

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.325 OF 2001

Hatya s/o. Kalya Tadvi,
Age 51 years, occ. Agri.,
r/o. Jamli, Tq. Akkalkuwa,
Dist. Nandurbar .. Appellant

versus

The State of Maharashtra .. Respondent

Mr.C.R.Deshpande, Advocate for appellant

Mr.P.N.Kutti, A.P.P. for respondent-State

CORAM : M.T. JOSHI, J.

DATE : 19/11/2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by recording of conviction for the offences punishable under Sections 451 and 376 of Indian Penal Code and consequential sentences to suffer rigorous imprisonment for six months and to pay fine of Rs.200/- for the offence punishable under Section 451 of Indian Penal Code; and

rigorous imprisonment for five years and to pay fine of Rs.500/- for the offence punishable under Section 376 of Indian Penal Code, by learned Addl. Sessions Judge, Shahada in Sessions Case No.166 of 1998, present appeal is preferred by the original accused.

3] The complainant/prosecutrix, a married lady, was resident of village Bhangrapani, Tq. Akkalkuwa, Dist. Nandurbar. On 24th January, 1990, her husband had gone to his maternal uncle at another village and the prosecutrix was all alone in the house. There was no permanent door to the house of the prosecutrix and therefore, the house was shut with a wooden log only. In the midnight, the appellant came in the house of the prosecutrix. He pressed throat of the prosecutrix due to which, she awoke from sleep. He disclosed his name as Hatya. Thereafter, under threat of life, she was asked to keep mum. The appellant gagged her mouth by his

one hand and removed his pant. He also removed saree of the prosecutrix, lifted her Ghagra (petticoat) and committed forcible sexual intercourse with her. There was discharge of semen. The prosecutrix wiped her vagina with her Ghagra (petticoat).

4] On the basis of the complaint filed by the prosecutrix, investigation was started. During investigation, it was gathered that in the same night, previously, the appellant had been to the house of PW 4 – Vithubai and asked her to have sexual intercourse with him. As PW 4 – Vithubai refused for the same, the appellant went away. Thereafter, PW 4 – Vithubai approached her neighbors including PW 3 – Chamrya and others. All those persons went to the house of the prosecutrix. They noticed that the prosecutrix and the appellant were sleeping in the house. Upon inquiry, the prosecutrix told that the appellant had threatened

her and committed sexual intercourse. These witnesses nabbed the appellant and took him to the police station.

5] The Investigating Officer PW 6 – Vitthal Vidhate, the then PSI, during investigation, drawn panchnama of the spot of occurrence. He seized Ghagra (petticoat) as well as nicker of the prosecutrix. He recorded statements of the witnesses. The seized articles were sent to the Chemical Analyst. The C.A. report was received and thereafter, the charge sheet came to be filed.

6] Before learned Addl. Sessions Judge, the prosecutrix was examined as PW 1. PW 2 – Ramsing was the panch witness, who deposed about seizure of the clothes in his presence. PW 3 – Chamrya and PW 4 – Vithubai are the villagers about whom, reference is already made herein above. PW 5 – Dr.

Suresh Rane had examined the prosecutrix and proved the certificate passed by him at Exhibit 46.

7] Though there is certain variance in the oral evidence, since the case was tried after ten years and the witnesses were villagers, learned Addl. Sessions Judge did not give any importance to the variance. According to learned Addl. Sessions Judge the case was proved beyond the reasonable doubt and therefore, the conviction and sentence, as detailed supra, came to be recorded against the appellant.

8] Mr.C.R.Deshpande, learned counsel for the appellant/accused, made following submissions :

. That, the prosecution case itself would show that when the villagers had come to the house of the prosecutrix, the appellant was found sleeping in her house. Further, though it is the prosecution case that after sexual intercourse, the discharge

of semen was wiped by the prosecutrix by her Ghagra, which was seized by the Investigating Officer, the C.A. report would show that no semen was found on the Ghagra. Further, it was the case of the prosecutrix that though her glass bangles were broken and even pieces of the bangles were seized from the spot, the Medical Officer did not find any corresponding injuries on the body of the prosecutrix. Further the Medical Officer was unable to opine as to whether any sexual intercourse took place.

