



Presented on :- 24/05/2022,  
Registered on :- 24/05/2022,  
Decided on :-15/04/2026,  
Duration :- 03Y. 10M. 22D.

**BEFORE THE COURT OF ADDITIONAL SESSIONS JUDGE AT  
GONDIA.**

(Presided over by M. T. Asim)

**CRIMINAL APPEAL NO.20/2022**  
**(CNR NO. MHGO010007442022)**

**EXH.NO.10**

**Arun s/o Shrikisan Agrawal,**  
Aged about 60 Years, Occ. Business,  
R/o – Near City police station,  
Tah. Dist. Gondia. \* \* \* **APPELLANT.**

**- V E R S U S -**

**State of Maharashtra,**  
Through DGP Gondia,  
Gondia. \* \* \* **RESPONDENT.**

**APPEAL UNDER SECTION 374 (3) OF CRI. PROCEDURE  
CODE.**

-----  
Mr. R.N. Bhajipale, advocate for Appellant.  
Mr. K.R. Khandelwal, APP for State/Respondent.  
-----

**J U D G M E N T**

(Delivered on this 15<sup>th</sup> day of April-2026)

1] Appellant Arun s/o Shrikisan Agrawal has taken exception to the judgment and order dated 29-04-2022 in Reg. Criminal Case No.153/2017 passed by learned Chief Judicial Magistrate, Gondia whereby he has been convicted

and sentenced for the offence punishable under sections 143, 147, 323 and 506 of the Indian Penal Code.

2] The case of Respondent in short is that:

On 13/04/2017 at about 05.00 to 5-30 p.m., the informant Haresh Adwani along with his younger brother, son Gourav Advani and five employees were present in his shop by name Jyoti Trading Company at Gondia. At that time appellant and co-accused persons came there. They started to shout. They abused informant uttering words “Haresh bahar nikal sale madarchod, sale bahanchod bahar dukan ke bahar nikal”. Hence the informant called them inside his shop. After entering into the shop of the informant, accused persons started to abuse him. They were demanding the amount which they advanced to informant. The informant told to them that he is not having money and is ready to give his plot to them. At that time accused Rinku assaulted the informant. Two workers of the shop of the informant came to rescue him. They were also assaulted by the accused. Deepak assaulted Waman Patle and Rinku assaulted Ravindra Patle. Deepak Jaipuriya pushed younger brother of informant Naresh and took out money by breaking cash box. However, he thrown the money there. Accused Rinku tried to snatch mobile handset of son of the informant by holding his collar. He was saying “tum sab bahar nikalo dukan hamari hai, mal bhi nahi bechane denge, gadi bulao mal bharo”. Then informant made request to all accused person to sit. Informant told to accused

that till money is arranged he would execute document in relation to his property. On that accused person told to informant “jitani hamari rakkam hai usake tin guna property register karke de, ek sal tak byaj dete rahana usake bad hi teri registry wapas karenge, agar ek sal tak paise nahi diya to property hamari ho jayengi”. Informant told to accused that in proportion to the amount advanced get execute registered document. Thereafter, accused persons went from there. On 15-4-2017 at 3.00 pm again accused Bali @ Balkrishna and Deepak Jaipuriya came in front of the shop of the informant and threatened to see him and will make difficult for him to live. Thereafter, the informant lodged report in Police Station Gondia City on 22-04-2017.

3] On the basis of that report offences punishable under sections 143, 147, 323, 294, 506 r/w 149 of I.P.C has been registered vide Crime No.199/2017. Investigation followed. During investigation, Investigating Officer visited the spot of incident and prepared the spot panchnama in presence of panchas, recorded statement of witnesses. After completion of investigation appellant and other accused came to be charge sheeted for offence under sections 143, 147, 323, 294, 506 r/w 149 of IPC.

4] Learned Chief Judicial Magistrate, Gondia has framed charge against appellant and other accused for the offences punishable under sections 143, 147, 323, 294, 506 r/w 149 of the IPC vide Exh.31 and explained the contents

thereof to them in vernacular. The appellant and other accused pleaded not guilty and claimed to be tried. Their defence is of denial and they have been falsely implicated as informant does not want to repay amount borrowed by him from appellant and co-accused.

