

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.372 OF 2015

Shri Naval Jatan More,
Age-49 years, Occu:Agriculture,
R/o-Satare, Tq-Sindkheda,
Dist-Dhule.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
- 2) Smt. Surekha Anil Bhil,
Age-27 years, Occu:Household,
R/o-Pimpral, Tq-Sindkheda,
Dist-Dhule.

...RESPONDENTS

...
Mr. Shrikant S. Patil Advocate for Appellant.
Mr. A.M. Phule, A.P.P. for Respondent No.1.
...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 4TH MAY,2016.

DATE OF PRONOUNCING JUDGMENT: 9TH JUNE, 2016.

JUDGMENT :

1. This Jail Appeal is by Appellant-

original accused (hereafter referred as "accused") against his conviction in Sessions Case No.121 of 2013, awarded by Additional Sessions Judge, Dhule on 26th December 2014. The accused has been convicted to ten years rigorous imprisonment under Section 376 of the Indian Penal Code, 1860 ("IPC" in brief), and fine of Rs.5000/- and in default to suffer further simple imprisonment for two months. He has also been convicted under Section 201 of IPC to rigorous imprisonment of three years and fine of Rs.1000/- and in default, to suffer further simple imprisonment for ten days. Under Section 506 of the IPC, he has been convicted to suffer rigorous imprisonment for two years. All the sentences were directed to run concurrently and the fine amount, if realized, has been directed to be paid to the prosecutrix as compensation. Thus, this Appeal.

2. In a nut-shell, the case of prosecution can be stated to be as follows:-

(A) Prosecutrix in this matter is a rustic villager of Pimpral, Tq-Sindkheda. I will refer to her as "victim". To conceal her identity, I will refer to her husband by merely using the word "husband". The victim filed First Information Report (FIR) with Sindkheda Police Station on 10th April 2013 at 7.30 p.m. and Crime No.33 of 2013 came to be registered under Section 376, 506 of IPC. The victim reported that:

. She reported that along with her husband and mother-in-law she was residing at Pimpral and doing agricultural labour work. In spite of passage of one year after marriage, she did not conceive and her husband told her that wife of one of his friend Vinod Damu Bhil was also not conceiving and they had gone to Naval Jatan More (Bhil) (*Bhagat*) (accused) residing at Satare, Tq-Sindkheda and the said Naval *Maharaj* (reference is to accused) gave one bath to the wife and she was blessed by a son.

The husband stated that they will also go to Satare to said Naval *Maharaj* and meet him and she can be given bath. Consequently, she and her husband, both went on the eve of Dandi Pournima to Satare and she was given first bath by said Naval *Maharaj*. Thereafter they were called at the time of Holi, at which time second bath was given. They were then told to come on 9th April 2013. They came back to Pimpral.

. FIR states that on 9th April 2013, the victim along with her husband reached Satare in the evening by 6.00 p.m. They went to the hut, which is near *Navnath Maharaj* Temple. There, the accused along with his family was present. They had food there and slept at 10.00 p.m. The couple slept on a cot outside the hut. Thereafter on 10th April 2013 in the early morning at about 4.00 a.m. on the say of accused, victim and her husband got up. The accused was standing near the victim and he gave a lemon in her hand and asked her husband

to wait there itself and that he will go and give bath to the victim. Thereafter the accused started walking ahead and the victim followed him. They reached nearby field where there was a drum and accused filled up a bucket of water and took her to well which is near the hillock. At about 4.30 a.m., the accused took the lemon from her hand and asked her to lie down on the ground and asked her if she wants a son or daughter. She stated that she wants a son. Thereafter accused removed his undergarment and told her not to shout or else he would throw her in the well. Then he pushed her saree upward and slept on her person and committed intercourse. He had kept his hands on her mouth and forcibly committed intercourse. Thereafter he poured water, which was in the bucket, on her head and told her that if she tells the incident to anybody, she and her husband would be killed by him. Then he asked her to go near the field to the place where water drum was there and asked her to take bath. The victim got afraid and

went near the drum and took bath and washed the clothes she was wearing and wore another saree which she had brought along. Then they came back near the hut which is near the *Navnath Maharaj* Temple. The accused then asked the couple to go home and come back again on Monday. FIR mentions that the couple then started to come back. They started to go to Lamkani village and reached there at 10.00 a.m. when she started crying loudly and the husband asked the reason. She told him that *Naval Maharaj* (accused) had forcibly committed rape on her and that he had threatened her that he will not let her and her husband remain alive if the incident is told to anybody. They then went to Pimpral and the incident was told to the mother-in-law and others like *Latabai Sajan Bhil*, *Revba Totaram Bagul* etc. (as mentioned in FIR). They had then come to the police station to file the FIR.

