



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 202 OF 2021

APPELLANT : Nagesh S/o. Jogayya Yelkuchiwar,
Aged 26 Years, Occu.: Labour, R/o.
Shivlingapur, Tah. Aheri, Dist.
Gadchiroli.

//VERSUS//

RESPONDENTS : State of Maharashtra, through PSO,
Police Station Aheri, Tah. Aheri,
Dist. Gadchiroli.

Mr. Sahil Umredkar, Advocate h/f. Mr. A.C. Jaltare, Advocate for
the Appellant.
Mr. C.A. Lokhande, APP for the Respondent/State.

CORAM : G. A. SANAP, J.
DATED : 9th DECEMBER, 2024.

JUDGMENT

. In this appeal, challenge is to the judgment and order
dated 23.02.2021, passed by the learned Judge, Special Court,
Gadchiroli, whereby the learned Judge convicted the appellant for
the offences punishable under Sections 354 and 323 of the Indian
Penal Code, 1860 (for short, "IPC"), and sentenced him to suffer

rigorous imprisonment for 4 years and to pay a fine of Rs.5,000/- and in default to suffer simple imprisonment for 3 months for the offence punishable under Section 354 of the IPC and rigorous imprisonment for 1 year and to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for one month for the offence punishable under Section 323 of the IPC.

02] BACKGROUND FACTS:

PW-1 is the victim. The crime was registered against the appellant on her report. The case of prosecution, which can be gathered from the report and other materials, is that the victim is the resident of village Allapalli, Tah. Aheri, Dist. Gadchiroli. The incident occurred on 9th July, 2016. At that time, she was serving as a teacher at Zilla Parishad Primary School, Nagulwahi. After attending her duty at about 11:00 a.m., she was coming back to Allapalli. On that day, there was heavy rain. On the way, there is a nullah (brook) near Tanbodi village. There was flood to the said nullah. The victim reached near the nullah at about 11:45 a.m. on her scooty. Since the nullah was overflowing, she stopped her scooty. At that time, one unknown person came from the jungle. After seeing the victim alone, he tried to outrage her modesty. He

touched her breast. The victim resisted the said act of the appellant. The appellant got annoyed and pelted stones at the victim. The victim sustained injury to her head and shoulder. At that time, one vehicle came from the opposite side. The appellant, after seeing the vehicle, fled from the spot. The victim, therefore, narrated the incident to the occupants of the vehicle. She also informed her relatives on phone about the incident. The occupants of the vehicle took search of the appellant in the area. They found the appellant hiding in the bushes. They overpowered him. Her relatives came there. Thereafter, she went to Allapalli Police Station. The victim was directed to go to Aheri Police Station since the spot of the incident was within the jurisdiction of Aheri Police Station. The victim went to Aheri Police Station and lodged the report.

03] On the basis of the report of the victim, a crime bearing No.52/2016 was registered against the appellant. The appellant was arrested. The victim belongs to Scheduled Castes. The FIR was registered by PW-6. Further investigation was carried out by PW-7. The victim was referred for the medical examination. The statements of the witnesses were recorded. After completion of the investigation, PW-7 filed the charge-sheet against the appellant in the Court.

04] The learned Judge framed the charge against the appellant. The appellant abjured his guilt. His defence is of false implication. It is his defence that the nullah (brook) was overflowing. The victim requested to help her to take her scooty to the other side of the nullah. The victim was holding the scooty. The appellant was pushing the scooty through the flood. In this process, the victim fell down in the water. She got annoyed. The victim beat him mercilessly. The false report was lodged to avoid the criminal prosecution on the report of the appellant. The prosecution, in order to bring home the guilt of the appellant, examined seven witnesses. The learned Judge, on consideration of the evidence, held the appellant guilty of the above offences and sentenced him as above. The appellant was acquitted of the offences punishable under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Being aggrieved, the appellant has knocked the doors of this Court by way of this appeal.

05] I have heard Mr. Sahil Umredkar, learned advocate for the appellant and Mr. C.A. Lokhande, learned APP for the respondent/State. Perused the record and proceedings.

06] Learned advocate for the appellant submitted that the appellant had sustained multiple injuries. The prosecution has not explained the injuries sustained by the appellant. It is submitted that, therefore, the defence of the appellant that the victim and her relatives mercilessly beat him is probable and acceptable. Learned advocate submitted that the evidence of the victim (PW-1) as to the occurrence of the incident does not inspire confidence. The account of the incident narrated by the victim appears to be unnatural. There are major omissions and improvements in the evidence of the victim. The evidence of the victim is not sufficient to prove the incident as deposed by her. The account of the incident placed on record is exaggerated. The victim was examined on 22nd July, 2016, whereas the incident occurred on 9th July, 2016. The doctor did not notice injury to the head of the victim. The evidence of PW-3, the sister of the victim, is not reliable. She was not an eye-witness to the occurrence of the incident. PW-3 has placed on record on oath the exaggerated account of the incident. The evidence is shaky and unreliable. The credibility of the evidence of PW-1 and PW-3 has been shaken. The appellant has made his defence probable, and as such, the learned Judge ought to have given him the benefit of doubt. Learned advocate submitted that the learned Judge has failed to properly appreciate the

evidence adduced by the prosecution and has come to a wrong conclusion.

