and thereafter assaulted him. His attention was drawn to the portion marked 'A' of his oral report, but he flatly denied to have stated the contents of that portion Exh.P-72-A. He also denied the alleged incident, though, he admitted his signature Exh.61 on the report (Exh.P-72). His attention was also drawn to his statement recorded under Section 164 of the Cr.P.C., but he denied its contents except for admitting his signature. He further admitted that, he belongs to the Mahar caste and that he had submitted his caste certificate as per Article 'A', but he did not produce the original certificate to substantiate the same. He admitted that, at the petrol pump, which is the spot of incident in front of petrol pump. According to him, the CCTV cameras are installed on all the four sides of the petrol pump at village Ratnara. He admitted that, he does not have caste validity certificate of his caste. He further admitted that, at the time of incident in front of petrol pump as the work of road was going on and there was Gitti (small chipped stones) and boulder (Big stones for construction of road). He admitted that, he lodged the report due to misunderstanding. Therefore, the testimony of the informant is, in fact, of no help to the prosecution, as he neither deposed about any assault nor stated that any of the accused had

abused his son Dhumreshwar @ Baba Pramod Deshbhratar on the basis of caste or had assaulted him in any manner. Moreover, this witness is hearsay witness of incident. Therefore, it is necessary to see the testimony of the injured and eyewitnesses on record.

18. PW-3 Dhumreshwar @ Baba Pramod Deshbhratar is the injured witness who is son of the informant (PW-2) Pramodkumar Deshbhratar. According to (PW-3)/injured, on 02.02.2020 at about 09:00 to 10:00 a.m. he was on his motorcycle with two friends and the accused person were on two other motorcycles with two riders each. He testified that, the work of road was going on near petrol pump a village Ratnara. He testified that, their vehicles dashed with each other's vehicles, in which he fell down and became unconscious and he was taken to K.T.S. Hospital, Gondia, where he regained consciousness after three hours. He did not support the prosecution in respect of the incident of abuses on caste and assault at the hands of the accused persons. He was cross-examined at length by the learned APP, and the contents of the portion marked 'A' of his statement were also brought to his notice, however, he did not admit the same to be correct. He also did not admit contents of his statement recorded under Section 164 of the Cr.P.C. before the Court, Exh. 62 (for identification). He admitted that, he belongs to Mahar caste and he produced his caste certificate as per Article

'B', but did not produce his original certificate. He admitted that the accused persons had also lodged report against him, which is pending against him. He further admitted that, there has been a settlement between him and the accused outside the Court, but he denied that he was deposing falsely.

19. From this testimony, it is clear that there has been some settlement between the accused and the injured. However, that does not prove the contents of the report or the factual incident itself. Unless there is positive and admissible evidence which beyond doubt establishes the facts constituting the ingredients of the offence, such testimony is of no use to the prosecution, particularly in proving the charges leveled against the accused persons.

20. PW-4 is the another witness Kundan Vijay Tighare. Though, he testified to know the injured Dhumreshwar @ Baba Pramod Deshbhratar (PW-3). He flatly denied that, he knew any of the accused persons. He also testified in one voice with the injured (PW-3) that on the day of incident, he was driving motorcycle, which gave dash to the motorcycle of Nikhil Chikhlonde. He, along with the injured Baba @ Dhumreshwar (PW-3), fell down off the motorcycle. According to him, as construction of road was ongoing at that place, there were Gitti and boulders lying on the road and therefore they sustained

injuries due to the fall. He testified that, he did not remember who took them to the hospital. He categorically denied that, there was any quarrel between him and the accused persons or that the accused persons had abused or assaulted (PW-3) Dhumreshwar on the basis of caste. He denied the entire incident as per the statement under section 161 of Cr.P.C., which was marked as portion marked 'A' in his statement. As regards his statement under section 164 of Cr.P.C. before the learned J.M.F.C.,Tirora, he testified that, though, he stated the facts mentioned in the statement, but he stated so at the say of the Police personnel. Questions were put to him, after which he testified that the Court had recorded the statement as he had narrated. The Court had also asked him whether there was any pressure or unlawful influence from any person, to which, he replied as 'Yes' and that there was no pressure. He further stated that whatever was recorded by the Court was as per Exh.69 under Section 164 of the Cr.P.C. Therefore, there exists a statement recorded under Section 164 of the Cr.P.C., in which it is stated that the accused persons abused the injured and assaulted him with stick, kicks and fist blows. However, such a statement is relevant only under Section 8 of the Evidence Act, regarding the conduct of a person having made such a statement and nothing more. It will not prove the offence, as the testimony of this witness, even under Section 164 of the Cr.P.C., is admissible only

