

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 403 OF 1996

The State of Maharashtra

Appellant

Versus

Parashuram Vishwanath Hule,
Age 42 years, Occ. Labourer,
r/o. Paithankheda, Tq. Paithan,
District Aurangabad.

Respondent/s

Mr. S.D. Kaldate, APP for appellant.
Mr. B.S. Kudale, Advocate (appointed) for respondent.

CORAM : S.S. SHINDE & A.M. BADAR, JJ.

DATE OF RESERVING JUDGMENT : 18TH FEBRUARY, 2015
DATE OF PRONOUNCING JUDGMENT : 24th FEBRUARY, 2015.

JUDGMENT : [PER A.M. BADAR, J]:

1] By this appeal, the State is challenging the judgment and order dated 8.12.1995, passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No. 235 of 1993, thereby acquitting the respondent/accused for the offence punishable under Section 376 of the IPC.

2] Facts projected from Police Report leading to the prosecution of the accused can be summarized as under :-

The prosecutrix is resident of village Paithankheda in Aurangabad District. Accused Parshuram Hule was her neighbourer. The prosecutrix used to do work of grazing goats in the fields located in the vicinity of the village. The accused also used to do the same work. The prosecutrix and the accused used to go together for grazing goats in the morning hours and they used to return by evening. According to prosecution, the incident in question happened on 11/10/1992. As usual, the prosecutrix went for grazing goats in the field of one Sukhdeo Ghugarde. She was accompanied by the accused. At about 2.00 P.M. of that day, the prosecutrix went for drinking water. The accused came near her and insisted her to come in the "Tur" crop. When the prosecutrix refused, the accused forcibly took her in the "Tur" crop, made her to lie on the ground, lifted her petticoat and then committed rape on her. The prosecutrix then went to her house and disclosed the incident to her father. The prosecutrix also disclosed the incident to her sister Alkabai, sister in law Dagdabai and cousin Arjun. Subsequently, the cousin sister of prosecutrix went to Aurangabad and disclosed the incident to her husband, who advised her to lodge report. Accordingly, the prosecutrix accompanied by her father, went to Police Station, Bidkin on 15.10.1992 and lodged report of the incident. Accordingly, Crime NO. 117 of 1992 for the offence for the offence punishable under section 376 of IPC came to be registered and routine investigation followed. Statement of witnesses came to be recorded. The Investigating Officer drew Spot Panchanama. Petticoat of the prosecutrix and Dhoti of the accused came to be seized. Samples of their blood were collected and seized. The

seized articles were then sent for Chemical Analysis and on completion of investigation, the accused was charge sheeted for the offence for the offence punishable under section 376 of IPC.

3] For proving the offence punishable under section 376 of IPC, the prosecution has examined in all 7 witnesses including the prosecutrix, her sister Alka Dongre, her father Vishwanath Kanade. Rest of the prosecution witnesses are either Panch Witnesses or the Investigating Officer.

4] After hearing the parties, the learned trial court, by the impugned judgment and order was pleased to acquit the accused by giving him benefit of doubt and by holding that prosecution has failed to prove the charge leveled against the accused.

5] Heard the learned APP appearing for the State. He vehemently argued that evidence of the prosecutrix is corroborated by evidence of her sister Alka and father Vishwanath. Therefore, according to learned APP, the order of acquittal recorded by learned Additional Sessions Judge, is perverse and needs interference at the hands of this court.

6] Per contra, Shri Kudale, learned counsel appearing for the respondent/accused contended that the view taken by the learned trial court, considering the inconsistencies in the prosecution evidence, cannot be considered to be a perverse view. He submitted that when two views are

possible equally, then, the view in favour of the respondent/accused needs to be taken. Learned counsel for the respondent/accused pointed out the inconsistencies in the version of the prosecutrix and her relatives and further submitted that non-examination of the Medical Officer, who examined the prosecutrix is fatal to the prosecution case.

7] With the assistance of the learned counsel appearing for both the parties, we have carefully perused the record and proceedings, including the depositions of the witnesses and the documentary evidence adduced by the prosecution. In the case in hand, the prosecutrix is an adult female whose marriage was already settled prior to the incident in question. The respondent/accused was her next door neighbour and she was well acquainted with him as even according to prosecution case, she and the accused used to go together for grazing goats in the field. It is well settled that in rape cases, the victim of offence cannot be treated as accomplice and evidence of the prosecutrix needs to be appreciated by considering broader probabilities of the case. However, at the same time, it needs to be kept in mind that the conviction can be recorded in such offences only if evidence of the prosecutrix appears to be truthful and trustworthy.