07] Learned APP submitted that, on the date of the incident, the victim was 43 years old and serving as a teacher. There was no dispute as well as enmity between the appellant and the victim. The appellant has admitted his presence on the spot. Learned APP submitted that even if the defence of the appellant is accepted at its face value, it would not be possible to accept the same. If the appellant had helped the victim in crossing the nullah, which was overflowing, and in the process, if she fell down, in ordinary circumstances, she would have no reason to beat him. It is submitted that, therefore, this defence is nothing but an attempt to explain his presence on the spot. The victim in the ordinary circumstances would not have made such an allegation against the appellant. The reporting of such a matter by the victim to the police with certainty would have caused damage to her reputation. The villagers and her companion teachers would have raised the doubt over her character. Learned APP submitted that her evidence has been corroborated by the evidence of her sister (PW-3) as well as by the medical evidence.

08] I have minutely perused the oral and documentary evidence. I have gone through the judgment and order passed by the learned Judge. On going through the evidence and the reasons recorded by the learned Judge in support of his findings, I am satisfied that there is no substance in this appeal. The appellant in the cross-examination of the victim as well as in the cross-examination of PW-3 has admitted his presence on the spot. The appellant, on the date of the incident, was 23 years old. The appellant was not known to the victim prior to this incident. It has come on record that, on the given date, there was heavy rain, and therefore the nullah was overflowing. The victim was returning to her village after attending her duty on her scooty. The victim has stated that on account of the flood to the nullah, she could not cross the same and therefore she had stopped on the road. She has stated that at that time the appellant came from the jungle and assaulted her with an intention to outrage her modesty. She has stated that the appellant touched her breast. She has stated that she resisted this act of the appellant. The appellant was annoyed, and therefore he pelted stones at her. The victim has stated that she sustained injury to her head and shoulder. The victim has stated that when this scuffle was going on between her and the appellant, one vehicle came from the opposite direction. The appellant, after

seeing the said vehicle, hid in the bushes. The victim has stated that she narrated the incident to the occupants of the vehicle as well as she informed this incident to her relatives on phone. They came there. They took the search of the appellant. The appellant was apprehended.

09] In this context, the injuries sustained by the appellant need appreciation. The act committed by the appellant as narrated by the victim is serious. The appellant took advantage of the position of the victim. She was alone. She could not cross the nullah because it was overflowing. The appellant took advantage of the situation and assaulted her with an intention to outrage her modesty. The appellant, as stated by the victim, touched her breast. It is to be noted that the appellant has not denied the case of prosecution that he was apprehended on the spot. It is to be noted that, after the narration of the assault on the victim with an intention to outrage her modesty, the people who had gathered on the spot might have beaten the appellant. In my view, therefore, the injuries sustained by the appellant could not be made use of by the appellant to substantiate his defence. The defence of the appellant is not probable for the simple reason that if he had helped the victim for crossing the nullah, which was overflowing,

and in the process, if the victim had a fall, the victim would not have blamed the appellant. The victim, as per the defence of the appellant, was obliged by him. It is further pertinent to mention that, if the nullah was overflowing, then there was no question of crossing the same even with the help of the appellant. The victim in such a situation was bound to wait till the water level was reduced. In my view, therefore, this defence does not appear to be probable. There was no enmity or motive for the victim to falsely implicate the appellant. The victim, who is a respectable teacher, in the ordinary circumstances would not have made such an allegation against the appellant. The reporting of such a matter to the police by a respectable person like PW-1 would have invited stigmatic consequences. Therefore, I do not see any reason to discard and disbelieve the evidence of the victim. The learned Judge has properly appreciated her evidence.

10] PW-3 is the sister of the victim. She was not an eye-witness to the incident. She has stated that on 9th July, 2016, at about 11:30 a.m. to 12:00 noon, she received a phone call from her sister. She has stated that her sister had called her to her house. She has stated that at that time the rain had stopped. She has stated that, after going to the house of the victim, she narrated the entire

incident. She has stated that the said person beat her and tried to press her breast. She has stated that they have consoled her. She was mentally disturbed. She was frightened. She had sustained injury. She has also stated that at that time the other teachers from the school of the victim had come to her house. She has stated that thereafter they went to the spot. The appellant was arrested. PW-3 was cross-examined. The defence of the appellant was put to her in her cross-examination. She has denied the said defence. She has stated that since the nullah was overflowing, the people were taking help of others for carrying their vehicles to the other side of the nullah. She has stated that after 2-3 hours of the incident, they have gone to the police station. The incident occurred at 11:30 a.m. to 12:00 noon. The report was lodged at 8:30 p.m. The Police Station Aheri is at a distance of 7-8 kms. from Allapalli. The report was lodged on the very same day. It has come on record in the evidence of PW-1 and PW-3 that initially they went to Allapalli Police Station, but there the report was not taken. They were sent to Aheri Police Station because the incident had occurred within the jurisdiction of Aheri Police Station. It is to be noted that the process of lodging the report takes some time in the police station. In this case, therefore, there is no delay as such in lodging the report.

