

Kailas & Ors vs State Of Maharashtra Tr.Taluka P.S on 5 January, 2011

Equivalent citations: AIR 2011 SUPREME COURT 598, 2011 (1) SCC 793, 2011 AIR SCW 3704, AIR 2011 SC(CRI) 259, 2011 (2) AIR BOM R 207, (2011) 1 UC 225, (2011) 103 ALLINDCAS 224 (SC), (2011) 2 MAD LJ(CRI) 499, (2011) 1 CRILR(RAJ) 139, (2011) 1 CURCRIR 185, 2011 CRILR(SC MAH GUJ) 139, (2011) 1 SCALE 40, (2011) 2 CHANDCRIC 162, 2011 CRILR(SC&MP) 139, (2011) 2 GUJ LR 994, (2011) 48 OCR 438, (2011) 1 RECCRIR 431, 2011 CRI LJ (SUPP) 531 (SC), (2011) 1 DLT(CRL) 77, (2012) 1 ALD(CRL) 484, (2011) 1 MH LJ (CRI) 580, (2011) 1 ALLCRIR 807, (2011) 74 ALLCRIC 179, (2011) 1 CAL LJ 186, (2011) 1 MADLW(CRI) 129, (2011) 1 BOMCR(CRI) 321, (2011) 1 CRIMES 138, 2011 (1) SCC (CRI) 401

Bench: Gyan Sudha Misra, Markandey Katju

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. ___11_____/2011
(Arising out of Special Leave Petition (Crl) No. 10367 of 2010)

Kailas & Others

.. Appellant (s)

-versus-

State of Maharashtra TR.
Taluka P.S.

.. Respondent (s)

JUDGMENT

1. Leave granted.

2. This appeal has been filed against the final judgment and order dated 10.03.2010 in Criminal Appeal No. 62 of 1998 passed by the Aurangabad Bench of Bombay High Court.

3. Heard learned counsel for the appellants.

4. This appeal furnishes a typical instance of how many of our people in India have been treating the tribal people (Scheduled Tribes or Adivasis), who are probably the descendants of the original inhabitants of India, but now constitute only about 8% of our total population, and as a group are one of the most marginalized and vulnerable communities in India characterized by high level of poverty, illiteracy, unemployment, disease, and landlessness.

5. The victim in the present case is a young woman Nandabai 25 years of age belonging to the Bhil tribe which is a Scheduled Tribe (ST) in Maharashtra, who was beaten with fists and kicks and stripped naked by the accused persons after tearing her blouse and brassieres and then got paraded in naked condition on the road of a village while being beaten and abused by the accused herein.

6. The four accused were convicted by the Additional Sessions Judge, Ahmednagar on 05.02.1998 under Sections 452, 354, 323, 506(2) read with Section 34 IPC and sentenced to suffer RI for six months and to pay a fine of Rs. 100/-. They were also sentenced to suffer RI for one year and to pay a fine of Rs. 100/- for the offence punishable under Sections 354/34 IPC. They were also sentenced under Section 323/34 IPC and sentenced to three months RI and to pay a fine of Rs. 100/-. The appellants were further convicted under Section 3 of the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to suffer RI for one year and to pay a fine of Rs. 100/-.

6. In appeal before the High Court the appellants were acquitted of the offence under Section 3 of the SC/ST Act, but the conviction under the provisions of the IPC were confirmed. However, that part of the order regarding fine was set aside and each of the appellant was directed to pay a fine of Rs. 5000/- only to the victim Nandabai.

7. The prosecution case is that the victim Nandabai who belongs to the Bhil community was residing with her father, handicapped brother, and lunatic sister. She had illicit relations with PW9 Vikram and had given birth to his daughter and was also pregnant through him for a second time. Vikram belongs to a higher caste and his marriage was being arranged by his family with a woman of his own caste. On 13.5.1994 at about 5.00 P.M. when the victim Nandabai was at her house the four accused went to her house and asked why she had illicit relations with Vikram and started beating her with fists and kicks. At that time the accused Kailas and Balu held her hands while accused Subabai @ Subhadra removed her sari. The accused Subhash then removed her petticoat and accused Subabai tore the blouse and brassiere of the victim Nandabai. Thereafter the accused Subabai and Balu paraded the victim Nandabai on the road of the village and at that time the four accused herein were beating and abusing the victim Nandabai.

8. At about 8.40 p.m. an FIR was lodged at Taluka Police Station and after investigation a charge-sheet was filed. After taking evidence the learned Additional Sessions Judge convicted the accused.

9. As already mentioned above, the conviction under the provisions of the IPC have been upheld but that under the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been set aside.

