

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.69 of 1995

Suresh Shankar Dethe .. Appellant
Versus
The State of Maharashtra .. Respondent

Mrs.Prabha V. Badadare, Advocate for the appellant.

Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 21st SEPTEMBER, 2015

ORAL JUDGMENT :-

1 This Appeal is directed against the judgment and order delivered by the Addl. Sessions Judge, Pune, convicting the appellant of an offence punishable under section 376 of the IPC and 506 of the IPC. The learned Addl. Sessions Judge has imposed a sentence of Rigorous Imprisonment for 7(seven) years and a fine of Rs.5,000/- with respect to the offence punishable under section 376 of the IPC and a sentence of Rigorous Imprisonment for 6(six) months with respect to the offence punishable under section 506 II of the IPC upon the appellant. Being aggrieved by his conviction and the sentences imposed upon him, the appellant has approached this Court by filing the present Appeal, praying that the impugned judgment of conviction be set aside and that he be acquitted.

2 I have heard Mrs.Prabha Badadare, learned counsel for the appellant. I have heard Mr.Deepak Thakre, APP for the State. I have been taken through the entire evidence adduced during the trial. I have carefully gone through the impugned judgment.

3 The case of the prosecution, as put forth before the trial Court in brief, be stated thus :-

The victim (name not mentioned to prevent disclosure of identity) is a married woman. At the material time, she was staying in village Peth with her mother-in-law Janabai (PW 3). Her two children were also staying with her. Her husband, at the material time, was staying at Mumbai. The appellant who used to reside at Village Manchar situate about 10 kms away from village Peth, is related to the victim through her father as also through her father-in-law. He is the cousin of her father as well as of her father-in-law. The appellant's daughter was to get married on 13th December 1992. The appellant's wife had to go to Mumbai in the second week of November for making necessary purchases for the marriage. The appellant, therefore, asked the mother-in-law of the victim to send the victim to his house to do the household chores in the absence of his wife. The victim then with her two children went to the house of the appellant to reside there. She initially went to his house on 17th November 1992, and stayed there till 21st November 1992. However, at that time, her menstruation period commenced, and as the appellant was not ready to accept the food prepared by her during that period, she went back to Peth on 21st November 1992. She again returned to

the house of the appellant on 24th November 1992. On that day, in the evening, she prepared the food as usual. After having dinner, the victim, the appellant and the others slept. In the midnight, the appellant gave a call for the victim. He initially demanded water and then asked the victim to prepare tea for him. When the victim went to the kitchen to prepare tea, the appellant came behind her, pressed her mouth, forcibly took her to a cot kept in the kitchen and committed rape on her. The appellant repeated his act after about 15 minutes. The appellant threatened the victim that he would kill her children if she disclosed the incident to anyone. The victim then along with her children, left the house of the appellant in early morning and came back to her house at Peth by a truck. She reported the matter to her mother-in-law Smt. Janabai (PW 3). Janabai, however, told her to wait till the marriage of the appellant's daughter would be over. The victim, however, was feeling uncomfortable and therefore, wrote to her father Changdeo (PW 2) and called him. When the father went to the house of the victim at Peth on 17th December 1992, she informed him of the incident and then, as per his advice came to Manchar and lodged a report against the appellant, alleging commission of the aforesaid offences.

4 On completion of investigation, the appellant was prosecuted and after the trial, was convicted and sentenced as aforesaid.

5 The learned counsel for the appellant submitted that the version of the victim is unreliable. According to her, the alleged incident had taken place on 24th November 1992, but the

FIR came to be lodged only on 7th December 1992. According to her, the delay in lodging the First Information Report is fatal and renders the testimony of the victim, unreliable. She also submitted that the defence of the appellant i.e. that he had advanced some money as loan to the father of the victim, and as the father was not in a position to repay the amount, the appellant was falsely implicated so as to be able to avoid the repayment.

6 In her evidence, the victim has clearly described the incident. She has also said that immediately after the incident, i.e. in the early morning, she left the house of the appellant and came to her house at Peth. She also speaks of having told Janabai about the incident and about Janabai having told her that nothing should be done till the marriage of the daughter of the appellant would be over, and that thereafter, matter would be resolved by holding a meeting. She then speaks of calling her father, disclosing the incident to him, and thereafter lodging a report.

