

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 220 OF 2003

The State of Maharashtra
through Public Prosecutor
High Court Bench at Aurangabad

.. Appellant
(Orig. Complainant)

Vs.

Suklal Trymbak Dandge
Age 39 years, Occu.: Agri.,
R/o Vadgaon Sado,
Tq. Jamner, Dist. Jalgaon

.. Respondent
(Orig. Accused)

Mrs. B.B. Gunjal, A.P.P. for the appellant/State
Mr. S.D. Hiwrekar, Advocate for the respondent

CORAM : M.T. JOSHI, J.
DATE : 17/06/2015

ORAL JUDGMENT:

Heard both sides.

2. Aggrieved by the acquittal of the respondent from the offences punishable under section 447, 354, 509, 323 of the Indian Penal Code, the present appeal is preferred by the State.

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

. That P.W. 4 - prosecutrix is resident of

village Wadgaon, Tq. Jamner. Her family is having a field nearby the field of present respondent. On 3/9/1998, she went to her field. At that time, crop was standing. The present respondent/accused has a field in the neighbourhood. He suddenly came to her field and made enquiry regarding husband of the prosecutrix. At that time, the prosecutrix told him that the husband has went to another field for cultivation. Upon that, respondent/accused asked the prosecutrix to come alongwith him. She however did not accompany. Upon that, the respondent caught both her hands and started pulling her in the field where the crop of hybrid jawar was standing. She fell on the ground and started shouting loudly. Upon that, four witnesses named in the FIR, who were working in the neighbouring land came there. They saved her from the respondent. The respondent fled away. The bangles from her hand were broken and certain bleeding injuries were there. Accordingly, the complaint was filed on the very same day with Fattepur Outpost, on the basis of which crime for the offences punishable under section 447, 354 and 323 of the Indian Penal Code was registered at Pahur Police Station. As some of the witnesses stated that

the prosecutrix told them that in the incident the respondent uttered "मला करू दे" (Let me have sexual intercourse), offence punishable under section 509 of the Indian Penal Code was added

4. Before the learned Judicial Magistrate First Class, in all six witnesses were examined. P.W. 1 Yashodabai and P.W. 3 Pandhari were examined as the neighbouring land owners. P.W. 4 is the victim of the offence i.e. prosecutrix. P.W. 2 Vasant Dandge is the panch witness to the spot of occurrence, who has proved the same at Exhibit 16. P.W. 5 Dr. Suresh Patil had examined the complainant – victim and proved the injury certificate at Exhibit 21. P.W. 6 – Assistant Police Inspector Arjun Indhate has carried the investigation.

5. The defence of the respondent – accused, as can be seen from the line of the cross-examination and from the statement recorded under section 313 of the Code of Criminal Procedure was that there was certain dispute regarding the neighbouring land and the cultivation of the same on contract basis. The present respondent's mother had filed complaint against the prosecutrix and, therefore, he was involved in a false case.

6. The learned Judicial Magistrate First Class acquitted the respondent on the ground that there is no corroboration to the oral evidence of three witnesses at the spot i.e. no broken bangles were found. Further, the injury certificate does not corroborate the prosecution case and, there was certain doubt as to whether the prosecutrix was referred by the Police to the hospital and as to whether she was examined before filing of the F.I.R.

7. The learned A.P.P. submits that the learned Judicial Magistrate First Class has not appreciated the evidence in correct perspective. The suggestion given to the prosecution witnesses by the defence side would show that the land was muddy during the relevant period and, therefore, there could not be any chances of visibility of any pieces of broken bangles on the spot at the time of recording of spot panchanama. Further, though the defence came with a specific case that the respondent's mother had filed complaint against the prosecutrix, no documentary evidence in this regard was filed and the suggestions in this regard were denied by the prosecutrix. She submits that the evidence of the

independent witnesses would show that they had no interest at all in the case and there is no reason as to why a lady would involve her honour by making a false statement. The observation about referring the prosecutrix to the hospital and the time period of the same calculated by the learned J.M.F.C. is against the record. She further submits that since the learned Judicial Magistrate First Class has not taken reasonable and probable view of the material before him, though this is an appeal against acquittal, since reasoning is perverse, interference from this Court is warranted.

8. On the other hand, learned counsel for the respondent submits that the reasoning is proper. The evidence on record would show that the prosecutrix was not referred to the Medical Officer by the I.O. Further, the injury certificate does not corroborate the case of the prosecutrix and the pieces of broken bangles ought to have been found on the spot had really, as per the prosecution, the bangles were broken in the incident. In the circumstances, he submits that when the learned Judicial Magistrate First Class has recorded acquittal of the present respondent, on the basis of the material

before him, in the present appeal against acquittal, this Court should be very slow in interfering with the said reasoning. In support he relied on the ratio of ***State of Maharashtra Vs. Haribhau Krishnaji Deshmukh and others [2003 (4) Mh.L.J. 1060.]***

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

i) Whether the prosecution has proved that on 3/9/1998 at around 1.30 pm. in the field at Vadgaon Sado, the present respondent has committed criminal trespass by entering in the field of the prosecutrix with an intention to intimidate and insult her ?

ii) Whether the prosecution has proved that on the given date, time and place, the present respondent has used criminal force by pulling the hands of the prosecutrix and outraged her modesty of the prosecutrix ?

iii) Whether the prosecution has proved that during the incident the respondent asked the prosecutrix to have sexual intercourse ?