11] It is the defence of the appellant that, in order to save the victim from prosecution, the false report was lodged against him. The appellant did not lodge the report to the police either on 9th July, 2016, or on the next day. If he was beaten by the victim, as suggested by him, then he would have lodged the report. On perusal of the evidence in entirety and on consideration of the attending circumstances, his defence is not probable. The appellant, on the date of the incident, was 23 years old. The victim, a 42-year-old teacher, would not have dared to attack or assault a person like the appellant at a lonely place. If she had a fall while crossing the nullah, she would have blamed herself and not the appellant. I, therefore, do not see any reason to discard and disbelieve the evidence of the victim and her sister (PW-3).

12] The next important corroborative evidence is of the Medical Officer (PW-5). He has stated that on 22nd July, 2016, he had examined the victim at Sub-District Hospital, Aheri. On examination, he found two injuries, namely (a) dislocation of left shoulder joint (inability to move shoulder) and (b) bruise 6 x 3 cm was appearing in the 24.1 inner aspect of left arm. He has stated that the injuries might have been caused due to blow of hard and blunt object. The first injury was grievous and the second injury

was simple one. He has stated that he referred the victim to the Orthopedic Surgeon at Gadchiroli. His medical certificate is at Exh.35. In his cross-examination, the doctor has admitted that he has not mentioned the age of the injuries. He has also admitted that the injuries noticed by him on the person of the victim could be caused due to fall on rough surface. The victim has stated that she sustained injury to her head and shoulder. The shoulder was dislocated. In my view, therefore, this medical evidence corroborates the version of the victim. In the facts and circumstances, I do not see any reason to discard and disbelieve the evidence of the victim and her sister (PW-3). The evidence of the victim has been corroborated by the evidence of the Medical Officer (PW-5).

13] The prosecution, by leading cogent and concrete evidence, has proved that the appellant took advantage of the loneliness of the victim. He took advantage of the situation and assaulted the victim with an intention to outrage her modesty. The victim was alone. The appellant touched her breast. The intention of the appellant is explicit from his act. The learned Judge was, therefore, right in holding him guilty of the charge under Sections 354 and 323 of the IPC.

14] Learned advocate for the appellant submitted that the appellant, on the date of the incident, was 23 years old. It is submitted that his wife and small children depend on him. It is submitted that he has been in jail for almost 3 years and 10 months. Learned advocate submitted that the sentence already undergone by the appellant would be sufficient. It is submitted that, during the period of imprisonment, the appellant might have reflected on his guilt. It is submitted that the sentence already undergone by him would meet the ends of justice, inasmuch as it would be proportionate to the gravity of the proved offence. It is submitted that, as per Section 354 of the IPC, the term sentence shall not be less than one year but which may extend to five years and shall also be liable to fine. It is submitted that the learned Judge has awarded 4 years rigorous imprisonment for an offence under Section 354 of the IPC and 1 year rigorous imprisonment for an offence under Section 323 of the IPC. It is submitted that the period of imprisonment already undergone by him would be sufficient.

15] Learned APP submitted that, considering the nature of the crime, the substantive sentence would be just and proper. It is submitted that the sentence in such a crime must be proportionate

to the gravity of the crime. It is submitted that, if the submission advanced by the learned advocate for the appellant is accepted, then the sentence already undergone by the appellant would be disproportionate to the gravity of the crime.

16] I have given thoughtful consideration to the submissions. The appellant has undergone the imprisonment for almost 3 years and 10 months. The appellant, during this period of imprisonment, might have reflected on his crime and repented over it. Repentance over the crime committed is very vital. The sentence, which he has already undergone, would be sufficient to teach him the lesson of his life. In view of this factual position and the fact that he has family and his family depends upon him, the sentence already undergone by him would meet the ends of justice. Hence, I proceed to pass the following order:

ORDER

- i] The Criminal Appeal is **dismissed**.
- ii] The judgment and order of conviction passed against the appellant by the learned Judge, Special Court, Gadchiroli, dated 23.02.2021 in Special Atrocity Case No.07/2017 for the offences

punishable under Sections 354 and 323 of the Indian Penal Code, 1860, is maintained.

iii] The substantive sentence awarded by the learned Judge is modified.

iv] The appellant – Nagesh S/o. Jogayya Yelkuchiwar is directed to undergo the imprisonment already suffered by him.

v] In the facts and circumstances, there shall be no sentence of fine. The appellant/accused is in jail. He be released forthwith, if not required in any other case/crime.

vi] The Criminal Appeal stands disposed of in the above terms.

(G. A. SANAP, J.)

Vijay