

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 48 OF 1990

1.	Bharat Dhondiba Khandekar	)
2.	Pandurang Vithal Mohite	)
3.	Manik Sukhadeo Bhanwase	)
	Appellant Nos. 1 and 2 are R/o. Kurduwadi	)
	and appellant NO.3 is R/o. Kurdu, Shivar,	)
	Taluka Madha, District Solapur	)
	(at present in Yeroda Central Prison,	)
	Yeroda).	).. Appellants.
		Orig. Accused Nos. 1 to 3.
	Versus	
	The State of Maharashtra	.. Respondent

Ms. Tejasweeta Bhosle, Advocate appointed, for the appellants.
Ms. P.P.Shinde, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 8th January, 2015.

JUDGMENT:

1. The appellants herein are convicted of an offence punishable under Section 376(2)(g) of the Indian Penal Code and are sentenced to suffer R.I. for ten years and fine of Rs.1,000/- in default to suffer further R.I. for six months by the Sessions Judge, Solapur, in Sessions Case No.240 of 1989 vide judgment and order dated 30th December, 1989. Hence this appeal.

2. Such of the facts necessary for the decision of this appeal are as follows :-

On 30.6.1989, the police of Kurduwadi Police Station had reduced into writing the oral report of the prosecutrix. According to her, she was working as a labour. She was married to Ashok Gaikwad. However, he had deserted her after one year of marriage. Her parents are residing at Mumbai. On 30.6.1989, she had come to Kurduwadi to visit her aunt at Village Laul. At about 11 a.m., she was proceeding towards Sitaram Maharaj Math. She met one of her relative. When they were proceeding on foot, four persons came from behind. They were armed with sticks. Bharat and Pandurang Mohite had accosted her. She was requesting them to release her. Her relative had also requested them to release her and at that time he was assaulted and therefore, he left the spot immediately. Thereafter, Bharat Gore had assaulted her on her hands and gelatin region. Manik gagged her mouth and then they had taken her beyond the railway line in a ditch and at that time they had ravished her one after another in an agricultural field where there was a standing crop. They were demanding money from her. On her refusal to pay the money, they had snatched her bag and had also taken away her ornaments such as ear-rings and nose-ring. On the way, she had seen a boy grazing cattle. The boys had taken her to a Gavli Appa. She had

narrated the incident to Gavli Appa. She had attempted to commit suicide by jumping into a nearby well. However, Gavli Appa had restrained her from doing so. Gavli Appa had told the accused to return her belongings. Manik Bhanvase had returned her ear-rings, but not the nose-ring. The miscreants had proceeded towards Sitaram Maharaj Math. Arjun Gavli accompanied her to the S.T. Stand and then left her alone. She approached the police station and lodged a report. On the basis of the said report, Crime No.46 of 1989 was registered at Kurduwadi Police Station against all the accused. After completion of investigation, charge sheet was filed. The case was committed to the Court of Sessions and registered as Sessions Case No.240 of 1989. The prosecution examined five witnesses to bring home the guilt of the accused.

3. The case rests mainly upon the substantive evidence of PW-2, PW-4 and PW-5 i.e. the prosecutrix since PW-1 and PW-3 are hostile witnesses.

4. PW-2 Anantrao Mukune has deposed before the Court that on 30.6.1989, he had alighted at Kurduwadi Bus Stand. The prosecutrix met him at the Bust Stand. She requested him to accompany her to Village Laul. While they were proceeding on foot and had reached upto Sitaram Maharaj Math, all the four accused accosted her from behind. Accused Nos. 1 to 3 started to drag the

prosecutrix towards railway track. He had requested them not to do so. He had also followed them but was assaulted by accused Nos. 1 and 4 and thereafter all the four accused had dragged her to the Jawar crop. It is elicited in the cross-examination that just it was the second occasion when he had met the prosecutrix. She is his relative. It is further elicited that he had not disclosed to the police that he had met her at the Bus Stand and neither had informed the police that she was his relative. According to him, she was frightened when she was dragged by all the accused and that all the four persons were unknown to him. He had walked down to Madha from the scene of offence. He had not approached the police nor had informed her relative or family members.

5. PW-4 is the prosecutrix. She has deposed before the Court that on the date of incident, she had come to village Laul to visit her paternal aunt. At about 9.30 a.m., she had reached Kurduwadi from Dhavlas. She was to come to Laul by bus. She missed the bus and therefore she decided to walk upto Laul. PW-2 had arrived at the bus stand. He had come by a different bus. At the request of the complainant, he had decided to accompany her upto Laul. When they crossed the Math, all the four accused accosted them from behind. The accused Pandurang and Manik had held her, they were dragging her. At that stage, PW-2 had requested them to refrain from dragging her. He was assaulted by accused

Nos. 1 and 4. PW-2 was scared and therefore fled from the scene. Thereafter, accused Nos. 2 and 3 took her to a ditch from the Railway track. They were demanding money from her. They snatched the bag from her. She was dragged into a Jawar crop and then she was ravished by the accused. After the incident, one Gavli Appa arrived at the well. He was calling out for some people. The accused went out of the Jawar crop. Gavli Appa enquired with the accused as to why the woman was brought by them. She came out of the crop. She wanted to jump into the well, but Gavali Appa restrained her from doing so and he pacified her and took her to his Vasti. The accused had left the spot. She returned to Kurduwadi along with Gavali Appa's son Arjun. Arjun had departed from the S.T.Stand. She then went to the police station and lodged a report alleging that she was raped by four boys. She had informed the police that she was not knowing the said person but could identify them if they were shown to her. She then accompanied the police to the Vasti of Gavali Appa in a jeep. Accused Pandurang and Manik were found sleeping there and accused No.1 Bharat was working with a plough. Accused No.4 was engaged in repairing his shed. All the four accused were brought to the police station and thereafter her report was reduced into writing. She has proved the contents of the FIR which is at Exhibit 27. She had identified her clothes.