10. My answers to all the points are in the affirmative except no.(iii). The appeal is therefore partly allowed and the respondent is convicted for the

offences punishable under section 447, 354 and 323 of the Indian Penal Code, however, the order of acquittal of the respondent recorded by the learned Judicial Magistrate First Class for the offence punishable under section 509 of the Indian Penal Code, is hereby maintained for the reasons to follow.

R E A S O N S

11. The prosecution case is reitratated on oath by P.W. 4 – the prosecutrix and corroborated by two witnesses i.e. P.W. 1 Yashodabai and P.W. 3 Pandhari Dandge.

12. P.W.1 Yashodabai deposed that she was working in a nearby field with her brother-in-law. She heard the cries of the prosecutrix and, therefore, she, alongwith her brother-in-law proceeded to the spot. At that time, she had seen the respondent catching the hands of the prosecutrix and was pulling her hair. He was pulling her towards his field. At that time, other witnesses also came there and rescued the prosecutrix. Enquiry was made with the complainant – prosecutrix on

the spot and she narrated the incident.

. During cross-examination, only 3 suggestions were given. The witness denied that the prosecutrix is related to her. Two more suggestions were given that the respondent has not caught the hands of the prosecutrix and the witness has not heard any cries. Both the suggestions were denied. There is no further cross-examination to doubt the veracity of the statement of this witness.

13. P.W. 3 Pandhari also deposed on the similar lines. He deposed that on the day of incident, at about 1.30 pm. he was cutting grass in his field. He heard the shouts of the prosecutrix and, therefore, he went to the spot. At that time, other witnesses, as named in the F.I.R. also came there. At that time, the respondent was seen dragging the prosecutrix towards his field. He ran away after seeing the witnesses. The bangles were broken and injuries to the prosecutrix were found.

. In cross-examination, it was suggested that no bangles were broken and he has not heard any cries. The

suggestion was given to him that the mother of the respondent had filed the complaint against the present prosecutrix. The witness deposed that he is not aware of any such happening.

14. P.W. 4 i.e. the prosecutrix also deposed on the line of the prosecution. She was suggested that there was a dispute over cultivation of the land on crop share basis. She denied the same. It was also suggested that the mother of the respondent had filed the complaint against her. She deposed that she is not aware of filing of any such complaint.

15. P.W. 2 Vasant Dandge deposed that the panchanama of the spot of occurrence was drawn in his presence. The contents of the same are true and he proved the same at Exhibit 16.

. On the basis of the contents of the spot panchanama, he denied that there were no scuffle marks on the spot. The panchanama at Exhibit 16 would show that some jawar crop was damaged and certain marks of dragging were present in the field. No other incriminating material was found there.

16. P.W. 5 Dr. Suresh Patil deposed that on the day of the incident at 6:45 pm., he had examined the prosecutrix. At that time, she had come with a memo from the Police. He had found multiple superficial abrasion to left forearm and superficial abrasion on right elbow posterior side and upper forearm and the prosecutrix was complaining of pain. He proved the injury certificate passed by him at Exhibit 21.

. In cross-examination, he agreed that he has not issued the injury certificate in proforma. He further accepted that specific age of the injury is not mentioned by him in the certificate. He denied that he has issued any false certificate.

17. Though, the said Medical Officer has deposed that the Police had referred the complainant with memo, the injury certificate does not specify the same. According to this witness, he had examined the prosecutrix at 6:45 pm. on the said date. The statement of the Investigating Officer i.e. P.W. 6 A.P.I. Arjun Indhate is silent on this aspect. The learned Judicial Magistrate First Class in this regard has observed that

if the statement of the Medical Officer that the prosecutrix was sent alongwith the memo, is accepted, then it would mean that the prosecutrix was examined prior to the giving of the information about the said incident.

18. However, the F.I.R. at Exhibit 19 would show that it was first submitted to the outpost of Fattepur within the jurisdiction of Pahur Police Station and the crime was registered with Pahur Police Station at 1.15 am. in the night on 4/9/1998. It should be noted that the complaint was filed with the Outpost. It was thereafter taken to Pahur Police Station and later-on, the crime was registered. If in the meantime, the prosecutrix was directed to the Primary Health Center of Fattepur, as is seen by Exhibit 21, by the officials at the outpost, no suspicion can be cast. The learned Judicial Magistrate First Class has committed mistake in accepting the time of registration of the crime at Pahur Police Station as 1.15 am. in the morning as the time of filing of the F.I.R. at that time. He lost sight of the fact that in-fact, the F.I.R. was filed with Fattepur Out-post, much prior to registration of the crime, as is

explicit in Exhibit 19 - the F.I.R.

