

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

**CRIMINAL APPEAL NO. 151 OF 2009**

Vasanta S/o Babulal Shukla,  
Aged about 60 years,  
R/o :- Village-Malhiwara,  
Tah – Digras, Dist.- Yavatmal

.... **APPELLANT**

// **VERSUS** //

State of Maharashtra,  
Through Police Station Officer,  
Police Station Arni,  
Dist.- Yavatmal

.... **RESPONDENT**

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Shri S. Raisuddin, Advocate for appellant.  
Shri H.D. Dubey, A.P.P for respondent.  
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**CORAM** : **N.B. SURYAWANSHI, J.**  
**DATE** : **08/02/2021.**

**ORAL JUDGMENT: [PER: N.B. SURYAWANSHI, J.]**

1. The appellant is convicted by the Additional Sessions Judge, Darwha in Special Case No. 1 of 2004 for the offence punishable under Section 354 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- with default clause. This conviction is challenged in the present appeal.

2. The prosecution case in short is that on 04/12/1992 at about 7.00 a.m. informant Narmadabai went to the flour mill of the accused with Jawar to be ground. She again went to the flour mill at 9.00 a.m. for taking back the container of ground Jawar. At that time, the accused was sitting outside his flour mill. He asked her where her husband was. She told him that he had gone to the field. He then asked her where father-in-law had gone. She replied that he too had also gone to the field. Thereafter she went inside the flour mill for taking away the container. At that time, the accused followed her inside the flour mill and caught hold of her, pushed her in one corner of the flour mill and pressed her breasts. When she shouted for help, he left her. At that time, there was no one in the flour mill to see the incident. Thereafter she went to her house and disclosed the incident to her mother-in-law. Then she went in the field and told the incident to her husband. Thereafter, she went to Arni Police Station and lodged oral report which was registered at Crime No. 176/1992 under Sections 354 of the Indian Penal Code and Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short Atrocities Act). After investigation the charge sheet came to be filed.

3. The learned Special Court framed charge under Sections 354, 3(1)(xi) of the Atrocities Act. The accused pleaded not guilty and claimed to be tried. His defence was of total denial. The learned Trial Court after recording evidence acquitted the accused of offences under Section 3(1)(xi) of the Atrocities Act. However, convicted him under Section 354 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for one year. Hence the present appeal.

4. Heard the learned Advocate for the appellant and the learned Additional Public Prosecutor at length. Perused the record.

5. The learned Advocate for the appellant strenuously submitted that the evidence of PW.1 does not inspire confidence. By inviting attention to the First Information Report, he stated that in fact her statement was recorded on 03/12/1992 but the crime was registered and First Information Report was prepared on 04/12/1992. The prosecution had not explained the said discrepancy and therefore it is doubtful as to whether the incident had really taken place. Taking into consideration the omissions and contradictions in the evidence of PW. 1, her sole testimony is not

reliable. Since panch to the spot panchanama (Exh.32) has turned hostile, the Spot Panchanama could not have been taken into consideration while recording the conviction by the learned Trial Court. He further submitted that since PW.1 has not identified the bangle pieces, the recovery of the bangle pieces from the spot was unreliable. By placing reliance on *Lalu Manjhi and another Vs. State of Jharkhand* reported in *AIR 2003 SC 854*. He submitted that the evidence of PW.1 since is unreliable, the appellant is entitled for acquittal.

6. The learned Additional Public Prosecutor on the other hand supported the decision of the learned Trial Court contending that the evidence of PW.1 is reliable and the same was not damaged during the cross-examination. No material favourable to the accused could be brought on record during the cross-examination of the PW.1. The spot panchanama was exhibited and admitted in the evidence in the testimony of the Investigating Officer and hence the learned Trial Court had rightly relied upon it. He therefore submits that the Trial Court had rightly recorded conviction on the basis of material placed before it and the appeal is without merit and the same may be dismissed.

