

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 74 OF 1999**

Kacharu Dattu Wable  
Age 23 , residing at  
Babulgaon Khurd,  
Tal: Yeola, District Nashik ..Appellant

v/s.

The State of Maharashtra ..Respondent/s

Mrs. Vrishali Raje for the Appellant .  
Mr. S.V.Gavand, APP for the Respondent-State.

**CORAM : ANUJA PRABHUDESSAI, J.  
DATED : 8<sup>th</sup> DECEMBER, 2021.**

**ORAL JUDGMENT.**

1. The Appellant (Org. Accused No.1) has challenged the judgment and order dated 18.11.1998 in Special Case (SC/ST) No.13 of 1998, Nashik.

2. By the impugned judgment the learned Judge has held the Appellant (hereinafter referred to as the “Accused”) guilty of offences under Section 354 and 323 of Indian Penal Code and sentenced to undergo rigorous imprisonment for one year with fine of Rs.500/- i.d. 3 months rigorous imprisonment for offence

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under Section 354 IPC, and rigorous imprisonment for 3 months for offence under Section 323 of IPC.

3. The case of the prosecution is that on 5.3.1995 at about 7.00 to 8.00 p.m., while PW1 was proceeding towards her residence, the accused and the co-accused Sanjay Satalkar dragged her towards the river. The accused told her to remove her clothes and when she refused, both the accused outraged her modesty. When she shouted for help, her mother, her sister and others came to the place of the incident. The co-accused ran away from the spot. It is alleged that the accused slapped and abused her using derogatory casteist remarks. Based on the first information report lodged by PW1, crime was registered against both the accused for offences under Section 354, 323, 506 of IPC and Section 3(1)(x) and 3(1)(xi) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of Protection of Civil Rights Act, 1955.

4. PW5 Bhagwan Dhole, API attached to Yeole Police Station took over the investigation, recorded the statements of the

witnesses, conducted the spot panchanama and seized the clothes of the victim. He also procured birth certificate and caste certificate of the victim and upon completion of investigation filed the charge sheet against the accused and the other co-accused.

5. The Accused pleaded not guilty and claimed to be tried. Prosecution, in support of its case examined five witnesses. Statements of the Accused under Section 313 of Cr.P.C. were recorded. The defence of the accused was of false implication at the behest of Baban Wabale.

6. Upon evaluating the evidence on record, the learned Judge held that the identity of the Accused No.2 was not established and hence acquitted the co-accused Sanjay Satalkar. The learned Judge further observed that the charge against the Accused No.1 under Section 506 IPC, 3(1)(x) and 3(1)(xi) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of Protection of Civil Rights Act, 1955 was not proved and hence acquitted the accused of offence under Section 506 of IPC and Section 3(1)(x) and 3(1)(xi) of Scheduled Caste

and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of Protection of Civil Rights Act. Relying upon the testimony of the victim- PW1 and her mother-PW3, the learned Judge held that the prosecution has established the guilt of the Accused for offence under Section 354, 323 of IPC and convicted and sentenced him as stated above. Being aggrieved by this judgment, the accused has filed this appeal under Section 374 of Cr.P.C.

7. Mrs. Raje, learned Counsel for the Appellant states that the prosecution has not proved the guilt of the accused beyond reasonable doubt. She submits that there is delay in lodging the FIR. She further states that though the Investigating Officer had recorded statements of the independent witnesses, they have not been examined. It is further stated that the evidence of the victim is not consistent with the evidence of PW3. She has stated that the fact that the victim has admitted that Baban had gone to the police station to lodge the report probablises the defence raised by the accused. She submits that PW1 has not emerged as a truthful witness. Relying upon the decision of the Apex Court in ***Santosh***

***Prasad @ Santosh Kumar vs. State of Bihar (2020) 3 SCC 443*** she urges that conviction cannot be based on the testimony of PW1 who has failed to pass the test of “sterling witness”.

8. Per contra, Shri Gavand, learned APP submits that the prosecutrix and her mother are illiterate labourers, who do not understand the concept of time and hence no undue importance can be given to minor discrepancies. He further submits that the victim has denied that she had lodged a false complaint at the behest of Baban Wabale. He submits that there is no reason to discard the evidence of the victim, which is duly corroborated by PW3-her mother and the medical evidence.

9. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

10. The evidence of PW1 and PW3 reveals that they were living in a shed erected in the field of Baban Wabale and that they were working in his field. PW1 has deposed that on 5.3.1995 at about 11 a.m. she had gone to the field of Baban Wabale to harvest the

crop. Laxmibai Wabale and Chaya Wabale, the mother and wife of Baban Wabale, were also present in the field. They left at about 6.30 p.m. and told her to leave after completing the work. She has deposed that after finishing her work, at about 7.00 to 7.30 p.m. while she was proceeding towards her house, both the accused came from behind. The accused caught her hand and told her to come to the river side. When she resisted, the co-accused pressed her mouth, the accused no.1 caught her hand and they took her towards the river. She has deposed that Accused no.1 told her to remove her clothes and when she refused, the accused molested her. On hearing her cries for help, her mother, grand mother and sister came to the site. The accused slapped her mother when she questioned his acts and threatened to bury them alive. They returned home, and later went to Yeole Police Station and lodged the FIR at Exhibit 19.

11. In her cross examination PW1 has deposed that there are several houses near the river. She has stated that the accused had never visited her house and had not talked to her prior to the incident. She has denied that her sister used to go to the field of

Baban Wabale. She has stated that she does not know whether the villagers were talking about her sister and Baban Wabale, and whether 15 to 20 days prior to the incident there was a quarrel between her mother, sister Asha and some persons including the accused.

12. PW1 has stated in her cross examination that on 5.3.95 she had returned home at about 7.45 p.m. and that Baban had gone to Yeola Police Station to lodge the report. She has stated that she when she went to the police station, Baban Yeole was already at the police station. She claims that her signature was not obtained on the complaint on the day she has lodged the report. She has stated that she was called to Yeole Police Station about a month after the incident and her signature was obtained on the complaint at Exhibit 19. She has denied the suggestion that a false case has been filed against the accused because of the accusation made against Baban Wabale and her sister. In answer to the Court question, this witness has stated that she was unable to state whether she had put her signature on the complaint on the day on which she lodged the report, but has reiterated that her

signature was obtained about a month later.

13. PW3, mother of the victim has deposed that on 5.3.1995, at about 8.00 p.m., after she returned home from Yeole, her mother and daughter Asha told her that the victim had not returned home. Hence they proceeded towards the river in search of the victim. At about 9.00 p.m. she heard shouts of her daughter from the river side. When she went to the place of incident she saw that the accused had held the hands of her daughter. When questioned, the accused abused and slapped her. She has deposed that her husband tried to catch accused no.2 but he ran away from the spot. After they returned home, the father and brother of the accused came to their shed and abused them. Hence, she, her mother, and daughter went to the police station to lodge the complaint.

14. PW2 has denied the suggestion that 15-20 days prior to the incident, some villagers had approached them and had raised certain objections about the behavior of her daughter Asha. She has stated that they do not know the accused, they had not visited

their house and she abd her daughter (PW1) did not know names or address of the accused. This witness had also admitted in the cross examination that Baban was already at the police station when they had gone to lodge the report.

15. The evidence of PW1 and PW3 indicates that they did not know the accused either by face or name. Under such circumstances, it is not known as to on what basis the victim had disclosed the name of the accused in the first information report. This assumes significance as the accused has taken a defence of false implication at the behest of Baban Wabale. It is not in dispute that the victim and her family members were residing in a shed in the field of Baban Wabale. It is also relevant to note that PW2 has admitted that there was a dispute between the accused and Baban Wabale and that the villagers had tried to intervene and settle the dispute. PW1 as well as PW3 have admitted that Baban Wabale had gone to the police station to lodge the report. It is not the case of the prosecution that Baban Wabale was present at the place of the incident and that he had witnessed the incident or that they had informed him about the incident. Hence his going

to the police station to lodge the report probabalises the defence that the complaint was lodged at his behest.

16. It is also to be noted that according to PW1 the incident occurred while she was returning home at about 7.00 to 7.30 p.m. and that after the incident she had returned home at about 7.45 p.m. Thus the testimony of PW1 indicates that the incident was between 7.00 to 7.45 p.m. Whereas, according to PW3 the incident had occurred at about 9.00 p.m. PW1 also does not support the corroborate the evidence of PW3 that after the incident, the father and brother of the accused had come to their house and threatened and abused them. The inconsistency and discrepancy in the evidence of these two witnesses raises serious doubt on the prosecution story. There is thus inconsistency in the evidence of PW1 and PW3.

17. It is in evidence that several other persons were present in the field. The prosecution has not examined the said witnesses. PW5 the Investigating Officer has admitted that though he had recorded the statement of some of the independent witnesses, he

has not annexed the same to the chargesheet. There is thus non compliance of mandatory provisions of Section 173 (5) of Cr.P.C. which impairs the right of the accused to fair trial.

18. In such circumstances, the impugned judgment and order cannot be sustained. Hence the following order:-

- (i) Appeal is allowed.
- (ii) Impugned judgment and order dated 18.11.1998 in Special Case (SC/ST) No.13 of 1998, Nashik, is quashed and set aside. Accused is acquitted of the offences under Section 354 and 323 of IPC.
- (iii) His bail bond stands canceled.

**(ANUJA PRABHUDESSAI, J.)**