

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 4189 OF 2014**

THE STATE OF MAHARASHTRA
VERSUS
BHAURAO @ BHAUSAHEB DASHRATH SHINDE

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APP for Applicant : Mr. S.G. Nandedkar
Advocate for Respondent : Mr. Koze G.J.

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CORAM : S.S. SHINDE & A.M. BADAR, JJ.
Dated: February 23, 2015

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COURT ORDER : (PER A.M. BADAR, J)

This is an application by the State challenging the judgment and order dated 04.03.2014 passed by the learned Special Judge, Osmanabad, thereby acquitting the respondent/accused of the offences punishable under section 366, 341, 376 and 506 of the Indian Penal Code and under Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard the learned Additional Public Prosecutor appearing for the State. He vehemently argued that, the First Information Report was lodged with promptitude by the prosecutrix and her version is duly corroborated by the

evidence of PW-2 Reshma Sonwane as well as evidence of PW-3 – Hanumant Shirake. According to the learned Additional Public Prosecutor, the evidence of the prosecutrix is also gaining corroboration from the Forensic evidence collected by the prosecution, and as such, it cannot be said that, the view taken by the trial Court in acquitting the respondent/accused of the offences alleged against him, is a plausible view.

3. With the assistance of the learned Additional Public Prosecutor, we have perused the record and proceedings including the documentary evidence placed on record.

4. The charges levelled against the respondent/accused were to the effect that, he not being the member of scheduled caste or scheduled tribe and being in position to dominate will of the prosecutrix exploited her sexually and more particularly on 22.03.2012 by abducting her took her to the rented room owned by PW-3 Hanumant Shirake and committed rape on her.

5. Though the learned trial Court had named the prosecutrix in the impugned judgment and order, keeping in mind, the directions of the Supreme Court in the matter of **State of Karnataka V/s Puttaraja** reported in **AIR 2003 S.C.W. 6429** as well as the social object of the provisions of Section 228A of the Indian Penal Code preventing social victimization of the victim of the sexual offence, we refrain ourselves from naming the prosecutrix.

6. We may note few facts leading to the prosecution of the respondent/accused. The prosecution case, as reflected from the First Information Report lodged by the prosecutrix, is as under :-

The prosecutrix is an adult female aged about 40 years. 20 years prior to the incident in question, she married one Sudhakar Kharat and had begotten two sons out of this wedlock. Since prior to 8 years, the prosecutrix took shelter of her parental house, as she was not pulling well with her husband. It is her case that, intermittently, she was visiting her matrimonial house, but she used to return as she was not pulling well with her husband.

According to the prosecutrix, two years prior to the incident in question, she had developed acquaintance with the respondent/ accused and then, that acquaintance was converted into illicit intimacy between them. The prosecutrix then alleged that, thereafter by alluring her that, he will deposit some amount in her name in the bank and by putting her under fear, the respondent-accused used to commit forcible sexual intercourse with her. The prosecutrix further alleged that, on 21.03.2012, the accused allured her to accompany him at Bhoom on the pretext of depositing some amount in the bank in her name and on that promise, the prosecutrix accompanied the accused to Bhoom. The accused then took her to rented room of PW-3 Hanumant Shirake and committed rape on her. Accused then threatened her that, he will kill her, if the incident is disclosed to anybody. According to the prosecutrix, in the evening hours, the accused left the room and thereafter she left that room and went to Osmanabad. The prosecutrix then on the next day i.e. on 22.03.2012 lodged a report against the accused, which has resulted into registration of Crime No. 11/2012 for the offences punishable under Section 376, 366, 341, 506 of the Indian Penal Code, 1860

read with section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. During the course of investigation, clothes found at the place of incident as well as the clothes of the prosecutrix and accused came to be seized and statements of the witnesses came to be recorded. To bring home the guilt to the respondent/accused, the prosecution examined as many as 9 witnesses.

