



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 49 OF 2005

Walmik Dattu Lembhe,
Age : 21 years, occu. : Agril.,
R/o. Mathapati Savangi,
Tq. and Dist. Aurangabad

... Appellant

Versus

The State of Maharashtra

... Respondent

...
Mr. P. F. Patni, Advocate for Appellant
Mr. D. R. Korade, APP for Respondent-State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 23rd SEPTEMBER, 2024

PRONOUNCED ON : 1st OCTOBER, 2024

JUDGMENT :

1. Convict Walmik Dattu Lembhe is assailing judgment and order of conviction dated 10.01.2005 rendered by learned IInd Ad-hod Additional Sessions Judge, Aurangabad recording his guilt in Sessions Case No.141 of 2004 for offence punishable under sections 354, 509 and 323 of Indian Penal Code (for short "IPC") and section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "SC & ST Act").

FACTUAL MATRIX

2. On 07.12.2003, victim informant PW1 Namita was

plucking legume in their field in the earlier hours of the morning. Appellant, who had land in the neighbourhood, initially, started whistling and subsequently he entered her field, showed his wallet with money to the victim and when she was about to leave, he reached her, dragged her in the cotton crop, after scuffling made her pull down and fondled her breast. She raised alarm inviting attention of her husband and brother-in-law. They rushed towards her. Accused fled and while running he used caste abuses. Then, police was approached and occurrence was reported. On the basis of which, Phulambri police station registered crime.

After investigation, accused was charge-sheeted and tried before learned IInd Ad-hoc Additional Sessions Judge, Aurangabad vide Sessions Case No.141 of 2004 for offence punishable under sections 354, 509 and 323 IPC and under the provisions of SC & ST Act.

By judgment and order dated 10.01.2005, case of prosecution was accepted recording guilt for above offences, which is precisely challenged here in instant appeal.

EVIDENCE BEFORE TRIAL COURT

3. The prosecution has examined following 10 witnesses in support of its case. Their role and status is as under :

PW1 Namita victim - informant lodged report regarding accused outraging her modesty.

PW2 Tarabai neighbour stated that, while she was plucking cotton in her field, she heard cries. She saw appellant running after scuffling with informant.

PW3 Kailas husband stated that, incident took place on 07.12.2003. He saw accused sitting on the chest of his wife and she shouting loudly. Seeing him accused ran and was chased, but he escaped. His wife narrated the acts of accused. They approached police.

PW4 Ashok is pancha to spot panchanama Exh.12.

PW5 Sukhdeo is brother of PW3.

PW6 Uttam is the Investigating Officer.

PW7 Mukteshwar is the Head Master.

PW8 Dy.S.P. Chawariya is the then Investigating Officer

PW9 P.S.I. Bagga, P.S.O., who drew panchanama and procured caste certificate.

PW10 S.D.O. Datkar, authority, who issued caste certificate.

SUBMISSIONS

On behalf of Appellant :-

4. Pointing to above evidence, learned counsel Shri Patni

would submit that, prosecution has miserably failed to establish the charges. According to him, it is false implication due to previous disputes and occurrence of beating dated 30.04.2004. He submitted that, informant victim is changing versions. According to him, at one time she claims incidence to be of 10:00 a.m. i.e. in the FIR, but in deposition, she gave time of occurrence as 1:30 p.m. Therefore, according to him, informant herself is giving contrary versions. He pointed out that, there is no independent witness. That, FIR is silent about any threats, however, there is testimony to that extent in witness box. Therefore, according to him, it amounts to improvisation. According to him, there is material omission regarding utterance and humiliation on caste abuse. He invited attention of the court to cross in paragraph no. 8 and pointed out that, police machinery was pressurized to register offence under SC & ST Act. That, even FIR is silent about caste abuse. Therefore, it is his submission that informant's testimony is not credible. He also pointed out that, in spot panchanama scene of occurrence is shown to be wet place. If version of informant is correct, then there would have been wet mud on the person and clothes of victim, but the same are not seized. That, learned trial court has also noted such infirmity.