8] Apart from the evidence of the prosecutrix, the Court is required to ascertain, whether there is atleast some corroboration to the evidence of the prosecutrix, particularly when the prosecutrix is a woman having attained majority and who is habitual to sexual intercourse. In case

of grown up women, it is always safe to insist for corroboration from an independent source, by either direct evidence or circumstantial evidence.

9] The prosecutrix is examined as PW-1 at Exhibit 6 in the instant case. It is in her evidence that, the accused is her neighbourer and, therefore, she was knowing the accused. As per her version, on the day of the incident, she had gone to the field of Sukhdeo Ghungarde for grazing goats and the accused also came in that field for grazing goats. The prosecutrix further deposed that when she went for drinking water in the “Tur” crop, the accused came from behind, threw her on the ground, gaged her mouth by his shirt and then raped her by lifting her petticoat. Because of this act of the accused, her petticoat was stained with semen. The accused then threatened her not to disclose this incident to anybody, or else, she would be thrown in the well. Then, according to prosecutrix, she went to the house of her sister Alka and disclosed the incident to her. Thereafter, she disclosed the incident to her sister in law Dagdabai. The prosecutrix further deposed that, thereafter Alkabai and Dagdabai narrated the incident to her father on the next day and then she accompanied by her father, went to Police Station, Bidkin and lodged report exhibit 7.

10] In her cross-examination, it is brought on record that the daughter of the accused namely, Sangita was also used to go for grazing goats in the field. The prosecutrix further admitted that there is a hut in the field of Sukhdeo Ghungarde where the incident in question happened

and labourers used to come in that field for work. She admitted in her cross-examination that she accompanied the accused on that day, for taking the goats for grazing. The prosecutrix further stated in her cross-examination that as the accused threw her on ground, she sustained injury on her back. From her cross-examination it is seen that Bidkin Police Station is just 5 to 6 km. away from her village.

11] Evidence of PW-2 Alka - sister of prosecutrix shows that on the day of the incident, at about 3.30 p.m. the prosecutrix came to her house and told her that the accused raped her in the field of Sukhdeo. PW-2 Alka deposed that on the next day morning she told the incident to her father.

12] PW-3 Vishwanath - Father of the prosecutrix deposed that he came to know about the incident on the next day through his daughter PW-2 Alka and thereafter he enquired from the prosecutrix as to what happened and then, the prosecutrix narrated the incident to him. Then, as per the version of PW-3 Vishwanath, he accompanied by the prosecution, went to Police Station Bidkin and lodged the report.

13] The learned trial court, took a view that evidence of these 3 witnesses is inconsistent and there is unexplained delay in lodging the FIR and as such, acquitted the accused. This court is scrutinizing the matter in appellate jurisdiction and it is well settled that merely because another view is possible, the appellate court should not take such other view unless the view taken by the learned trial court is proved to be perverse. If the

conclusions recorded by the learned trial court does not reflect a possible view then only this court can step in for interfering the impugned and order.

{ Refer **Murugesan and others v. State through Inspector of Police, AIR 2013 SC 274 and State of Maharashtra vs. Haribhau Krishnaji Deshmukh and others, 2003 Bom.C.R. (Cri.) 1233 }**

14] Let us, therefore, appreciate the evidence of these 3 prosecution witnesses in order to ascertain whether the view taken by the learned trial court is a possible view. In the case in hand, perusal of FIR at Exhibit 7 shows that the prosecutrix was well acquainted with the respondent/accused, they being next door neighbours. The prosecutrix was an adult female whose marriage was to be solemnized shortly as it was already settled. The prosecutrix used to accompany the accused for taking the goats for grazing. Even evidence of the prosecutrix on this aspect is in tune with the FIR lodged by her on 15.10.1992, which is at Exhibit 7. Though as per version of the prosecutrix brought on record from her cross-examination, labourers used to work in the field where the incident in question happened and though there is hut located in that field, the prosecutrix does not appear to have made any attempt to extricate herself from the clutches of the accused. Though, in her evidence she has stated that the accused gaged her mouth by means of his shirt, this appears to be an improvement and this fact is conspicuously absent in the FIR. It is thus clear that the prosecutrix had not made any hue and cry at the time of the incident in question.

