

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 284 OF 2015

Manojkumar Sandipan Ugale,
Age : 27 years, Occu.: Agri.,
R/o. Simur Gavhan, Taluka Pathri,
District Parbhani

.. Appellant
(Orig. Accused)

Vs.

The State of Maharashtra

.. Respondent

Mr. S.S. Jadhavar, Advocate for the appellant
Mr. R.P. Phatke, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

RESERVED ON : 29/07/2015
PRONOUNCED ON : 05/08/2015

JUDGMENT :

. Heard both sides.

2. Aggrieved by the recording of conviction of the present appellant by the learned Sessions Judge, Parbhani vide judgment and order dated 27/02/2015 passed in Sessions Trial No. 156 of 2010 for the offences punishable under section 376, 341 and 506 of the Indian Penal Code and awarding of consequent

sentences to suffer rigorous imprisonment for 7 years, simple imprisonment for 1 month and rigorous imprisonment for 2 years, respectively, which were directed to run concurrently, with further direction to deposit of fine amount in respective offences, the present appeal is preferred.

3. The prosecution case, in short is as under:-

. That the present appellant as well as the prosecutrix are from the same village. On 25/2/2010, the husband of the prosecutrix went to Pathri for repair of his auto-rickshaw and, thereafter, she and her mother-in-law went to work in their field. However, as the funeral of one Babarao Ugle was to take place at 4.30 p.m., the mother-in-law returned to the village and, thereafter, at about 5:15 pm., after completion of the work, the prosecutrix started to proceed towards the village on foot.

. At about 5:30 pm., when the prosecutrix reached near banana plantation in the field of one Balasaheb Ugle, the present appellant came from behind.

He pushed the basket of the prosecutrix which was on her head. Thereafter, he caught hold her hand and dragged her in the banana plantation. When the prosecutrix tried to raise shouts, the appellant threatened to kill her by the sickle. Thereupon in the banana plantation, he removed the nicker of the prosecutrix. He also removed his trouser and underpant and attempted to have sexual intercourse. When the prosecutrix resisted, he threatened to kill her and twice committed forcible sexual intercourse with her. Thereafter, he again threatened to kill her in case she would disclose the incident and, thereafter, ran away.

. The prosecutrix thereafter returned to her house and started disclosing the incident to her husband and father-in-law, however, in the meanwhile, she became unconscious. Therefore, she was taken to the hospital at Pathri and, thereafter to Government Hospital at Parbhani. The prosecutrix regained her consciousness in Parbhani Government Hospital. There, she narrated the incident to her husband and other relatives, whereupon, the complaint came to be filed.

. During investigation, P.S.I. U.K. Tak, visited the spot of occurrence, recorded the spot panchanama. He further recorded the statements of the witnesses. Some bunch of hair was found on the spot as well as pieces of bangles of the prosecutrix were seized from the spot alongwith other sample of earth. Clothes of the prosecutrix were seized. Thereafter, the appellant was arrested, his clothes were also seized. All the bangles were sent to the Chemical Analyzer. Medical examination papers of the prosecutrix as well as the appellant were collected and, thereafter, the chargesheet was filed.

4. Upon committal, the learned Sessions Judge, Parbhani framed the charges. Before her, in all 10 witnesses were examined. P.W. 3 is the prosecutrix. P.W. 5 is the husband of the prosecutrix. P.W. 4 is Dr. Mrs. Kausar W/o Parvez Zikiria, the Medical Officer, who had examined the prosecutrix. P.W. 8 Dr. Dhananjay Mudgalkar had examined the appellant. P.W. 6 is the panch witness. P.W. 9 Dadarao Kadam is

the panch to the memorandum of panchanama and seizure panchanama of the sickle at the behest of the appellant. P.W. 1 – Ramkisan Munde had registered the crime. P.W. 10 – Vishwamber, the Police Head Constable carried the article to Chemical Analyzer while P.W. 7 – Assistant Police Inspector Uttam Tak is the Investigating Officer.

5. Deposition of P.W. 4 Dr. Smt. Kausar Zikiria, who has examined the prosecutrix on the next day of the incident alongwith her memorandum of examination of the prosecutrix at Exhibit 40 would show that the prosecutrix was habituated with sexual intercourse and no evidence of forcible sexual intercourse was found. Further, no injuries were found on the body of the prosecutrix.