19. As regards the absence of the bangles on the spot, it is case of both the sides that due to rain, there was mud on the spot. It was so suggested to the prosecution witnesses by the respondent's counsel himself. In the circumstances, if some broken pieces of bangles are mingled in the mud, which was disturbed as is found in the panchanama, and, therefore, no pieces could be found on the spot, the fact could not have been taken to doubt the prosecution case.

20. As regards the injuries on the person of the prosecutrix, in the F.I.R. at Exhibit 19, it was alleged that her hand had suffered injuries due to the breaking of bangles and there were scratch marks on her forearm. The injuries found by the Medical Officer as is seen by Exhibit 21 would materially corroborate these facts. According to the Medical Officer, there were multiple superficial abrasion on left forearm and superficial abrasion on the elbow and upper forearm of the prosecutrix.

21. The deposition of the prosecutrix is on the

same lines. The learned Judicial Magistrate First Class however has doubted this evidence by observing that no corresponding injuries are found by breaking of bangles. When superficial abrasions were found on the hand, as detailed supra, one fails to understand, which more corresponding injuries were required.

22. Doubt regarding the veracity of the statements of the eye witnesses was also expressed by the learned Judicial Magistrate First Class that the evidence of P.W.1 Yashoda does not disclose that the prosecutrix had told her that the respondent asked her to allow him to have sexual intercourse. Further the omission highlighted by the learned Judge that in the evidence of P.W. 6 – The Investigating Officer that he did not depose that other witnesses have told him that they reached the spot is legally wrong. Investigating Officer can not depose about the statement made to him except about contradictions or omissions.

23. It is to be noted that normally, a lady would not involve her honour and make a false allegation of outraging the modesty unless a motive for the same would be there. In the present case, the respondent alleges

the motive as the dispute over cultivation of certain land on crop share basis and that his mother had also filed a complaint against the prosecutrix. First of the defence is denied by the prosecutrix and other witnesses. As regards second defence, had there been any complaint filed by the mother of the respondent against the complainant, then definitely, the documentary evidence could have been there in existence. The prosecutrix deposed that she was not aware of filing any such complaint, meaning thereby that no such complaint was filed and if such complaint is filed she had no knowledge of the same. We are also not aware as to whether such complaint, if any, was filed prior to the present incident or after the present incident.

24. Taking into consideration all these facts on record and more particularly, finding that this is a case of a lady making statement relating to outraging her modesty, which inspires confidence for the reasons as stated above, in my view, the learned Judicial Magistrate First Class has taken an unreasonable view of the matter. He did not take into consideration the fact that the F.I.R. was filed at the Outpost and, therefore,

it was registered at the proper Police Station in the midnight and without taking into consideration this fact, has doubted the timing of filing of the F.I.R. Further, the absence of the broken pieces of bangles were doubted, without taking into consideration the admitted fact that due to rain, the spot was already muddy which was disturbed due to the incident.

25. As the findings of the learned Judicial Magistrate First Class are against the record, as detailed supra, for the reasons already pointed out, in my view, the prosecution has proved the offences punishable under section 447, 354 and 323 of the I.P. Code, beyond reasonable doubt.

. As regards the offence punishable under section 509 of the Indian Penal Code i.e. the utterances attributed to the respondent, it is to be noted that in her immediate statement i.e. F.I.R. at Exhibit 19, the prosecutrix remained silent on this aspect. Hence the said offence is not proved beyond reasonable doubt.

26. As regards the sentences, heard both sides on the issue of sentence.

27. The record would reveal that respondent is now 65 years old. He is facing the trial since the year 1998. In the circumstances, the learned counsel for the respondent submits that no substantive sentences be awarded and the respondent be left by imposing fine only.

28. Learned A.P.P. however opposes the same. She submits that considering the nature of the offences, no leniency is required to be shown to the respondent.

29. Taking into consideration all these facts, the following order:-

30. The appeal is hereby partly allowed.

31. The order of the learned Judicial Magistrate First Class recording acquittal of the present respondent - Suklal Trymbak Dandge for the offences punishable under section 447, 354, 323 of the Indian Penal Code is hereby set aside. Instead, the respondent - Suklal Trymbak Dandge is convicted for the offences punishable under section 447, 354, 323 of the Indian Penal Code. However, the order of acquittal of the

respondent for the offence punishable under section 509 of the Indian Penal Code recorded by the learned Judicial Magistrate First Class is hereby maintained.

32. The respondent - Suklal Trymbak Dandge is directed to suffer simple imprisonment for a period of three (3) months for each of the offences punishable under section 447, 354 and 323 of the Indian Penal Code and to pay fine of Rs.200/- (Rs. Two Hundred) on each of the counts. All the sentences shall run concurrently. In default of payment of fine, he shall suffer further simple imprisonment of 10 days on the respective count.

33. The learned Judicial Magistrate First Class is directed to take steps for securing the presence of the respondent - Suklal Trymbak Dandge for serving the sentences, as directed above.

34. Copy of the present judgment be supplied forthwith to the learned counsel for the respondent free of cost.

[M.T. JOSHI]
JUDGE

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