15] Evidence of the prosecutrix shows that she has disclosed the incident firstly to her sister PW-2 Alka, whereas, the FIR lodged by her shows that she returned to her house and narrated the incident to her father PW-2 Vishwanath. Evidence of prosecutrix shows that on the day of the incident, she reached her own house but evidence of the prosecution is not explaining the fact as to why the prosecutrix had not disclosed the incident to her father on the very same day. Though it is seen from evidence of PW-2 Alka that house of her father PW-3 Vishwanath is at a distance which can be travelled within half a minute from her house, evidence of the prosecution is not explaining as to why PW-2 Alka has not thought it fit to disclose the alleged incident to her father PW-3 Vishwanath.

16] The offence of rape on unmarried woman is a serious offence and every prudent person acting in similar situation would have thought of disclosing the same to the elderly member of the family immediately. In the case in hand, though PW-3 Vishwanath was very much present in the house, neither the prosecutrix nor PW-1 Alka thought it fit to disclose the incident to him on that day. This is a circumstance, which was considered by the learned trial court for giving benefit of doubt and it cannot be said that this view taken by the learned trial court is not possible view in the matter.

17] Even if it is assumed that PW-3 Vishwanath came to know about the incident of rape on his daughter on the next day, evidence of the

prosecution is not explaining as to why there is further delay in lodging the FIR. In this case, the alleged incident of rape by the accused took place on 11.10.1992 whereas the FIR Exhibit 7 was lodged on 15.10.1992. Cross-examination of the prosecutrix shows that Bidkin Police Station was just 5 to 6 Kilometers away from her village. Though the prosecutrix has stated in her evidence that accused threatened that if the incident is disclosed to anybody he will throw her in the well, the version of the prosecutrix shows that she disclosed the incident immediately to her sister PW-2 Alka. The incident came to the notice of their father on the next day. As such, in the normal course, it was expected the FIR should have been lodged on the next day of the incident. There is no evidence which suggests that even father of the prosecutrix was under threat of the accused or that he was apprehending social stigma. On the contrary, the evidence of the prosecutrix shows that soon after the incident in question, her marriage was also solemnized. As such, this unexplained delay on the part of the prosecutrix and her father in lodging the FIR, makes the prosecution case suspect and as such, the conclusion drawn by the learned trial court in this regard depicts a plausible view requiring no interference at the hands of this Court.

18] Though according to the prosecution case, the prosecutrix was sent for medical examination and she was medically examined, the prosecution has failed to examine that Medical Officer. The learned trial court has exhibited the Medical Report through evidence of PW-7 Kashinath Lahane, PSI. This report of medical examination of the prosecutrix filed at

Exhibit 28 shows that she was examined on 16/10/1992. The Medical Officer has not found any injury on her person. Though in medical examination, it was found that hymen of the prosecutrix was having tear but the Medical Officer has categorically mentioned that the said tear is old one. Old healed tear found on hymen of the prosecutrix, though the alleged incident was relatively fresh, casts a shadow of doubt on the prosecution case. If really the prosecutrix was subjected to rape by an adult man, 5 days prior to her Medical examination, then atleast there would have been tenderness, swelling or sign of bleeding from the vagina of the prosecutrix. Absence of these signs is a fact which makes the prosecution case doubtful.

19] Forensic evidence collected by the prosecution is also not supporting its case. No stains of semen were found on the seized petticoat of the prosecutrix as reflected from CA report at Exhibit 24. CA report at Exhibit 25 shows that there was stain of semen on Dhoti of the accused. Finding of semen on the Dhoti of an adult male can be for various reasons. Stains of blood of B Group was found on Dhoti of the accused. Blood Group of the accused is also "B" as seen from C.A. Report at Exhibit 26. Blood group of the prosecutrix cannot be determined. As such, the forensic evidence is not connecting the accused to the crime in question in any manner.

20] To conclude, as the view taken by the trial court is a possible view in the wake of the evidence adduced by the prosecution, instant appeal

is devoid of merit and, therefore the order :-

[A] The appeal is dismissed.

[B] The respondent/accused was represented by Shri B.S. Kudale, Advocate appointed by this court. Fees of learned counsel Mr. Kudale for representing the respondent is quantified at Rs. 5,000/-. The same be paid to him.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-