7 In the cross-examination of the victim, nothing which would discredit her, could be elicited. After carefully going through her evidence in the cross-examination, I am unable to see that the defence has been successful in creating any doubt about the testimony of the victim, which, in itself, is consistent, convincing and reliable.

8 The testimony of the victim finds corroboration from the evidence of her father Changdeo (PW 2) and her mother-in-law Janabai (PW 3). A suggestion was given to Changdeo (PW 2) in his cross-examination, that the appellant had initially lent an

amount of Rs.5,000/-, and then an amount of Rs.2,000/- to him, and that, the appellant was demanding back the said amount. It was put to Changdeo (PW 2) that the appellant had been falsely involved in the case so as to avoid paying the said amount back. These suggestions have been denied by Changdeo (PW 2). Janabai (PW 3) has also stated about the victim coming back from the house of the appellant, and telling her that the appellant had raped her. In the cross-examination, it was suggested to Janabai that a prosecution (in respect of an offence punishable under section 498A of the IPC) had been lodged by the victim against Janabai (PW 3) and that, Janabai had been deposing falsely against the appellant so that the victim should not prosecute the said case diligently. Though Janabai admitted launching of such prosecution at the instance of the victim, she denied that she was giving false evidence.

9 The evidence of Chandrabhaga (PW 5) neighbor of the appellant also lends corroboration to the version of the victim. Now, this Chandrabhaga is related to the appellant. According to her, after the incident and in the early morning, the victim had met her, and told her that the appellant had raped her. This appears to have taken place immediately before the victim left the house of the appellant and went to her house at Peth. In the cross-examination of Chandrabhaga, it was suggested to her that there was a dispute over land between her and the appellant, but this suggestion was denied by her. Chandrabhaga admitted in the cross-examination that the incident disclosed by the victim to her was not disclosed to anyone by Chandrabhaga, till it was, later on disclosed to the police.

10 I have carefully gone through the impugned judgment. The learned Judge observed that the evidence of victim was quite reliable. The learned Judge subjected victim's evidence to a careful scrutiny, and came to the conclusion that there was no possibility of victim having made a false complaint of rape against the appellant. The learned trial Judge also held that victim's evidence was corroborated by the other evidence.

11 Before this Court, the only contention that has been advanced is the late disclosure of the incident by the victim. It is also submitted that even Janabai or Chandrabhaga (PW 5) did not disclose the incident to anyone. Though this is factually correct, I am not able to draw an inference from this that the victim had falsely implicated the appellant.

12 It is clear that the appellant was in a dominating position over the victim. He is related to the victim from her father's side as well as from the side of her father and his father-in-law. This is obvious from the fact that he could authoritatively ask the victim to be sent to his house to do the household chores in the absence of his wife. The victim evidently was in a vulnerable position. She had not been residing with her husband, and apparently also had some quarrels with her mother-in-law. The evidence of the victim shows that the appellant in the midnight asked the victim to get up and give water to him. He then asked her to prepare tea. The victim complied with the same. It appears that the appellant was judging how submissive or docile the victim was, and what was the possibility of her putting up a stiff resistance to what he intended to do.

13 The fact that the appellant had called her at his house, that she had gone there, and that she was doing the household work in the absence of the appellant's wife, is not in dispute at all. That she left the house of the appellant abruptly, is also clear from the evidence. The evidence does not indicate that she waited till the wife of the appellant came back, and only thereafter, left the appellant's house. On the contrary, it indicates that she left the house of the appellant quite arbitrarily in the early morning, and came to Peth by a truck. The conduct of the victim supports her version.

14 What is significant is there is absolutely no motive for the victim to have implicated the appellant falsely. The suggestion of the appellant that the victim's father had been given some money by him and to avoid repayment thereof, a false complaint had been lodged by the victim, cannot be accepted. As a matter of fact, this theory is not very consistent in the context of the argument about a delayed complaint having been lodged. If a false complaint was to be lodged, there was no necessity for the victim or her father to deliberately delay the matter, and then report the matter to the police.

15 The appreciation of evidence as done by the learned trial Judge, does not seem to be suffering from any error or infirmity. The reasoning of the learned Addl. Sessions Judge and the conclusion arrived at by him appears to be proper and legal. Consequently, there is no case for interfering with the impugned judgment and order.

16 The Appeal is dismissed.

(ABHAY M. THIPSAY, J)

CERTIFICATE

Certified to be true and correct copy of the original
signed Judgment/Order.