

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

Criminal Appeal No.297 Of 2000.

Motiram Rama Khachane
Age : 32 Years., Occ.: -
R/o.: Yawal, Taluka – Yawal.
District – Jalgaon.

}

Appellant.
Ori.Accused.

Versus

The State of Maharashtra.

}

Respondent.

Appearance =>

Mr. G.V. Wani, Advocate for the Appellant.

Mrs. Pratibha Bharad, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. DESHPANDE, J.

DATE : 27th MARCH, 2015.

ORAL JUDGMENT :-

Being aggrieved by the Judgment and Order of conviction dated 30th June, 2000 passed by the learned 5th Additional Sessions Judge, Jalgaon in Sessions Case No.255 Of 1995 whereby; the learned court below convicted the present appellant for the offence punishable under Section 376 of the Indian Penal Code and sentenced him to suffer Rigorous Imprisonment for five years and to pay fine of Rs.1000/- and in default of payment of fine, to suffer Rigorous Imprisonment for three months. The appellant was also convicted for the offence punishable under Section 506 of the Indian Penal Code and sentenced him to suffer Rigorous Imprisonment for one month and to pay fine of Rs.500/- and in

default of payment of fine to suffer Simple Imprisonment for one month and to pay fine of Rs.500/- and in default to suffer Simple Imprisonment for 15 days, the appellant is before this court.

[2] Heard Mr. G.V. Wani, learned counsel for the appellant and Mrs. Pratibha Bharad, learned Additional Public Prosecutor for the State of Maharashtra, in extenso. With their able assistance, I have gone through the Record & Proceedings.

[3] The learned Additional Sessions Judge framed the charge on 6th October, 1999. The appellant-accused was charged that on 18th March, 1995 at about 14.00 to 14.15 hrs. in the agricultural field Gat No.324 situated at village Viravali, Taluka – Yawal, Dist. Jalgaon, he committed rape on the prosecutrix (hereinafter referred to “R”) and thus committed an offence punishable under Section 376 of the Indian Penal Code.

He was also charged that he committed criminal intimidation by threatening the “R” with injury to her person by sickle and, thereby committed an offence punishable under Section 506 of the Indian Penal Code.

[4] In order to bring home the guilt of accused, the prosecution has examined in all nine witnesses and also relied upon the documents.

PW No.1 : “R”

PW No.2 Ganesh Madhav Bari, PW No.3 – Pandurang Kalu Lad and PW No.8 Jagannath Dhanna Barve were examined prosecution as Panch witnesses however, none of them supported the prosecution.

PW No.4 Ravindra Yadav Talele is the husband of "R". His evidence is of little use for the prosecution.

PW No.5 is Dr. Madhukar Kisan Kolhe, who has examined the "R" and issued injury certificate Exhibit - 12A.

PW No.6 Malati Fakira Wadile, Lady Police Constable, who examined the "R", when she approached to the Police Station.

PW No.7 Jagannath Narayan Pachpute is the Investigating Officer.

PW No.8 is Jagannath Dhana Barve.

PW No.9 Shivaji Rajaram Patil, who carried Muddemal for Chemical Analysis.

[6] Case of the prosecution is completely based on evidence of "R". Defence of the appellant-accused as could be seen from the line of cross-examination of "R" is that of consensual sex by the appellant with "R".

[6] Evidence of "R" would reveal that, agricultural field of the appellant and agricultural field of husband of "R" are adjacent to each other. Both the agricultural fields situated in the vicinity of village Viravali.

On the day of incident, she alongwith her husband had been to their agricultural field at 10.00 a.m. on bicycle. Shaves of wheat crop were collected in the field. Thereafter her husband left the field and went to Yawal for bringing the threshing machine. Her evidence further discloses that she was alone in the field; that time, the appellant came to her field and started catching her hands. Thereafter, he caught hold her hands and pulled her upto the bullock-cart of wheat, which was near the heap of wheat crop and there he committed sexual intercourse with her. According to the "R", the appellant struck a sickle blow over her back when she started shouting. He inflicted sickle blow from the blunt

side. Nobody was present there to rescue her. According to her, incident took place at about 2/15 pm. Her husband came to village at 3.00 p.m. Thereafter she disclosed the incident to her husband and thereafter matter was reported to the Police Station, Yawal.