5. He took this court through the evidence of PW3 Kailas

husband and pointed out that, his evidence is silent about caste utterance. He apparently did not see any incident and moreover it is submitted that, he testified about appellant attempting to commit rape which was not informant's case and so he submits that his testimony is also improvised version. He also invited attention of this court to the answers given in cross in paragraph no. 7 and would submit that it is a full of material omission and hence according to learned counsel, his testimony is unworthy of credence.

6. He next submitted that, there is no evidence that intentionally and knowingly as informant belongs to scheduled caste category with sole intention she was humiliated. That, in fact, appellant's caste is not proved and therefore, for all above reasons, learned counsel questions the finding, reasons and conclusion drawn by learned trial Judge. He prays to interfeerer by allowing the appeal.

In support of his submissions, learned counsel places reliance on following decisions :-

- (i) *Ramdas and Others v. State of Maharashtra, (2007) 2 Supreme Court Cases 170*
- (ii) *State of Maharashtra v. Mohammad Isaq Mohammad Ansari, 2021 (1) Mh.L.J. (Cri.) 260*

(iii) *Kuwarlal s/o. Chandulal Patle v. State of Maharashtra*
2012 (2) Mh.L.J. (Cri.) 716

(iv) *Vimalbai Manohar Doballiwar and Ors. v. State of*
Maharashtra, 2019 (2) Mh.L.J. (Cri.) 209

On behalf of Respondent - State : -

7. In answer to above, learned APP would submit that, testimony of informant is inspiring confidence. She has narrated the act of appellant to her neighbour. He submitted that, her testimony regarding occurrence has remained unshaken and has not disturbed. He pointed out that, FIR is not encyclopedia and all minute details are not required to be reproduced. Informant has categorically deposed in the witness box regarding the pervert acts of appellant. That, she raised shouts and husband and neighbour PW2 Tarabai immediately rushed towards the spot and then accused running. That, there is prompt lodgment of the complaint. That, while running appellant uttered caste abuse with reference to caste of informant. Said Incident has taken place in public. That, Investigating Officer has gathered caste certificate of victim, even authority issuing certificate is examined and there is overwhelming evidence regarding occurrence as well as caste abuse. Therefore, all necessary ingredients for the charges being available, case is proved beyond reasonable doubt. That, testimony of victim is supported by her husband, brother and brother-in-law.

Such evidence as was inspiring confidence has been accepted by learned trial Judge and therefore according to him, there is no infirmity or error in the appreciation.

8. Here, evidence of victim **PW1** Namita, her neighbour **PW2** Tarabai, husband **PW3** Kailas and brother-in-law **PW5** Sukhdeo is crucial on the point of occurrence. Therefore, first it needs to be appreciated.

PW1 Namita is the victim informant. Regarding occurrence she deposed as under :-

“Present incident took place about one year ago on 7th December in our land. I got-up after my sleep was over during morning hours and bathed. I finished the work of taking ‘Tea’ as well as ‘breakfast’. I went in the land to pluck legume and when I was plucking the legume, the accused Walmik at that time was feeding his she-buffaloes which were just 5 to 10 ft. away from me. There is a road in our land known as ‘pandhi’ and the accused was wandering here and there in that Pandhi road. I did not care for his movement as I did not think that he would have any ill intention. The accused was whistling while moving on that road. I did not care for him and his act. The accused within a short span jumped from that Pandhi area in our land. He showed me a pocket containing Paise. At that time, I tried to tun away. The accused came from my

backside and caught hold of me and dragged me in side our land having cotton standing crops. He started scuffling with me. He pulled me down. He caught hold of my both breasts with his both hands. I started shouting. My husband came on the spot while running on hearing hue and cry raised by me. Behind him, elder brother of my husband by name Sukhdeo Bhalerao came running on that spot. Accused when found the persons had come, he left me and ran away while jumping from that spot inside the Pandhi. Wives of the brothers of my husband who plucking cotton buds in the land, came running towards me. The accused while running told that as to what we people being 'Mangte' would take any action against him. When we were going to police station after the above incident was over, accused and his brothers threatened us. Brother of the accused threatened us saying that we should not go to Police station. He told us that we could do no wrong as against him. This happened about half an hour after the incident was over. The incident has taken place at about 1:30 p.m."