In the cross-examination, she has admitted that for the preceding 2 – 3 years, she was residing in Parel locality at Bombay. That she had visited Laul from Kurduwadi on several occasions. That Village Laul is 8 km. Away from Kurduwadi. It is on her way to Pandharpur. Material omissions are elicited in the cross-examination to the extent that she had not disclosed to the police that she met PW-2 at the Bus stand or that PW-2 was threatened by the accused. She had also not stated before the police that she was taken to Vasti Gavali Appa and at that time they found accused Nos. 2 and 3 were sleeping or that Bharat was driving the plough or that accused No.4 was repairing his shed. According to her, the incident of rape lasted for 45 minutes.

6. PW-5 Mahadeo Sutar happens to be the Investigating Officer. He has deposed before the Court that on 30.6.1989 at about 1 p.m., the complainant had been to the police station and complained to him that four persons had committed rape upon her. Upon enquiry, she had informed him that she does not know their names, but would be able to identify them in the eventuality that they are shown to her. Thereafter, he had taken the complainant in a jeep near Sitaram Maharaj Math. She pointed out two persons who were sleeping and one third person who was working there. He took all of them in custody. From there they had been to Vasti of accused No.4. He was identified by the complainant and hence he was

also taken into custody. Thereafter they returned to the police station and the oral report of the complainant was reduced into writing on the basis of which Crime No.46 of 1989 was registered. PW-5 has verified the same as Exhibit 27. Thereafter he had contacted the panchas. The complainant and accused Nos. 1 to 3 were sent to General Hospital Solapur for examination and on 1.7.1989, he had formally assisted all the accused.

7. PW-5 has proved the omissions and contradictions as well as the statements of the hostile witnesses.

8. It is elicited in the cross-examination that PW-5 did not feel necessity of arresting the accused immediately after they were shown to him by the complainant nor he felt it necessary to hold T.I. Parade. He has also admitted that he had not enquired with the agriculturists adjacent to the scene of offence. Except Limbaji, he had not recorded the statement of any other witness. It is also admitted that accused No.1 and myself are in the witness of PW-3 Limbaji.

9. The learned counsel for the applicant has submitted that the scene of offence as narrated by PW-4 and PW-5 are at variance and the said discrepancy goes to the root of the matter. He has rightly submitted that according to PW-4,

when she was passing from the front of Sitaram Maharaj Math, the accused persons had accosted her and dragged her upto some distance and then she was taken into a ditch beyond the Railway track. However, according to PW-5, she had led PW-5 near Sitaram Maharaj Math where both accused were sleeping and the third was working. The spot panchnama shows that she was actually dragged for quite some distance upto the Railway track and the said act was committed in a ditch, where she was assaulted. Thereafter, she was taken in the midst of the standing crop near a well where the act was committed. It is pertinent to note that the scene of offence panchnama would indicate that Arjun i.e. son of PW-3 was present in the agricultural land and had informed the police that the said land belongs to him. There was no reason for the accused persons to come and sleep near Sitaram Maharaj Math from where they had taken the complainant. The panch of scene of offence panchnama has not proved the panchnamna. Moreover, the complainant was not knowing that accused Nos. 1 and 2 are working with PW-3. However, she had directly taken the police to the Vasti of accused No.4. This would simply indicate that she was knowing the whereabouts of accused No.4. PW-4 has further deposed that PW-3 had been to the agricultural land and enquired about the woman brought by the accused. The accused had told PW-3 about the woman in the crop and thereafter she had attempted to throw herself into the well where she was rescued by PW-3. It is

pertinent to note that PW-2 & 3 have not supported the case of the prosecution. The prosecution has stated that along with PSI and police she had been to the Vasti of Gavali Appa i.e. PW-3 by a jeep and accused Pandurang and Manik were found sleeping in the agricultural land of PW-3, whereas accused No.1 Bharat was working with a plough and accused No.4 was carrying on repairs to his shed. The discrepancies are writ large on the face of the record.

10. Upon perusal of the medical certificate of the complainant also there is nothing to indicate that the complainant had been dragged for some distance, assaulted or was subjected to sexual intercourse. The clinical opinion is that “no definite opinion regarding rape can be given”. The prosecution has not examined the medical officer also. Hence, there is scope to doubt as to whether the incident as narrated by the complainant, had occurred at all. The testimony of the complainant does not inspire confidence of the Court.

11. In the case of **Sadashiv Ramrao Hadbe vs. State of Maharashtra & Anr. (2006) 10 SCC 92**, the Hon'ble Apex Court has held as under :-

“It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole

surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”

12. In view of the observations made hereinabove, it can be safely held that the prosecution has not proved the guilt of the accused beyond reasonable doubt. Hence, the appeal deserves to be allowed.

ORDER

- (i) Appeal is allowed.
 - (ii) The Judgment and Order dated 30.12.1989 passed by Sessions Judge, Solapur in Sessions Case No. 240 of 1989 is hereby quashed and set aside.
 - (iii) Appellants herein are acquitted of the offence punishable under Section 376(2)(g) of Indian Penal Code.
 - (iv) Amount of fine, if paid, be refunded to the appellants.
 - (v) Bail bonds of the appellants stand cancelled.
- Appeal stands disposed of.

(SMT.SADHANA S.JADHAV, J.)