[7] The report was lodged at 20.10 hrs. Said report is at Exhibit -11. According to the prosecution, as could be seen from the evidence of PW No.7 Pandharinath Pachpute, when the report was lodged, he directed Malati (PW No.6), a the lady police constable to inspect the body of "R" and accordingly she prepared her body panchnama (Exhibit – 21). According to the said panchnama, she found abrasion on the person of “R”.

"R" was referred for medical examination in General Hospital, Jalgaon. Dr. Madhukar Kolhe (PW No.5) alongwith Dr.(Mrs.) Sontakke examined her and gave injury certificate Exhibit – 12A. Following injuries were found :-

- (i) linear abrasion on back at the level of renal and angel. On Lt.side 1 ½ x 1 cm. in length.
- (ii) Linear abrasion multiple on both the wrist ventrally of size 1 ½ x 1 cm in length.

According to the Doctor, no injury was found on her breast, thigh and genitals. Evidence of Doctor shows that, as per the speculum examination, no injury was seen on service of in the vagina. His evidence would disclose no recent injury seen. In the opinion of Doctor, he could not give any definite opinion regarding the rape.

[8] In the First Information Report it is stated as under :-

त्याने मला मी होते त्या ठिकाणापासून बैलगाडीपर्यंत ओढत नेले.

From her substantive evidence, "R" has stated that she was dragged about 200 to 250 fts. From the evidence of "R" it is clear that there were clods in the field. In the backdrop this piece of evidence as found, the following version of Dr. Madhukar Kolhe (PW No.5) required to be reproduced :-

“Normally there should be multiple injuries; if person is dragged in the agricultural field with clods at a distance of 200 to 250 fts.

Injuries as appearing as stated earlier according to the Doctor are superficial.

Obviously, if fully grown lady is dragged in agricultural field having clods about 250 fts.; naturally there will be resistance at her fullest, which will definitely cause much more injuries on her person than the injuries which were noticed by the Doctor. In that behalf the evidence of Doctor which is reproduced herein above assumes importance. Thus the nature of injuries as found on the person of “R”, in the light of evidence of Dr. Madhukar Kolhe (PW No.5) clearly belies the version of “R” that she was dragged by appellant for a distance of 200 to 250 feet.

[9] Further from the cross-examination of the "R", it is clear that there was opportunity for her to run away from the clutches of the accused however, she did not make any efforts. The following portion as appearing in her cross-examination is suggestive of consensual sex.

“I could not get the idea to run away from the clutches of the accused.”

“It did happen that the accused first lifted my saree and petticoat and pulled knicker.”

“I did not make the efforts to run away from the accused stand up and unfasten his pant and and unfasten the underwear and then committed sexual intercourse with me.”

“I did not make effort or attempt to run away from the spot at that time.”

“It is true that the accused had crossed his both hands around my back when he was committing sexual intercourse with me.”

“It is true that my both legs were straight to the ground when he was committing sexual intercourse.”

“It did happen that my hands were lying on the ground and not on his back when he was committing act of sexual intercourse.”

From the aforesaid it is absolutely clear that there was no resistance at all. Aforesaid version, which is brought on record clearly shows that, it was consensual sex.

If sexual intercourse is committed against the wish of lady, who is fully grown; there will be at least scratches on the body of person, who is committing the sex against the wish of said lady.

[10] The injury certificate of accused – Motiram is at Exhibit – 18. It shows that he was having average built. No injury of what so ever nature were seen on his body, not even a scratch.

[11] Thus if the evidence of prosecution case is assessed in its true perspective, then it is clear that the prosecution has failed to bring home the guilt

of accused beyond reasonable ground. On the contrary, possibility of consensual sex cannot be completely ruled out. That leads me to pass the following order :-

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Judgment and Order of conviction dated 30th June, 2000 passed by the learned 5th Additional Sessions Judge, Jalgaon in Sessions Case No.255 Of 1995 is hereby set aside.
- (iii) The Appellant – accused is acquitted for the offence punishable under Section 376 of the Indian Penal Code.
- (iv) Fine amount, if deposited, be refunded to the Accused-Appellant.
- (v) Bail bonds stands cancelled.

(V.M. DESHPANDE, J.)