(B). The FIR (Exhibit 15) as above was registered by A.P.I. *Arjun Patle* (PW-5). *Arjun*

Patle then went to the spot and early morning did Panchnama. At the spot, he found pieces of bangles and lemon, which was lying there. The Spot Panchnama Exhibit 31 was recorded. Going back to the police station, the clothes of the victim were seized vide Panchnama Exhibit 9. The victim was referred to the hospital. The accused came to be arrested. Further investigation was done by P.I. Deoram Gaoli (PW-4). The said P.I. recorded statements of witnesses. The accused gave discovery of the clothes he was wearing at the time of incident and the same were seized vide Memorandum of Panchnamas Exhibit 29 and 30. The accused was also got medically examined. The medical certificate of accused (Exhibit 8) and the medical certificate of the examination of victim (Exhibit 7) were obtained. After investigation, charge-sheet came to be filed.

3. Against the accused, earlier charge was framed under Section 376 and 506 of IPC. After

partly recording the examination-in-chief of the victim, the charge came to be altered to add offence under Section 201 of IPC also relating to destruction of evidence. The accused pleaded not guilty. His defence is of denial. It is also suggested to the witnesses that there was a quarrel between the accused and the husband of victim regarding payment of money and thus false case has been filed.

4. Before the trial Court, evidence of five witnesses came to be recorded and the trial Court, after considering the evidence, found the accused guilty as mentioned above and convicted and sentenced as recorded.

5. The Appellant – accused has filed this Appeal contending, and the learned counsel for the accused has argued that for the conviction there were no sufficient and cogent reasons recorded by the trial Court. The husband has also not been

examined by the prosecution. The victim accepted that there was a quarrel between her husband and the accused over the fees of *Bhagat* and her evidence shows that except that, no other incident took place on the said day. The victim accepted that she was not aware what was written in the FIR. In the medical evidence, it was found that the victim was habituated to intercourse and there was no injury to her private part. In the other evidence, no blood stains or stains of semen were found either on the clothes of the accused or on the clothes of the victim. PW-3 Revba Bagul, the neighbour examined, could not have personal knowledge of the incident. PW-3 Revba admitted that the husband had told that he was abused and assaulted by the accused. It has been argued by the learned counsel that there is no incriminating evidence other than oral version of the victim. The doctor gave evidence that the rape may have taken place or may not have taken place. For such reasons, according to the learned counsel, the

accused is entitled to benefit of doubt and he should be acquitted.

6. Per contra, the learned A.P.P. submitted that there was no reason to disbelieve PW-1 – victim. She belongs to rural area and is illiterate labourer working in the fields. Her evidence needs to be appreciated keeping these facts in view. According to the A.P.P., it is unlikely that such a rustic woman from rural background or her husband would simply implicate the accused only because there was some quarrel regarding the fees of *Bhagat*. It is stated that the accused was taking disadvantage of illiteracy of the rustic women and purported as if he can help them to conceive. The rape has been established and the conviction needs to be maintained.

7. It is now necessary to consider the evidence to see if the prosecution proved the

offence beyond reasonable doubts and if the conviction and sentence as awarded, is liable to be maintained or requires to be interfered with.

8. Crucial evidence is that of the victim herself. She deposed as PW-1. Her evidence is that she was residing with her in-laws and brother of her husband together. Her marriage had taken place 1 $\frac{1}{4}$ year before the incident but she did not have any issue and she wanted a child. Her husband also wanted that they should have children. Friend of her husband, namely, Vinod told them that there is good *Bhagat* and if contacted to him, the wives conceive. The friend told that *Bhagat* gives bath to ladies and thereafter ladies conceive. The name of *Bhagat* was told to the husband by the friend.