10. We are surprised that the conviction of the accused under the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was set aside on hyper technical grounds that the Caste Certificate was not produced and investigation by a Police Officer of the rank of Deputy Superintendent of Police was not done. These appear to be only technicalities and hardly a ground for acquittal, but since no appeal has been filed against that part of the High Court judgment, we are now not going into it.

11. However, we see no reason to interfere with the judgment of the High court convicting the appellants under various provisions of the IPC and imposing fine on them. In fact, we feel that the sentence was too light considering the gravity of the offence.

12. There is the evidence of the victim Nandabai PW4 herself and we see no reason to disbelieve the same. Although many of the witnesses have turned hostile, we see no reason to disbelieve the statement of the victim Nandabai. In fact, PW9 Vikram supported the prosecution case to some extent. He has accepted his illicit relations with victim Nandabai and admitted that he had a daughter from her and she was pregnant for a second time through him. Even though he did not support the actual incident, we are of the opinion that Vikram's evidence at least on the points admitted by him corroborates the evidence of victim Nandabai.

13. PW2 Narendra Kalamkar has proved the spot panchanama Exh. 12. He stated that the panchanama was drawn in front of the house of PW4, the victim Nandabai. At the time of the panchanama, Nandabai was accompanied by the police and she had shown the entire area from her house to the place in front of the shop of PW3 Shankar Pawar. The police seized the clothes in torn condition, produced by PW4 Nandabai. There were pieces of bangles lying in front of the house. Hence there is no reason to disbelieve PW2 Narendra Kalamkar.

14. It appears that the accused are powerful persons in the village inasmuch as that all the eye-witnesses have turned hostile out of fear or some inducement. However, PW8 Dr. Ashok Ingale proved the medical certificate Exh. 26 and stated that there were two contusions on the person of the victim.

15. The parade of a tribal woman on the village road in broad day light is shameful, shocking and outrageous. The dishonor of the victim Nandabai called for harsher punishment, and we are surprised that the State Government did not file any appeal for enhancement of the punishment awarded by the Additional Sessions Judge.

16. It is alleged by the appellants that the people belonging to the Bhil community live in torn clothes as they do not have proper clothes to wear. This itself shows the mentality of the accused who regard tribal people as inferior or sub-humans. This is totally unacceptable in modern India.

17. The Bhils are probably the descendants of some of the original inhabitants of India living in various parts of the country particularly southern Rajasthan, Maharashtra, Madhya Pradesh etc. They are mostly tribal people and have managed to preserve many of their tribal customs despite many oppressions and atrocities from other communities.

18. It is stated in the Article 'World Directory of Minorities and Indigenous Peoples - India: Advasis', that in Maharashtra Bhils were mercilessly persecuted in the 17th century. If a criminal was caught and found to be a Bhil, he or she was often killed on the spot. Historical accounts tell us of entire Bhil communities being killed and wiped out. Hence, Bhils retreated to the strongholds of the hills and forests.

19. Thus Bhils are probably the descendants of some of the original inhabitants of India known as the 'aborigines' or Scheduled Tribes (Adivasis), who presently comprise of only about 8% of the population of India. The rest 92 % of the population of India consists of descendants of immigrants. Thus India is broadly a country of immigrants like North America. We may consider this in some detail.

India is broadly a country of immigrants

20. While North America (USA and Canada) is a country of new immigrants, who came mainly from Europe over the last four or five centuries, India is a country of old immigrants in which people have been coming in over the last ten thousand years or so. Probably about 92% people living in India today are descendants of immigrants, who came mainly from the North-West, and to a lesser extent from the North-East. Since this is a point of great importance for the understanding of our country, it is necessary to go into it in some detail.

21. People migrate from uncomfortable areas to comfortable areas. This is natural because everyone wants to live in comfort. Before the coming of modern industry there were agricultural societies everywhere, and India was a paradise for these because agriculture requires level land, fertile soil, plenty of water for irrigation etc. which was in abundance in India. Why should anybody living in India migrate to, say, Afghanistan which has a harsh terrain, rocky and mountainous and covered with snow for several months in a year when one cannot grow any crop? Hence, almost all immigrations and invasions came from outside into India (except those Indians who were sent out during British rule as indentured labour, and the recent migration of a few million Indians to the developed countries for job opportunities). There is perhaps not a single instance of an invasion from India to outside India.

22. India was a veritable paradise for pastoral and agricultural societies because it has level & fertile land, hundreds of rivers, forests etc. and is rich in natural resources. Hence for thousands of years people kept pouring into India because they found a comfortable life here in a country which was gifted by nature.

23. As the great Urdu poet Firaq Gorakhpuri wrote:

"Sar Zamin-e--hind par aqwaam-e-alam ke firaq Kafila guzarte gae Hindustan banta gaya"

Which means -

"In the land of Hind, the Caravans of the peoples of The world kept coming in and India kept getting formed".