7. We may note that, the evidence of the prosecutrix so far incident as allegedly happened on 21.02.2013 is in tune with the First Information Report lodged by her and she reiterated that, accused abducted her with allurement of depositing some amount in her name, took her in the rented room of PW-3 – Hanumant Shirake and committed rape on her.

8. We may note that, the prosecutrix is an adult female having two sons and her marriage with Sudhakar Kharat is subsisting. Far back in the matter of **Bharwada Bhoginbhai Hirjibhai V/s State of Gujrat** reported in **AIR 1983 SC 753**, the Hon'ble Apex Court has laid down a law

that, in Indian setting refusal to act on testimony of a victim of a sexual assault in absence of corroboration as a rule is adding an insult to injury. However, at the same time, it is well settled that, when victim of a sexual assault is a married woman then rule of prudence requires that, her testimony needs to be corroborated from the independent sources as in such cases there are numerous reasons for leveling such charge. In the case in hand cross examination of the prosecutrix reveals that she has received compensation of Rs. 25,000/- from the Government after lodging the First Information Report.

9. In the case in hand, the First Information Report lodged by the prosecutrix by itself shows that, the prosecutrix after leaving her husband, had developed illicit relations with accused since prior to two years of the incident. She lodged a report alleging that, on 22.03.2012 that the accused committed rape on her by abducting her and by alluring her. She wants that, after keeping illicit relations with the accused for two years, her theory of rape after abduction should be believed by the Court. If all this had taken place and was taking place for a period of two

years against her will then the prosecutrix had ample opportunity to lodge report against accused with police. She had not done this. Her version in First Information Report goes to show the case of consensual sex rather than rape. Rape as defined by Section 375 of Indian Penal Code, which includes amongst categories sexual intercourse by a man with a woman against her will and without her consent. Will as undertaken is one's own voluntary act, desire or wish. Consent is act of reason accompanied by deliberation the mind weighing good and evil on each side. In the case in hand, the prosecutrix had continued her illicit relations with the accused for two years and came with a version that, the accused had committed rape. The learned trial Court in the wake of this evidence has come to the plausible conclusion that, the sexual intercourse by the accused, if any, with the prosecutrix was not falling in any of the categories as defined in section 375 of the Indian Penal Code and we do endorse that view as reasonable view as the same could not have been without her consent or against her will.

10. The Investigating Officer had seized a piece of lungi and petticoat from the spot of incident, which was

ultimately found with stained with blood. This forensic evidence does not in any way connect the accused with the crime in question. The clothes of the prosecutrix and accused also came to be seized during the course of investigation and were subjected to chemical analysis. That, forensic evidence also does not support the prosecution.

11. The prosecutrix was subjected to medical examination at the hands of PW-6 Dr. Kanta Tambe, Medical Officer, Rural Hospital, Bhoom and her report shows that, it was not possible to give the confirmatory opinion even regarding sexual intercourse with the prosecutrix. No injuries were found on person of the prosecutrix. As such this medical evidence is not supporting the prosecution.

12. True it is that PW-2 Reshma Sonwane-wife of the brother of the prosecutrix deposed that, the prosecutrix accompanied the accused on 21.03.2012 as the accused promised to deposit some amount in her name, but considering the fact that, prosecutrix is matured woman of 40 years of age having love relations with the accused, this

evidence is of no assistance to infer the guilt of the accused in alleged abduction. PW-3 Hanumant Shirake had deposed that, the accused had taken his room on rent. However, panchanama of spot of incident shows that, the said room is situated in populous area and there was ample opportunity with the prosecutrix to save herself from the clutches of the accused, if really rape was committed on her after abducting her. This was not done. No witnesses are examined to show that the prosecutrix had been to this room along with the accused. Evidence of prosecutrix is not making it clear as to why she did not offer resistance to the accused or why she had not shouted to call neighbours for saving her.

13. The net result of aforesaid discussion requires us to hold that, the view taken by the trial court, being a plausible view needs no interference at the hands of this Court and therefore, the order :-

The application for leave to file appeal is rejected.

(**A.M. BADAR, J.**)

(**S.S. SHINDE, J.**)

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