to show the conduct of having made such a statement and nothing further. It cannot be substantive testimony of the actual incident, but the testimony is in the form of a conduct of such statement being made which will not lead the case any further of the prosecution. Furthermore, in cross-examination, he categorically admitted that the injuries he sustained were due to fall on the Gitti on the road. He also testified that he was taken to the hospital and discharged on next day.

21. In view of the above, the testimony of PW4 cannot be accepted as substantive evidence of the incident, for the reasons discussed above.

22. PW-5 Sankesh Balkrishna Biranwar is the worker at the Essar petrol pump of Ratnara. His testimony to the effect that, as he was filling petrol, his attention was not on the road. On that day, there was heavy rush. The road was not good and there were pit holes on the road and construction of the road was going on. He heard sound of collision of vehicle and therefore he turned towards the sound. He did not go towards the actual spot where incident occurred. He went there after sometime as number of people gathered there and thereafter he returned to his point for filling petrol. Thus, he did not support the prosecution on the point of incident of alleged assault or abuses particularly at the hands of accused persons.

23. PW-6 Ganesh Ramdas Dhumal. He testified that, he had recorded the report of informant (PW-2) as per his narration, in which, the informant alleged that the accused Jitendra Lilhare, Sachin Chikhlonde, Jitendra Lilhare and Pintu Kharole abused his son Baba @ Dhumreshwar stating, "*Sale Mehrya Dhedya, Yaha Par Kya Kar Raha Hai ?*" and assaulted him by stick near left ear, on left ear and right eyebrow, due to which he sustained bleeding injury and Sachin Chikhlonde and Pintu Kharole also assaulted him by fists and kicks blows and ran away. He registered the crime on the above allegations as per Crime No.34 of 2020, for the offences punishable under section 324 r/w of IPC, r/w section 3(1)(r)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The report was admitted in evidence as per Exh.P-72 and the portion marked 'A' at Exh.P-72-A and prepared printed FIR at Exh.P-73.

24. PW-7 Nitin Vinayak Yadav is the Investigating Officer who is Dy. S. P. and working as SDPO at the relevant time who received the investigation as per order of the then Superintendent of Police at Exh.P-75 and wireless message at Exh.P-76. He testified that he prepared the panchnama by calling witnesses and got recorded video recording of the spot. He proved the spot panchnama (Exh.P-81), the seizure of blood-stained earth and plain earth from the spot (Exh.P-82), the seizure of a wooden stick from the scene of the incident (Exh.P-

83), a bamboo stick from the injured/Dhumreshwar (PW-3) as per (Exh. P-84) and the clothes of the injured as per Exh.P-51. He also proved the caste certificates at Articles 'A' & 'B' and the Aadhaar card (Exh.P-85 of the injured PW-3. He also proved the portion marked 'A' at Exh. P-86, containing the statement of Sankesh Balkrishna Biranwar (PW-5) and the portion marked 'A' at Exh. P-87 of PW-4 Kundan Vijay Tighare. He further proved the letter (Exh.P-89) issued by the S.D.O., Gondia, informing that, the caste of the injured (PW-2) is Mahar as per Exh.P-90. He testified about the seizure of the clothes of the injured (Dhumreshwar PW-3) and of the accused persons, along with their arrest. He also deposed that he had sent the muddemal to the R.S.F.L., Nagpur.