While under cross in paragraph nos. 5 and 6 PW1 Namita is questioned about field, its surroundings and regarding dispute with accused on account of grazing, which is denied by her. There is also denial that she deposed falsely that accused jumped, came in their land, showed her the money purse, she started running away and that there was scuffle and therefore she

shouted and labouring woman and her husband came. In paragraph no.7 omissions are brought about accused while running away referring to their caste and further saying that he would see the consequence. Omissions are also brought that she wept at the spot at the time of incident. In paragraph no.8, she has denied that, her husband and brother-in-law Sukhdeo had beat accused on 30.04.2004 regarding which criminal case has been filed bearing Crime No.43 of 2004. But, she admitted that, her husband and brother-in-law had staged strike of sitting in front of Office of Superintendent of Police for not registering crime under SC & ST Act.

9. PW2 Tarabai a neighbour regarding occurrence deposited at Exh.9 as under :-

“I was plucking cotton buds in the land of Kausabai Bhalerao then. Kausabai, Tarabai, I myself, Kushiwaratabai were in the land then. At the time of incident we were plucking cotton buds at a distance of 50 to 60 ft. from Bandh of the land of accused Walmik. I felt that, I heard voice of my daughter by name Geeta. Thereafter, younger brother of my brother by name Kailash Bhalerae and Sukhdeo Bhalerao came running near us. I saw accused Walmik running away after scuffling Namita. Accused Walmik snatched away his hand caughthold by Namita (PW1). I came back to the house after incident. Kailash and Namita went to Phulambri Police Station.”

PW2 Tarabai in cross denied all suggestions that there used to be quarrel between Kailas and accused in connection with bandh; prior to the incident, there was heated exchange of words between both of them. Then she is questioned about surroundings of the land, height of the crop. In paragraph no.3 omission is brought that she was plucking cotton at the a distance of 50 feet and she saw accused running away after he snatched away his hand held by victim.

10. PW3 Kailas husband regarding occurrence deposed at Exh.10 as under :-

".... Incident took place on 07.12.2003. It was Sunday. My wife on that day went to the land after her household work was over during morning hours. At that time, I was in my house. I started to go to my land after lapse of sufficient time. Meanwhile, I heard voice of my wife of shouting. I started running away fastly towards the direction from where I heard shouting of my wife, and I reached at the place where my wife was plucking legumes. I saw on the spot the plants were moving. I saw the accused was sitting on the chest of my wife and my wife was shouting loudly. I jumped from the Bandh inside cotton crop. My wife had caught hold of the hands of accused saying as to why he has running away then, when her person had been there and the accused snatched away his hand from

her hand and ran away, through Pandi beyond that Pandhi in his land. I chased him while running. I could not catch him. The accused ran away. I told him that he had escaped from my clutches but he could not escape from the clutches of police. This happened in between 1:00 p.m. to 1:30 p.m. We came to the place of offence. We I mean I myself and my brother Sukhdeo Bhalerao. At that place I asked my wife Namita as to what had happened and she told that she was plucking legumes and the accused was moving in Pandhi. He was whistling. But, she did not care for him and she remained busy with her work of plucking legumes. The accused came to her, and shewed her money purse containing money. She started running out offear, and the accused followed her from behind and caught hold of her and pulled her inside cotton crop and tried to pull down her on the ground and she shouted loudly and the accused attempted to rape on her person. The accused pressed her breasts and when she shouted, the accused slapped on her face.”

Above witness husband is cross examined extensively, wherein he has denied dispute between him and accused in connection with tethering of she-buffaloes. However, he admitted that crime being registered for beating accused previously in the year 2004. Rest all suggestions about occurrence are denied in paragraph no.6. In paragraph no.7 omissions are brought to the following extent that he reached the spot and saw cotton plants

moving, his wife lying down on the ground and shouting and accused sitting over a chest; he jumped in the field and started running and there is scuffle taking place; asking wife what happened, she narrated the entire incident; he has not stating before police about giving caste certificate; about three persons coming to his house and asking him to withdraw the complaint i.e. around 1:00 a.m. to 1:30 a.m; about he refusing to withdraw the complaint. Rest is all denial.