7. The prosecution has examined P.W.1 -Narmadabai, the first informant, who narrated the incident in her deposition. She stated that the accused used to run the flour mill. She went to the flour mill on 04/12/1992 at about 7.00 a.m. and kept the Jowar inside for grinding and returned home. Thereafter, she again went back to the flour mill at 9.00 a.m. At that time, the appellant was sitting outside the flour mill. He asked her where her husband had gone and she told him that he had gone to the field. He also inquired about whereabouts of her father-in-law and she told him that he too had gone to the field. When Narmada went inside the flour mill to take away the container of Jowar, at that time, the appellant entered the flour mill and caught her and pushed her in a corner of the flour mill and pressed her breasts. In that her bangles were broken. She raised the cry and asked him to release her. She deposed that nobody was present there at that time. She returned to the house and narrated the incident to her mother-in-law. She then went to the field and narrated the incident to her husband and along with him she went to Arni and lodged Report (Exh.22). Exh.23 is the copy of printed F.I.R.

8. In the cross-examination P.W.1 admitted that there were houses of various people around the flour mill and there was a grocery shop in front of flour mill. She also admitted that the flour mill was located at the junction of two roads. She deposed that she did not know whether the way in front of flour mill was also flooded by people. She further stated that the grocery shop in front of the flour mill opens at 6.00 a.m. in the morning. She stated that Shukla and Jaysingh were two brothers and any one of them used to run the flour mill. The name of accused was Vasanta. She was not aware whether the flour mill belonged to Shivshankar Shukla. Her father-in-law's name was Sitaram. She did not know whether her father-in-law was prosecuted in prohibition cases. She stated that he was dead. She denied the suggestion that at the time of deposition also they were indulging in the liquor business. She knew Suresh Agoshe from her village. He was the son of her maternal aunt. She denied that she was deposing falsely at the instance of Sitaram Agoshe and Suresh Agoshe.

9. P.W.2 the panch to the spot panchanama (Exh.32) turned hostile. The spot panchanama was proved by the

Investigating Officer Yusuf Peer (P.W.3). At the time of conducting spot panchanama, two pieces of bangles were seized from the spot.

10. On careful appreciation of evidence of prosecution, it appears that the evidence of P.W.1 about the incident is truthful and reliable. It is corroborated with the recovery of the bangle pieces from the spot of incident which is recorded in the spot panchanama (Exh.32). Though P.W.1 was cross examined at length, her evidence could not be shattered in the cross-examination. The defence has not even given suggestions to her that no such incident had taken place.

Merely because in the First Information Report (Exh.23), the date 03/12/1992 appears at the bottom and the First Information Report was actually registered on 04/12/1992, that by itself does not create doubt about the veracity of the testimony of P.W.1, which is already found reliable. Non-examination of other witnesses would not help the defence, as P.W.1 has categorically stated that nobody was present there at the time of incident. The incident had taken place inside the flour mill, therefore her statement to that effect is believable.

11. In my opinion, the sole testimony of P.W.1 is reliable and it has been rightly believed by the Trial Court. The defence has failed to bring on record any enmity which led to false implication of the appellant by P.W.1. There are no suggestions in respect of enmity given to the P.W.1. The prosecution has therefore proved the charge against the appellant beyond reasonable doubt.

12. The Trial Court has properly appreciated the evidence on record. Though the appellant was charged for the offence punishable under Section 3(1)(xi) of the Atrocities Act, he was acquitted of that offence as there was no evidence to sustain the said charge. However, the Trial Court has rightly come to the conclusion that the report of the incident was promptly given by P.W.1 and her evidence inspires confidence and it is corroborated by the spot panchanama (Exh.32). It is thus clear that the learned Trial Court has properly appreciated the evidence and has rightly convicted the appellant.

In *Lalu Manjhi* (supra) the Hon'ble Supreme Court in the facts of that case held that the conviction recorded under Section 302 of the Indian Penal Code on the basis of sole eye

witness was unsustainable as there was land dispute pending between the parties, the eye witness was interested being the brother of the deceased. There was no corroboration to his testimony by medical evidence and the investigation was found defective, the witnesses of the locality were not examined. Hence, disbelieved the testimony of sole eye witness and acquitted the accused. In the present case PW.1 herself was a victim and she has vividly described the incident. The ratio in that case is distinguishable on facts. It would not help the appellant, since it was rendered in different facts.

13. For the aforestated reasons, there is no merit in the appeal filed by the appellant and the same is hereby dismissed. The appellant to surrender before the Trial Court for undergoing the sentence.

**JUDGE**

*J.Pethe..*