6. Deposition of P.W. 8 Dr. Dhananjay Mudgalkar coupled with the memorandum of examination of the appellant by him at Exhibit 61 would reveal that the examination of the appellant was carried on 3/3/2010 i.e. after about 1 week of the alleged incident and,

therefore, no evidence regarding the offence was found on the person of the appellant. A lacerated infected wound admeasuring 2 cm X 1 cm X 1/4 cm coupled with pus formation was found on prepuse of the penis, which was three days old prior to the examination and thus cannot be said to be relevant so far as the offence is concerned.

7. The prosecutrix as well as her husband deposed on the prosecution line. The panch witness disclosed to be father of the prosecutrix during his cross-examination has proved that the ground was found disturbed, pieces of bangles were found there.

8. The learned Sessions Judge however found the statement of the prosecutrix as reliable and the alternative defence of the appellant of consent was negatived. In the result, the conviction came to be recorded, as detailed supra. Hence, the present appeal.

9. Mr. Jadhavar, learned counsel for the appellant submitted before me that as per the

prosecution case, the prosecutrix was 26 years old at the time of the incident. Though, it is the case of the prosecutrix that pieces of bangles were collected from the spot are of different colour than the bangles, admittedly worn by the prosecutrix at the time of the alleged incident. Evidence of the Medical Officer would show that there was no injuries on the hand of the prosecutrix. Further, though the prosecution case is that on the bare ground, two times, complete sexual intercourses were committed by the present appellant, no bruises or any injuries were found on the back of the prosecutrix. Further, though the prosecution case, as shown in the panchanama of spot of occurrence, would be that the actual forcible sexual intercourse was committed by the present appellant 30 feet away from the road, in the banana plantation, and as per the prosecution, the prosecutrix was dragged for that distance by the appellant from the road till the place, there are no injuries in this regard on her body. No dragging marks were found at the spot. Further, no injuries to the knee of the appellant were found though

as per the prosecution case, he committed forcible sexual intercourse on a bare ground.

10. Mr. Jadhavar further submitted that the prosecution evidence would show that the alleged spot of occurrence is very near to the village abadi. Further, the Chemical Analyzer's report would show that blood stains were found on the clothes which is against the prosecution case that, no injuries were caused to the prosecutrix. He further submitted that the learned Sessions Judge however convicted the present appellant by putting a query, as to why there would be a false accusation and by putting wrong reliance on the Chemical Analyzer's report coupled with the testimony of the prosecutrix. In the circumstances, he submitted that the appeal be allowed.

11. Learned A.P.P. Mr. Phatke submitted that even the testimony of the victim in such a case would be sufficient. Here, the spot would show that the place of occurrence was disturbed. There was no reason for the prosecutrix to make a false accusation and,

therefore, the appeal be dismissed.

12. On the basis of this material, following points arise for my determination:-

I) Whether the prosecution has proved that on 25/2/2010, at about 5:30 pm, in the field of one Balasaheb at village Simur Gavhan, Tq. Pathri, District Parbhani, the present appellant has committed rape on the prosecutrix ?

II) Whether the prosecution has further proved that at the given date, time and place, the appellant has wrongfully restrained the prosecutrix ?

III) Whether the prosecution has further proved that at the given date, time and place, the appellant has given criminal intimidation to the prosecutrix by threatening her to kill ?

My answers to all the above points are in the negative. The appeal is therefore allowed and the appellant is acquitted of all the offences, for the reasons to follow.

R E A S O N S

13. The learned Sessions Judge has convicted the present appellant chiefly for three reasons :

i) That the testimony of the prosecutrix is reliable.

ii) That there was no reason to make a false accusation against the appellant involving honour of the prosecutrix and her family and

iii) The Chemical Analyzer's report corroborates the prosecution case.

14. Taking the last reason first, it should be noted that during the medical examination of the prosecutrix, nothing incriminating was found by P.W. 4 Dr. Smt. Zikiria to suggest that there was any intercourse, much less a forcible sexual intercourse against the prosecutrix. The prosecutrix was 26 years old married lady. According to her, she was threatened at the time of commission of the offence and, therefore, no injuries as such on her person and even on her hand were found.

. In those circumstances, Chemical Analyzer's report at Exhibit 55 which would show that the saree of the prosecutrix had stains of blood and/or of semen, could not have been a reliable piece of evidence. The stains of semen found on the saree was of blood group 'B', however, there is nothing further to connect the same to the present appellant and admittedly, there is no case of any bleeding to the prosecutrix in the incident. The learned Sessions Judge however generally observed that Chemical Analyzer's report also support the prosecution case.

. As regards the reliance over the statement of the prosecutrix coupled with other circumstances on record, it is necessary to first advert to the material.