25. The learned APP Shri V. M. Chute argued that, the Investigating Officer (PW-7) proved the contents of the statements of the witnesses. PW-4, PW-5 and PW-6 have proved the contents of the report lodged by the informant, on the basis of which medical certificate of the injured at Exh.P-65 admitted by the defence show that the injured did sustained injuries in the incident of assault and not by fall on the road as per the history. However, this argument cannot be accepted as rightly argued by learned advocate for the accused persons that, the injuries in the Exh.P-65, which are CLW over posterior surface of left 3 x 0.5 x 0.5 cm. by hard and blunt object and the other is CLW over

lateral surface of right eyebrow, 1 x 0.5 x 0.2 cm also caused by hard and blunt object. These injuries are also possible by fall as admittedly on the spot of the incident at the road there was construction going on, which is in front of the petrol pump Ratnara, where there were pit holes, Gitti and boulders. If a person falls from motorcycle, these injuries are possible.

26. The proof of the contents which are proved by the PW-6 Ganesh Dhumal to have been stated in the report by PW-2 Pramodkumar and PW-4 Kundan and PW-5 Sankesh having made statements before him at Exhs.P-87 and Exh.P-86 would be admitted on the point of conduct of the witnesses having made such statements, but, there is no substantive evidence of any eyewitness to have stated that, in fact, they have seen the incident of assault at the hands of the accused persons, causing the injuries mentioned, which occurred to the injured or heard accused Nos.1, 3 and 4 abusing injured on his caste.

27. There is no substance to evidence on record to say that, which of the accused persons abused on caste by uttering which particular word and thereafter assaulted him, which accused caused the injuries to the injured. Only one statement is attributed to all the four accused persons. One same statement cannot be stated by four persons at a time as if such abusive statement was memorized by them and thereafter recited. The

incident even as per prosecution occurred on spur of moment. Therefore, same statement uttered by three/four accused persons cannot be accepted. Therefore, allegations of abuse on caste fails. Consequently the charge of Atrocities Act also fails.

28. This conclusion further finds support from the fact that, the Caste Certificates of injured and his father are also not properly established. Moreover, the accused No.1 himself belongs to Scheduled Caste. Furthermore, the incident is dated 02.02.2020 in the morning to noon hours and the report is lodged much belatedly on 06.02.2020 after about four days.

29. In view thereof, the ingredients of any of the offence as charged, cannot be said to have been proved beyond doubt. The further discussion of the admitted documents is uncalled for as it will only burden the judgment and nothing further. In absence of the admissible substantive evidence to prove the assault or the abuses on the caste by a particular accused, neither the offences under sections 324 r/w 34 of the IPC is established nor the offences under section 3(1)(r)(s), 3(2)(va) of the SC & ST (Prevention of Atrocities) Act, can be said to have been established.

30. In view of above, the arguments of learned APP are only to be rejected by answering the points in the negative

against the prosecution. I hold that the prosecution has failed to prove the guilt of any of the accused persons beyond doubt. Accordingly, all the accused Nos.1 to 4 are entitled to be acquitted of all charges levelled against them. Hence, I proceed to pass the following order.

ORDER

1. The accused **No.1 Nikhil S/o Arunlal Chikhlonde, (2) Rakesh @ Pintu S/o Surajlal Kharole, (3) Jitendra S/o Mulchand Lilhare and (4) Noharlal @ Sachin S/o Meghlal Chikhlonde** are acquitted under Section 235(1) of the Code of Criminal Procedure of the offence punishable under Sections 324 r/w Section 34 of the Indian Penal Code.
2. The accused **Nos.1 Nikhil S/o Arunlal Chikhlonde, (3) Jitendra S/o Mulchand Lilhare and (4) Noharlal @ Sachin S/o Meghlal Chikhlonde** are acquitted under Section 235(1) of the Code of Criminal Procedure of the offence punishable under Sections 3(1)(r)(s) and 3(2)(va) of The Scheduled Castes and The Scheduled Tribes (Prevention Of Atrocities) Act, 1989.
3. The bail bonds of the accused persons shall stand cancelled.
4. The accused persons are directed to furnish P.R. Bond and Surety Bond of Rs.15,000/- **each** with one solvent surety towards compliance of Section 437-A of the Cr.P.C./481 of B.N.S.S.,2023 to appear in the Appellate Court in case of appeal.
5. Muddemal property i.e. the clothes and two sticks being worthless, be destroyed after appeal period is over.

6. Dictated and Pronounced in open Court.
Upon transcription, correction if any and signature, the same be uploaded.

Gondia.
Date : 18.03.2026.

(R. N. Joshi)
Special Judge, **Gondia.**