5] After considering evidence produced by prosecution, learned CJM, Gondia came to hold the appellant and co-accused guilty for offences punishable under sections 143, 147, 323, 506 r/w section 149 of the Indian Penal Code and convicted them for said offence. While appellant and co-accused have been acquitted for the offence punishable under section 294 r/w section 149 of IPC. Appellant has challenged the said judgment of conviction and order of sentence passed against him.

6] Learned counsel for appellant submits that learned trial court has failed to appreciate evidence properly and arrived at wrong conclusion and recorded perverse findings. He submits that evidence is not appreciated in proper prospective and incorrect finding is recorded by misapplying facts. Observations of the learned trial court on the point of delay in lodging of report is based on conjecture and surmises. He further submits that learned trial court incorrectly held that appellant has formed unlawful assembly with co-accused on 15-04-2017. He argued that learned trial court recorded findings on defective charge without application of mind. He submits that name of appellant is not

mentioned in Charge Exh.31. He further submits that learned trial court wrongly mentioned place of incident as Sindhi colony near Sangam building, Gondia. Although as per prosecution alleged incident had taken place in Kapada Line Ganj Bazar, Gondia. He further submits that as per prosecution in alleged incident dated 15-04-2017 only two accused were shown to have been involved and no charge is framed in relation to alleged incident dated 15-04-2017. The findings recorded by learned trial court about formation of unlawful assembly, rioting, voluntarily causing hurt and criminal intimidation is perverse and illegal. It is contended that impugned judgment resulted in miscarriage of justice. Therefore, he submitted that appellant may be acquitted by setting-aside impugned judgment and order of conviction.

7] Per contra, learned APP defended impugned judgment and order and submits that there is no need to interfere with impugned judgment and order and prays that appeal may be dismissed.

8] I have gone through record and proceeding in R.Cr.C No. 153/2017 received in Criminal Appeal No.22/2022 which is also pending on the file of this court and on today's board. Following points arise for my determination and I have recorded my findings together with reasons thereon as under:

	<b>POINTS</b>	<b>FINDINGS</b>
1)	Whether failure of justice has been	**Yes.

	occasioned due to error, omission or irregularity in Charge?	
2)	Whether impugned judgment and order calls for interference?	**Yes.
3)	What order?	As per final order

### REASONS

#### As to Point No.1 :

9] In light of points raised, I have not discussed evidence of prosecution witnesses. I would like to mention that in view of section 464 of Cr.PC, it is well settled that mere error, omission or irregularity in the Charge will not invalidate the finding as a matter of law in absence of prejudice to the convicted person. It is well settled that a charge is a written notice of the precise and specific accusation which an accused is required to meet. Charge must be properly framed and evidence tendered must relate to matters stated in charge. In order to hold that error, omission or irregularity in the Charge is not curable the accused has to show that by such error, omission or irregularity a failure of justice has in fact occasioned. Now it is to be seen whether there is material to establish point involved in present appeal.

10] It is pointed out that place of incident as per the report and spot panchnama is shop of informant and place in front of his shop at Kapada Line Ganj Bazar, Gondia. While in the Charge the place of incident is shown as Sindhi Colony

near Sangam Building, Gondia. It is to be noted as per section 212 of the Code of Criminal Procedure particulars of time and place of incident are required to be mentioned in the Charge. No doubt in the Charge time and place of incident is mentioned. However, place of incident is incorrectly mentioned and assuming place of incident as mentioned in the Charge, learned Chief Judicial Magistrate has recorded finding of happening of incident at said place. Certainly, the place of occurrence of incident mentioned in the Charge and that mentioned in report Exh.42 and spot panchnama Exh.45 are different places. There is nothing to suggest that those places are near to each other. It seems that place of resident of informant is mentioned as place of occurrence of incident in the Charge Exh.31. In my view mentioning of different place of occurrence of incident in the Charge Exh.31 is grave error committed by learned Chief Judicial Magistrate. They could have put defence considering spot of incident. It has caused prejudice to the accused persons.

11] It is to be noted that to prove offence under section 294 of IPC the prosecution is require to prove two particulars i] the offender has done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near any public place and ii] has so cause annoyance to others. In present case learned Chief Judicial Magistrate has not taken into consideration recital in FIR about alleged utterances of obscene words by accused in front

of shop of informant. Instead of that learned Chief Judicial Magistrate has mentioned particulars of words allegedly uttered by accused inside the shop of informant which are not obscene while framing charge under section 294 of IPC and proceeded with trial on such defective Charge. Further learned Chief Judicial Magistrate has not framed charge for criminal trespass or house trespass.