9. Victim stated that in view of such information from the friend of the husband, she and her husband went to the village Satara at the hut of said *Bhagat*. It would be appropriate to

keep in view the location of the said hut. The evidence of the victim shows that the said hut is situated outside the village. There is a hillock and well near the hut. There is temple of *Navnath Maharaj* near the hut. Her cross-examination shows that the temple of God Navnath is at the outskirts of the village Satara where the accused used to sit. She admitted in the cross-examination that accused used to perform all his religious activities at the said place. The Spot Panchnama, which came to be admitted, shows that the hut was in the field belonging to the accused, which field was situated behind the temple of *Navnath Maharaj*. The victim had showed the Panchas the hut and from there the spot in field which was behind the hut and where the plastic drum was kept on the way towards the hillock from where the bucket of water had been filled. The victim showed that the well was further ahead and she took the Panchas to the said spot. From the spot, broken bangles of red colour were found as well as lemon was seized.

10. It is thus clear that it was an isolated spot where the hut was situated and at some distance, on the way towards the hillock, there was a water drum kept. This was behind the said hut. Further away, there was a well near the hillock where the actual incident took place.

11. Evidence of the victim shows that they had gone to such hut of the victim, firstly at the time of Dandi Pournima when he gave bath to her. Second occasion was at the time of Holi when they were called and again the accused had given bath to her. They were then called on the date of 9th which was the third visit. Victim stated that on such 9th date, they reached Satare village in the evening and went to the hut of the accused. She identified the accused in the Court. Her evidence is that she and her husband stayed at the hut of the accused and took dinner there and slept in the hut of the accused. She deposed that the accused

got up about 4.00 a.m. and told her husband to stay at the hut itself and that he was taking her for bath. At that time, accused gave lemon to her. Then the accused was walking ahead and she was following him. The accused took out water from the drum in bucket and took her near the well. Regarding the incident, the victim then deposed that the accused caught her and made her to lie on the ground and removed his undergarments and pushed up her saree. She deposed that he threatened that if she shouts, he would throw her in the well and would kill her husband. She deposed that accused pressed her mouth and the evidence further shows that he committed intercourse. Her evidence is that after such act, accused poured water from the bucket over her person and sent her near the drum of water and directed her to take bath and to wash the clothes. She deposed that she accordingly took bath and washed the clothes and then she was taken to the hut. The evidence is that the accused committed

the act against her wish and she was feeling ashamed. The accused then told the husband to bring her back on Saturday. She deposed that she and her husband then left by foot and came to the village Satare. It is deposed that she was weeping and her husband asked the reason and she told the incident. The evidence then discloses that the FIR came to be filed. She deposed that the FIR was recorded as per her say and the contents were correct and she had signed it. The document was proved at Exhibit 15. The evidence shows that she was got medically examined and her clothes were also seized, which she identified in the Court.

12. The victim is corroborated, regarding her subsequent conduct, by PW-3 Revba Bagul. Amongst other names, the name of Revba finds reflection in the FIR Exhibit 15. PW-3 Revba deposed that the victim resides opposite his house and on 10th April 2013 he found that she was weeping in her house and they all gathered in her house and on inquiry,

they came to know about the incident. His evidence shows details of what the victim told regarding the incident. The victim told the people who had gathered, that the accused had committed rape on her and she wanted to file complaint against the said *Maharaj* (accused) in police station but she is afraid and so they all should accompany her. He deposed that they went along with victim and she gave details of the incident to the police and police recorded her complaint as per her say.

13. Thus, although the husband of the victim has not been examined by the prosecution, the victim finds corroboration to her immediate subsequent conduct after the incident, as to how the FIR came to be filed.

14. There is no dispute regarding the fact that when PW-2 Dr. Shital Deore examined the victim on 11th April 2013, she did not find any injury to her private parts. The victim was also

found to be habituated to sexual intercourse. But then she is a married woman. The C.A. Reports of the clothes of the victim also did not reveal any semen or blood. Blood and semen were not found on the clothes of the accused also. Memorandum of Seizure Panchnamas Exhibit 29 and 30 relating to seizure of clothes of the accused were admitted by the accused. The clothes of the accused were seized after some days on 16th April 2013. The accused, who made the victim to take bath as well as wash her clothes, must have washed his own clothes also and naturally chemical analysis did not reveal any traces of semen. Looking to the details of the incident, if blood was not found, that would also not be surprising. The doctor herself deposed that if the person takes bath after sexual intercourse, the stains of semen will be washed away and the semen in vagina would also be washed away if the bath is taken in lying down position. Naturally the doctor deposed that rape might have been or might not have been committed

on the victim. She accepted that if there was slightest opposition, there could be possibility of injury to the private part.