11. PW5 Sukhadeo brother-in-law, regarding occurrence deposed at Exh.13 as under :-

“About one year ago, the present incident took place. At the time of incident, I was in my own land. I heard noise of hue and cry. I rushed on the spot while running. Before I reached on spot, Kailash had reached on spot while running. I had seen him while running towards spot. I saw Walmik running away from the land of Kailash. Walmik Jumped and ran away through Pandhan, Walmik, Namita and Kailash were present on the spot and I had seen them on the spot. I had seen Walmik caught hold of Namita and Walmik ran away after leaving Namita. I and Kailash chased Walmik while running. We could not catch him. I myself, Kailash and Namita came towards our house, after Walmik ran away. Namita told us that Walmk was moving in Pandhi, Walmik whistled and he was giving signal and thereafter he entered in land

and he caughthold her hand and lifted her and took her in cotton crop field, and pulled her down on ground and pressed her breast and she did not tell me anything else as she was ashamed of.”

In cross of PW5 Sukhdeo following omissions are brought :-

He heard voice of hue and cry and reached on the spot while running and found Kailas, victim and accused present and he saw accused had caught hold of Namita victim and then running away. Victim was ashamed while giving details. Rest is all denial.

ANALYSIS

12. On carefully appreciating the substantive evidence of victim PW1 Namita, it is emerging that, her testimony has not shaken as regards to her visit to the field in the morning, accused initially whistling, then jumping in their field; showing purse and then dragging her; making her fall and then outraging her modesty.

PW2 Tarabai, independent witness has also stated about hearing shouts and she candidly stated that she thought it to be voice of her daughter Geeta, but when she saw she found accused present near victim and victim raising shouts. Her such evidence has been intact. Likewise, she has also marked presence of accused.

13. Even on carefully going through the evidence of her husband Kailas (PW3), he deposed that, it being Sunday and though he was in service, he was available in the house and he has also lend support to the testimony of victim by stating that, on hearing hue and cry, he reached at the spot and saw his wife had caught hold of the hands of accused and then accused snatched away his hand and ran away.

14. Similarly brother-in-law Sukhdeo also has reached the spot and has marked presence of accused. No doubt, there are omissions in the evidence of husband and brother-in-law on material count, still, here, in cross victim, who is important witness has stood steadfast regarding the occurrence. Alleged incident is of early morning. Suggestions of previous disputes and quarrels are all denied except admission that crime was registered against PW3 Kailash and PW5 Sukhdeo for beating accused previously. However, on mere such counts testimony of PW1 victim a married lady cannot be doubted. More particularly, when independent witness PW2 Tarabai also supported. Therefore, as regards to the commission of offence under section 354 IPC, there is reliable evidence.

15. Here also charge is for commission of offence under section 3(1)(xi) of SC & ST Act, which reads as under :-

“Section 3(1)(xi) - “assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty.”

16. Learned counsel submitted that, there is no convincing evidence about commission of said offence. However, the above provision itself penalizes for any pervert act with a person belonging to reserve category. Here, by examining PW10 S.D.O. Datkar, caste certificate is brought on record and therefore automatically said provision also gets attracted. In the light of above material, necessary ingredients for attracting both offence are available in the evidence.

17. Perused the rulings of the Hon'ble Apex court taken aid of by learned counsel for appellant. With due respect, the facts and circumstance in those cases being distinct, cannot be applied here or taken aid of.

18. Having gone through the impugned judgment, this court is convinced that, no perversity or illegality is brought to the notice so as to interfere in the findings arrived at by the learned trial Judge. Finding no merits, I proceed to pass the following order :

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

19. On pronouncement of this judgment, learned counsel for the appellant prays for four weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

20. Learned APP strongly opposes the same.

21. Considering the above request made by learned counsel for the appellant, four weeks time is granted for the appellant to surrender.

(ABHAY S. WAGHWASE, J.)