12] I have carefully gone through report Exh.42 there is no recital in it showing that on 13-04-2017 at about 5.00 to 5.30 pm appellant and co-accused threatened to kill informant and thereby gave criminal intimidation to him so as to cause alarm to him. However, in the Charge Exh.31 it is mentioned that on 13-04-2017 in between 5.00 to 5.30 pm at Sindhi Colony near Sangam Building, Gondia accused were members of unlawful assembly and in prosecution of common object of such assembly committed criminal intimidation by threatening informant Haresh Adwani to kill him with intent to cause alarm to him. This is an error in Charge which amounts to misjoinder of Charge.

13] It is to be noted that as per report Exh.42 alleged incident of giving criminal intimidation to the informant had happened on 15-04-2017 at about 3.00 pm and same was committed by accused Bali Maheshwari and Deepak Jaipuriya. However, learned CJM has not framed any charge in that regard but convicted all accused for offence punishable under

section 506 of IPC in relation to incident dated 15-04-2017. It is to be noted that as per report Exh.42 alleged incident dated 15-04-2017 is shown to have been committed by two accused which is less than five persons require to form unlawful assembly as per section 141 of IPC. So, question of formation of unlawful assembly by all accused persons for prosecution of their common object in relation to alleged act does not arise. Therefore, holding accused persons guilty of offence under section 506 of IPC for alleged act dated 15-04-2017 and convicting them for said offence cannot be said to be legal and proper. The error pointed earlier is serious in framing the Charge and omission to frame Charge, has caused prejudice to the accused persons.

14] I have carefully gone through impugned judgment and order. It appears that learned Chief Judicial Magistrate hold guilty accused persons mentioning the common object of such assembly was to cause hurt and threat to the informant but in Charge Exh.31 it is not mentioned that common object of such assembly was to cause hurt to the informant. This omission in the Charge Exh.31 cannot be ignored. Moreso, learned CJM hold that accused persons used violence against informant, his son and brother but those particulars are not mentioned while framing Charge under section 323 of IPC against the accused persons. It is an omission to Charge.

15] It is to be noted that learned CJM hold that

prosecution has proved beyond doubt that on 15-04-2017, the accused persons created unlawful assembly, they all were members of it, they caused hurt to the informant and so also threatened him and hold them guilty of offence punishable under sections 143, 147, 323, 506 r/w section 149 of IPC and convicted them for offence under sections 143, 147, 323, 506 of IPC. However, there is no Charge in relation to alleged incident dated 15-04-2017. Moreso, it is not the prosecution case that on 15-04-2017 accused persons formed unlawful assembly for prosecution of their common object to commit criminal trespass or offence. That being so same leads to failure of justice. Certainly, irregularities pointed earlier indicate that failure of justice has in fact occasioned. Therefore, defect in charge vitiates conviction.

16] In light of discussion made above I hold that failure of justice has been occasioned due to error, omission or irregularity in Charge as pointed earlier particularly from paras 11 to 16. Hence, I answer point No.1 in affirmative.

**AS TO POINT NO.2:**

17] In view of my findings to point No.1 in affirmative I hold that conviction has been vitiated. Therefore, Impugned judgment and order calls for interference. Hence, I answer point No.2 in affirmative.

18] In view of my findings to point Nos.1 and 2 and I am satisfied that trial was vitiated by serious illegalities or

irregularities, an exceptional case is made out for re-trial of Regular Criminal Case No.153/2017 by setting-aside impugned judgment and order of conviction. Hence, this order.

### **ORDER**

- 1] Criminal Appeal No.20/2022 is partly allowed.
- 2] Impugned judgment and order dated 29-04-2022 in relation to conviction of accused in Reg. Criminal Case No.153/2017 passed by learned Chief Judicial Magistrate, Gondia is hereby set aside.
- 3] Criminal Case bearing RCC No.153/2017 is remanded to learned Chief Judicial Magistrate, Gondia with direction that appellant be retried after rectifying/framing the Charge against him in light of observations made in the judgment and decide the case by following due procedure.
- 4] Appellant appear before the learned Chief Judicial Magistrate, Gondia on 06-05-2026.
- 5] Accordingly, appeal stands dispose of.

**Gondia.**

Dated :-15/04/2026.

( M. T. Asim)  
Additional Sessions Judge,  
Gondia.