. Mr.Deshpande further pointed out that PW 3 – Chamrya deposed that when the prosecutrix was seen by him and other villagers, she was not frightened after noticing them. Thereafter, they went to her house and made inquiry about the appellant, upon which, she replied that the appellant was in her house and thereafter, the prosecutrix became frightened after the dialogue.

. Mr.Deshpande further pointed towards the admission of the prosecutrix that the brother of the appellant was working as Watchman of the forest land and the prosecutrix used to graze cattle of the villagers regularly in the forest land. He submitted that in the circumstances, though the prosecutrix has denied that the brother of the appellant and the appellant had come to the village to make grievance, he submits that, there is a possibility that the prosecutrix has filed a false complaint.

9] Learned A.P.P. for the respondent – State supported the impugned judgment and order passed by learned Addl. Sessions Judge. He submitted that learned Addl. Sessions Judge has appreciated the evidence on record in its proper perspectives. All the witnesses were tribal and they deposed about the incident after almost ten years. Further,

recovery panchnama would show that stains of semen were found on the Ghagra (petticoat) of the prosecutrix. He therefore submitted that the appeal may be dismissed.

10] On the basis of this material, following points arise for my determination :-

(I) Whether the prosecution has proved that 24th January, 1990, in the midnight, at village Bhangrapani, Tq. Akkalkuwa, Dist. Nandurbar, present appellant has committed house trespass by entering the house of the prosecutrix ?

(II) Whether the prosecution has further proved that on the given date, time and place, the appellant has committed forcible sexual intercourse with her ?

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

R E A S O N S

11] According to PW 4 – Vithubai, the appellant had first made demand of sexual intercourse with her by entering her house whereupon, she refused for the same and ran out of the house and approached her neighbor PW 3 – Chamrya. Thereafter, other villagers were collected and all of them went to the house of the prosecutrix. This witness, however, did not depose as to how, all of them thought it fit to go to the house of the prosecutrix and find the appellant in the said house. Further, this witness deposed that the appellant was found sleeping in the house of the prosecutrix that too, after alleged commission of

forcible sexual intercourse with the prosecutrix. Further, the case of the prosecutrix was that she had wiped the semen by her Ghagra. But, the C.A. report would show that no semen was found on her Ghagra.

12] Last but not the least, though, according to the prosecutrix, her glass bangles were broken in the incident, no corresponding injury was found by the Medical Officer on the wrist or any body part of the prosecutrix. Thus, the prosecution has failed to prove beyond the reasonable doubt, that present appellant has forcibly committed sexual intercourse with her.

13] The appreciation of the evidence by learned Addl. Sessions Judge regarding contradictions and omissions in the statements of the witnesses, for the reasons forwarded by him, cannot be faulted with. However, the admitted circumstances on

record, as detailed supra, should have been the reasons for the learned Addl. Sessions Judge to extend benefit of reasonable doubt to the appellant/accused in the present case.

14] Hence, the following order :-

A] The appeal is hereby allowed.

B] The impugned judgment and order dated 21st July, 2001 passed by learned Addl. Sessions Judge, Shahada in Sessions Case No.166 of 1998 thereby convicting the appellant for the offences punishable under Sections 451 and 376 of Indian Penal Code; and consequential sentences to suffer rigorous imprisonment for six months and to pay fine of Rs.200/- for the offence punishable under Section 451 of Indian Penal Code; and rigorous imprisonment for five years and to pay fine of Rs.500/- for the offence punishable under Section 376 of Indian Penal Code, is hereby set aside.

. Instead the appellant/accused is acquitted from both the offences.

C] Bail bonds of the appellant shall stand cancelled.

D] Fine amount, if any, deposited by the appellant be refunded to him.

[M.T. JOSHI]
JUDGE

kbp