24. Who were the original inhabitants of India ? At one time it was believed that the Dravidians were the original inhabitants. However, this view has been considerably modified subsequently, and now the generally accepted belief is that the original inhabitants of India were the pre- Dravidian aborigines i.e. the ancestors of the present tribals or advasis (Scheduled Tribes). In this connection it is stated in The Cambridge History of India (Vol-I), Ancient India as follows:

"It must be remembered, however, that, when the term `Dravidian' is thus used ethnographically, it is nothing more than a convenient label. It must not be assumed that the speakers of the Dravidian languages are aborigines. In Southern India, as in the North, the same general distinction exists between the more primitive tribes of the hills and jungles and the civilized inhabitants of the fertile tracts; and some ethnologists hold that the difference is racial and not merely the result of culture. Mr. Thurston, for instance, says:

"It is the Pre-Dravidian aborigines, and not the later and more cultured Dravidians, who must be regarded as the primitive existing race..... These Pre-Dravidians are differentiated from the Dravidian classes by their short stature and broad (platyrrhine) noses. There is strong ground for the belief that the Pre-Dravidians are ethnically related to the Veddas of Ceylon, the Talas of the Celebes, the Batin of Sumatra, and possibly the Australians. (The Madras Presidency, pp. 124-5.)"

It would seem probable, then, that the original speakers of the Dravidian languages were outsiders, and that the ethnographical Dravidians are a mixed race. In the more habitable regions the two elements have fused, while representatives of the aborigines are still in the fastnesses (in hills and forests) to which they retired before the encroachments of the newcomers. If this view be correct, we must suppose that these aborigines have, in the course of long ages, lost their ancient languages and adopted those of their conquerors. The process of linguistic transformation, which may still be observed in other parts of India, would seem to have been carried out more completely in the South than elsewhere.

The theory that the Dravidian element is the most ancient which we can discover in the population of Northern India, must also be modified by what we now know of the Munda languages, the Indian representatives of the Austric family of speech, and the mixed languages in which their influence has been traced (p.43). Here, according to the evidence now available, it would seem that the Austric element is the oldest, and that it has been overlaid in different regions by successive waves of Dravidian and Indo-European on the one hand, and by Tibeto-Chinese on the other. Most ethnologists hold that there is no difference in physical type between the present speakers of Munda and Dravidian languages. This statement has been called in question; but, if it is true, it shows that racial conditions have become so complicated that it is no longer possible to analyse their constituents. Language alone has preserved a record which would otherwise have been lost.

At the same time, there can be little doubt that Dravidian languages were actually flourishing in the western regions of Northern India at the period when languages of the Indo-European type were introduced by the Aryan invasions from the north-west. Dravidian characteristics have been traced alike in Vedic and Classical Sanskrit, in the Prakrits, or early popular dialects, and in the modern vernaculars derived from them. The linguistic strata would thus appear to be arranged in the order-Austrian, Dravidian, Indo-European.

There is good ground, then, for supposing that, before the coming of the Indo-Aryans speakers the Dravidian languages predominated both in Northern and in Southern India; but, as we have seen, older elements are discoverable in the populations of both regions, and therefore the assumption that the Dravidians are aboriginal is no longer tenable. Is there any evidence to show whence they came into India?

No theory of their origin can be maintained which does not account for the existence of Brahui, the large island of Dravidian speech in the mountainous regions of distant Baluchistan which lie near the western routes into India. Is Brahui a surviving trace of the immigration of Dravidian -

speaking peoples into India from the west? Or does it mark the limits of an overflow from India into Baluchistan? Both theories have been held; but as all the great movements of peoples have been into India and not out of India, and as a remote mountainous district may be expected to retain the survivals of ancient races while it is not likely to have been colonized, the former view would a priori seem to be by far the more probable."

(See 'Brahui' on Google).

25. In Google 'The original inhabitants of India', it is mentioned :

"A number of earlier anthropologists held the view that the Dravidian peoples together were a distinct race. However, comprehensive genetic studies have proven that this is not the case.

The original inhabitants of India may be identified with the speakers of the Munda languages, which are unrelated to either Indo-Aryan or Dravidian languages"

26. Thus the generally accepted view now is that the original inhabitants of India were not the Dravidians but the pre-Dravidians Munda aborigines whose descendants presently live in parts of Chotanagpur (Jharkhand), Chattisgarh, Orissa, West Bengal, etc., the Todas of the Nilgiris in Tamil Nadu, the tribals in the Andaman Islands, the Adivasis in various parts of India (especially in the forests and hills) e.g. Gonds, Santhals, Bhils, etc.