. The prosecutrix deposed that at about 5:30 pm, she proceeded towards the village with sickle and other material. She was all alone on the road. At that time, the appellant came from behind and thrown her basket from over her head. He thereafter started

dragging her by catching her hand. When she attempted to raise shouts, he threatened her. Thereafter, he dragged her inside the banana plantation and flung her on the ground. Thereafter, he removed her saree and made her to sleep on the ground. She was trying to push him away. He however anyway removed his trouser and by inserting his private part in her private part, committed sexual intercourse with her. She however anyhow pushed him away. However, again, the appellant came towards her and on the second occasion, committed sexual intercourse with her and, thereafter, he threatened her not to disclose the incident to anybody, else he would kill her.

. Thereafter he ran away. She felt somewhat giddy, however, she managed to go to the village. Upon reaching the house, she started telling about the incident to her husband but in the process, she became unconscious. Thereafter, she was carried to the Government Hospital, Pathri from where, she was referred to Government Hospital at Parbhani and, there, her statement was recorded.

15. The cross-examination of the prosecutrix and the relevant witnesses does not show that any abadi was in the vicinity of the spot of occurrence. The submission of Mr. Jadhavar in this regard, therefore, cannot be accepted.

16. It was suggested to the prosecutrix that the appellant and her husband were friends and that her husband had obtained a hand-loan from the appellant but was not paying the same. Therefore, the appellant has visited the husband of the prosecutrix at his house. It was suggested to the prosecutrix that on some occasions, she used to call the appellant to her house when her husband was away by making a phone call. She however denied the same by saying that her family does not have any phone.

17. The panch to the panchanama of the spot of occurrence, at exhibit 51 is disclosed during cross-examination, as the father of the prosecutrix herself. Therefore, it is not necessary to refer his name in the present judgment.

18. The spot of occurrence however would show that in between one row of the banana plants i.e. about 36 feet away from the road, the ground was found disturbed. There, the pieces of one bangle were found.

. The prosecutrix during cross-examination clarified that since earth was brittle, there was no hardness, thereby explaining absence of the injuries on her back. It should however be noted that, according to her, her one bangle was broken into pieces in the incident then said bangle must have caused certain injury to the prosecutrix, however, not a slight injury was found on hand of the prosecutrix, as has been deposed by P.W. 4 – Dr. Smt. Zikiria.

19. Further, according to the prosecutrix, she was dragged from the road in the banana plantation. Panchanama shows the distance as 36 feet. However, the panchanama would show that no such marks of dragging were found from the road till the disturbed place inside the plantation.

20. Mr. Jadhavar submitted that, according to the prosecution, the field was dry, the soil was found disturbed and, there was sexual intercourse against the prosecutrix for two times and as per the prosecutrix, for a period of thirty minutes, by dragging her for 36 feet and by pushing her on the ground and by breaking one bangle. However, no injury either to the back, hand or to any part of the body of the prosecutrix is found, would show that the statement of the prosecutrix is not reliable. He therefore submitted that only upon suspicion of having illicit relationship between the prosecutrix and the appellant, there are chances of having made the false accusation against the appellant at the behest of her husband and her own father, who reside in the neighbouring village and who acted as a panch witness to the panchanama of spot of occurrence, though law requires that the panch should be an independent and reputed person.

21. We have already found that the Chemical Analyzer's report is not of any help to the

prosecution. The case, therefore, solely rests on the testimony of the prosecutrix. The details of the prosecution case would show that the incident must have caused injury atleast to the wrist of the prosecutrix and marks of dragging on the field. Possibility of having some bruises to the back of the prosecutrix, cannot also be ruled out in such circumstances. Thus, two stark circumstances i.e. the absence of injuries on the wrist of the prosecutrix coupled with absence of any dragging marks in the field would, however, put a question mark on the testimony of the prosecutrix. In the circumstances, the learned Sessions Judge ought to have extended benefit of reasonable doubt to the appellant. In the result, the following order:-

22. Criminal Appeal is hereby allowed.

23. The impugned judgment and order of the learned Sessions Judge, Parbhani dated 27/02/2015 passed in Sessions Trial No. 156 of 2010, convicting and consequently sentencing the present appellant for the offences punishable under section 376, 341 and 506 of

the Indian Penal Code, is set aside.

. Instead, the appellant is acquitted of all the offences.

24. The appellant be released forthwith, in case, he is not required in any other offence/s.

25. Property be disposed of as per the directions issued by the learned Sessions Judge, Parbhani.

26. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/