

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.480 OF 2003

The State of Maharashtra.
Through, Police Station, Naigaon,
Tq.Biloli, Dist. Nanded.

...APPELLANT

-versus-

Vilas Raghunath Chavan,
Age : 22 years, Occupation : Education,
R/o Tembhurni, Tq.Biloli,
Dist. Nanded.

...RESPONDENT/ ACCUSED

...
Shri K.S. Patil, APP for the Appellant/ State.
Shri U.B. Bilolikar, Advocate for the Respondent/ Accused.
...

**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 13th January, 2021

JUDGMENT (Per Ravindra V. Ghuge, J.):

1. By this appeal, the State of Maharashtra seeks to challenge the judgment and order dated 10.03.2003 delivered by the learned 1st Adhoc Assistant Sessions Judge, Biloli, District Nanded in Sessions Case No.61/1999. The learned prosecutor points out that as the law stood in 2003, the appeals against the judgment of the Assistant Sessions Judge were being filed directly in this Court.

2. We have considered the strenuous submissions of the learned prosecutor on behalf of the appellant/ State and the learned advocate on behalf of the respondent/ accused.

3. The prosecution had put forth its case by stating that the victim Prabhavati, daughter of Datta Bhakare, aged about 09 years, was bodily lifted from her house on 29.03.1999 at about 10:00 pm by the respondent/ accused Vilas Raghunath Chavan. He carried her towards the well belonging to Divanji. While doing so, the victim woke up and asked him as to where was he carrying her. The accused told her that since her mother had gone for the recital of a *pothi* (a religious book), he was taking her to her mother. He then laid her on the platform of the well by holding her hand and pushed her into the well. While falling into the well, she caught hold of niche (known as *devli* in Marathi). Vilas then started pelting stones which hit her on the forehead and the nose causing injuries.

4. After the mother of the victim Dhondyabai came back from the recital, she started searching for the victim. Vilas was also assisting her. Some of the villagers, namely, Vitthal Pundalik Pawle, Ishwar, Madhavrao and Prakash started searching for the victim and went near the well. Vilas did not go near the well and he was not amongst the persons who brought the victim out of the well. The victim Prabhavati and her mother Dhondyabai claimed that the victim was unconscious for about four to five days and therefore, she submitted her complaint to the

concerned Police Station on 03.04.1999, which is the FIR.

5. Five witnesses were examined and finally, the Trial Court concluded that the charge leveled upon the accused Vilas of committing an offence punishable under Section 307 and Section 363 of the Indian Penal Code, was not proved.

6. We find from the record certain undisputed aspects, which are as under :-

(a) The complaint submitted by the victim Prabhavati on 03.04.1999, does not make a mention of the accused Vilas sitting on her chest and then subsequently sitting on her stomach. As such, the victim did not complain of an attempt by the accused to outrage her modesty, which would have invoked Section 354 of the Indian Penal Code.

(b) The FIR, in printed form, indicates that Sections 307, 363 and 354 of the Indian Penal Code were invoked.

(c) On 03.11.1999, the learned JMFC, Naigaon passed an order for committing the case, which reads as under:-

*“RCC No.79 of 199.
State vs. Vilas.
U/s 363, 307, 354 of IPC.*

Order below Exh.1.

Perused the papers. They disclose the offences under section 307, 363 and 354 of I.P.C.. The offences under section 307 and 363 of I.P.C. are exclusively triable by the Court of Additional Sessions Judge, Biloli. Hence, the case is committed to the Court of Additional Sessions Judge, Biloli vide section 209 of Cr.P.C..

The copies of police papers have been furnished to the accused person vide section 207 of Cr.P.C.. Accused person is released on bail. He has been directed to appear before the court of Additional District & Sessions Judge, Biloli on 13.12.1999. Accused person wants to engage hi advocate on his own cost at Biloli Court.

Inform A.G.P Biloli, accordingly.

Date : 3rd November, 1999.

-sd-

*Judicial Magistrate F.C.,
Naigaon Bz.”*

(d) The charge was framed on 05.09.2002 under Sections 307 and 363 of the Indian Penal Code and not under Section 354.

(e) In the first paragraph of the judgment, the Trial Court has recorded that the accused is facing trial for committing an offence punishable under Sections 307, 363 and 354 of the Indian Penal Code.

(f) While concluding the judgment, the Trial Court has recorded that the accused stands acquitted of the offence punishable under Sections 307 and 363 of the Indian Penal Code.

(g) In Exhibit 23, which is the statement of the victim made to the Police, through her father Datta, the victim has not alleged that the accused Vilas sat on her chest and then on her stomach.

(h) In the deposition of the victim before the Trial Court, she has stated that Vilas sat on her chest on the way to Divanji's well. She has also stated that he sat on her stomach before pushing her into the well.

(i) PW-2 (Dhondyabai Datta Bhakare), mother of the victim, has

not even whispered about any act by the accused Vilas, which outraged the modesty of the victim. She has only stated that there was a scuffle between the two and Vilas tried to misbehave with her.