27. It is not necessary for us to go into further details into this issue, but the facts mentioned above certainly lends support to the view that about 92% people living in India are descendants of immigrants (though more research is required).

28. It is for this reason that there is such tremendous diversity in India. This diversity is a significant feature of our country, and the only way to explain it is to accept that India is largely a country of immigrants.

29. There are a large number of religions, castes, languages, ethnic groups, cultures etc. in our country, which is due to the fact that India is a country of immigrants. Somebody is tall, somebody is short, some are dark, some are fair complexioned, with all kinds of shades in between, someone has Caucasian features, someone has Mongoloid features, someone has Negroid features, etc. There are differences in dress, food habits and various other matters.

30. We may compare India with China which is larger both in population and in land area than India. China has a population of about 1.3 billion whereas our population is roughly 1.1 billion. Also, China has more than twice our land area. However, all Chinese have Mongoloid features; they have a common written script (Mandarin Chinese) and 95% of them belong to one ethnic group, called the Han Chinese. Hence there is a broad (though not absolute) homogeneity in China.

31. On the other hand, as stated above, India has tremendous diversity and this is due to the large scale migrations and invasions into India over thousands of years. The various immigrants/invasers who came into India brought with them their different cultures, languages, religions, etc. which accounts for the tremendous diversity in India.

32. Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and equal respect for all communities and sects. It was due to the wisdom of our founding fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country.

33. Thus it is the Constitution of India which is keeping us together despite all our tremendous diversity, because the Constitution gives equal respect to all communities, sects, lingual and ethnic groups, etc. in the country. The Constitution guarantees to all citizens freedom of speech (Article 19), freedom of religion (Article 25), equality (Articles 14 to 17), liberty (Article 21), etc.

34. However, giving formal equality to all groups or communities in India would not result in genuine equality. The historically disadvantaged groups must be given special protection and help so that they can be uplifted from their poverty and low social status. It is for this reason that special provisions have been made in our Constitution in Articles 15(4), 15(5), 16(4), 16(4A), 46, etc. for the upliftment of these groups. Among these disadvantaged groups, the most disadvantaged and marginalized in India are the Adivasis (STs), who, as already mentioned, are the descendants of the original inhabitants of India, and are the most marginalized and living in terrible poverty with high rates of illiteracy, disease, early mortality etc. Their plight has been described by this Court in *Samatha vs. State of Andhra Pradesh* and *Ors*. AIR 1997 SC 3297 (vide paragraphs 12 to 15). Hence, it is the duty of all people who love our country to see that no harm is done to the Scheduled Tribes and that they are given all help to bring them up in their economic and social status, since they have been victimized for thousands of years by terrible oppression and atrocities. The mentality of our countrymen towards these tribals must change, and they must be given the respect they deserve as

the original inhabitants of India.

35. The bravery of the Bhils was accepted by that great Indian warrior Rana Pratap, who held a high opinion of Bhils as part of his army.

36. The injustice done to the tribal people of India is a shameful chapter in our country's history. The tribals were called 'rakshas' (demons), 'asuras', and what not. They were slaughtered in large numbers, and the survivors and their descendants were degraded, humiliated, and all kinds of atrocities inflicted on them for centuries. They were deprived of their lands, and pushed into forests and hills where they eke out a miserable existence of poverty, illiteracy, disease, etc. And now efforts are being made by some people to deprive them even of their forest and hill land where they are living, and the forest produce on which they survive.

37. The well known example of the injustice to the tribals is the story of Eklavya in the Adiparva of the Mahabharat. Eklavya wanted to learn archery, but Dronacharya refused to teach him, regarding him as low born. Eklavya then built a statue of Dronacharya and practiced archery before the statue. He would have perhaps become a better archer than Arjun, but since Arjun was Dronacharya's favourite pupil Dronacharya told Eklavya to cut off his right thumb and give it to him as 'guru dakshina' (gift to the teacher given traditionally by the student after his study is complete). In his simplicity Eklavya did what he was told.

38. This was a shameful act on the part of Dronacharya. He had not even taught Eklavya, so what right had he to demand 'guru dakshina', and that too of the right thumb of Eklavya so that the latter may not become a better archer than his favourite pupil Arjun?

39. Despite this horrible oppression on them, the tribals of India have generally (though not invariably) retained a higher level of ethics than the non-tribals in our country. They normally do not cheat, tell lies, and do other misdeeds which many non-tribals do. They are generally superior in character to the non-tribals. It is time now to undo the historical injustice to them.

40. Instances like the one with which we are concerned in this case deserve total condemnation and harsh punishment.

41. With these observations the appeal stands dismissed.

.....J. (Markandey Katju)J. (Gyan Sudha Misra) New Delhi;

5th January, 2011