7. With the assistance of the learned counsel, we have gone through the appeal paper book and the record and proceedings, threadbare. The Trial Court has handed down the judgment of acquittal on the following two grounds:-

- (a) That, there was a delay of about five days in lodging the FIR and the delay has not been explained.
- (b) That, interested witnesses have attempted to implicate the accused Vilas and as there was a previous enmity between the mother (PW-2) of the victim and the mother of the accused, who had tried to expose the misdeeds of PW-2 in the mid day meals at an Anganwadi and, therefore, cooked up charges have been leveled against the accused.

8. The medico-legal (injury) certificate dated 30.03.1999, time 05:30 am, indicates that the victim suffered a contused lacerated wound (CLW) of 1/2 x 1/2 cm over the scalp, which was a simple injury caused by a hard and blunt object. The frontal sinus of the victim was depressed and there was fracture, which was a grievous injury caused by a hard and

blunt object.

9. PW-5, Dr.Shivaji Vitthalrao Shinde, was the Medical Officer at the Civil Hospital, Nanded. He has stated in his deposition that the victim had a fracture at frontal sinus, which might have been caused by a hard and blunt object. If a person is forcibly thrown into the well, such injuries are possible. However, if the well is full of water, such injuries would not be caused. If a child of about 10 to 12 years falls from a staircase, such injuries are possible. As such, the injuries suffered by the victim have been proved.

10. The issue is as regards the delay of five days in lodging the FIR. The victim PW-1 and her mother PW-2 alleged that the victim was unconscious ever since the incident and she regained her consciousness only on 03.04.1999. PW-2, mother of the victim, also stated that the victim was unconscious. Dr.Shinde, who treated the victim and issued the medical certificate on 07.07.1999, upon a request from the Naigaon Police Station on 29.06.1999, has stated in his deposition that the victim patient was brought to him early morning on 30.03.1999 by the relatives and the Police and she was fully conscious. In short, he has denied that she was unconscious. He further stated that the patient was able to talk, walk and have food. As such, the evidence on record indicates that the victim was conscious and the plea of being unconscious has been taken only for covering up the delay of five days in lodging the police complaint.

11. The defence taken by the accused Vilas, while cross examining the prosecution witnesses, is that the mother of the accused Vilas had raised an issue of malpractices at the hands of PW-2 in an Anganwadi. To a suggestion, PW-2, mother of the victim, has stated that she has not committed any malpractice and there was no enmity between the mother of the accused and the mother of the victim.

12. PW-3 (Vithal Pundlik Warwate) is the brother-in-law of PW-2. He had also searched for the victim along with the accused and PW-2. Upon hearing sounds from the well, he along with Ishwar, Madhavrao and Prakash had gone upto the well and upon flashing a torch light, they saw the victim who was shouting for help. PW-3 and Prakash entered the well and brought the victim out. The victim has then stated that the accused had assaulted her.

13. PW-4, Sitaram Dhondiba Adegaonkar, Investigating Officer, was at the Police Station, Naigaon. He has stated in his deposition at exhibit 30 that he received the statement recorded at the hospital at 03:00 pm on 04.04.1999. He recorded the offence as Crime No.25/1999 and launched investigation. On the same day, he visited the spot and prepared the spot panchanama. Then, he recorded the statements of eight witnesses and recorded the supplementary statement of the victim, which is not found in the record and proceedings or the appeal paper book.

14. As such, there is no evidence of any witness, unrelated to the

victim and her family, who has seen the accused throwing the victim in the well and hurling stones at her as she was clinging to the niche. The stones allegedly thrown by the accused at the victim, could not be traced out. Besides the oral statement of the victim, there is no evidence of any independent witness, who had seen the accused pelting stones at the victim upon allegedly flinging her into the well.

15. The police had recorded the statements of eight persons, who had gathered near the well and their names have also been disclosed in exhibit 25, which is the statement by the mother of the victim dated 03.04.1999 addressed to the District Superintendent of Police. Yet, barring PW-3, whose wife is the sister of Dhondyabai, no other independent witness has been examined, despite their names figuring in the complaint of the victim and the list of witnesses mentioned in the FIR, which indicates 15 witnesses. About 7 to 8 independent witnesses like Vitthal, Pundalik, Madhavrao, Nagoba, Ishwar, Baliram, etc. were available.

16. We, therefore, find that an improbable story has been put forth by the prosecution, the victim and her mother that the delay in lodging an FIR of five days was caused as the victim was unconscious. This has been disproved and the evidence indicates that the victim was never unconscious. Had the victim been unconscious after suffering injuries allegedly caused by stones, she would not have been able to continue to cling onto the niche until several villagers, who were searching for her,

found her after two hours and, by that time, she would have fallen into the well and would have got drowned. So also, on the one hand, PW-2 claims that her daughter immediately told her after coming out of the well that the accused had attempted to outrage her modesty, had pushed her into the well and had pelted stones on her. Yet, PW-2 or the father of the victim (PW-1) did not lodge an FIR till 03.04.1999. There is no evidence to indicate that the accused pushed the victim into the well or has assaulted her with stones.

17. Considering the delay in filing of the FIR, the probable story of enmity between the mother of the victim and the mother of the accused and as there is no evidence to indicate the involvement of the accused Vilas, we do not find that the Trial Court has committed any error in acquitting the accused Vilas. This Criminal Appeal is, therefore, dismissed.