15. Learned counsel for the accused has argued that all the above evidence would show that there was no resistance. However, I find that on the face of evidence, the victim was gullible rustic villager who, within one year of marriage, became so anxious for children and on the say of husband came up to the accused as if he was some *Bhagat* who would solve their problems. Merely by such evidence, consent cannot be presumed. There is evidence of the victim that the accused had threatened her to throw in the well and to kill her husband and had even pressed her mouth while committing the intercourse. The accused himself poured water on her person and further made her to take bath and wash her clothes. Because of all this, naturally the evidence of semen, if it fell on the clothes, would get washed away. Accused

appears to be aware as to what is the benefit in his favour of taking bath by woman after such intercourse is committed.

16. It is interesting to read the cross-examination of the victim. She gave certain admissions to the counsel for the accused, benefit of which is being tried to be taken by the accused. The trial Court discussed the cross-examination of the victim in Para 17 of its Judgment. Trial Court firstly referred to the fact that the evidence of the victim was required to be adjourned mid-way due to alteration of the charge and as medical officer was not yet examined, and final opinion regarding rape had not been received after C.A. Report had come and the accused came up with some plea for adjournment. Consequently, there was time gap and the examination-in-chief which was recorded on 16th August 2014, was completed on 18th October 2014 when the cross-examination was also recorded. The trial Court has

discussed the admissions given by the victim, but still did not agree with the counsel for the accused to read the evidence in a manner which would say that there was only quarrel on the day concerned and no rape took place.

17. I will now refer to the cross-examination of the victim.

a) In the cross-examination, victim admitted that it was true that prior to the incident, 4-5 times she had visited the house of *Bhagat* for taking treatment for infertility and always her husband used to accompany her. She visited 3 times or 4-5 times, would not be of material consequence.

b) She admitted that every time the accused used to take Rs.300/- to Rs.400/- from her husband for treatment charges. She further admitted that even after 4-5 visits to the accused, she did not

conceive and on the day of incident also the accused had asked them to come after one month. She accepted that accused poured one plate of water on her person and asked the husband to pay Rs.300/- and because of which there was quarrel between her husband and accused and they assaulted each other.

. The FIR Exhibit 15 shows that the husband had been told by his friend that by just one bath wife of his friend had conceived. If this fact is kept in view, it is natural that the husband of victim may have got annoyed when, after a couple of visits and payments on each occasion also, the accused was asking that the victim should be brought back again. This may have led to some quarrel. PW-3 Revba has also deposed in cross-examination that on the concerned day the husband told him that the said *Bhagat* had assaulted and abused him. Even if such cross-examination is kept in view, it would be undisputed fact that accused

was indeed calling women for giving bath, misguiding people that by his giving of bath the woman would conceive. Even if such quarrel did take place, it is not at all appealing that such victim and her husband from rural background, would go to such an extent so as to make allegations which would cause the victim to be looked down upon in the society even if she was not at fault. The Hon'ble Supreme Court in such context in the matter of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, (1983) 3 Supreme Court Cases 217**, observed in Para 10 as under:-

"10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or

two and that too possibly from amongst the urban elites. Because (1) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had even occurred. (2) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some

way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent."

. The Hon'ble Supreme Court observed that in view of such factors victims and relatives are not too keen to bring the culprit to books and when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated. Thus no undue weight can be given to the quarrel on count of fees as alleged.

(c) Although in the cross-examination of the victim, she accepted that the accused poured one plate water over her person and thereafter demanded Rs.300/- from her husband, this cannot be read to mean, (as the accused wants) that only one plate of water was poured on her person. The cross-examiner after taking admission regarding

the quarrel and the husband getting annoyed, put to the victim and she accepted that on that day only this much incident had taken place and thereafter they had returned. It is then being argued that it would show that the accused had only poured a plate of water on the person of the victim and asked for fees and so the quarrel took place and only that much incident occurred. I do not wish to close my eyes to the fact that the victim is a rustic farm labourer from rural area. Although she has written her name below the FIR, it can be hardly said to be a signature and it is mere writing of her name by her and the manner in which the name is written, shows that she may or may not be literate and one does not know if she can write any further. Even if she were literate to some extent, by such cross-examination, one cannot read between the lines to say that there is admission that there was no rape. No question was put to the victim referring to her examination-in-chief that what she had stated that she was raped

was not true. Without denying the specific evidence in the examination-in-chief giving various details as to how she came to be raped, such conclusions from cross-examination cannot be drawn by reading between the lines that rape did not take place. It would be construing the evidence wrongly if such effort is made.

(d) In the cross-examination the victim further admitted that "it is true that my husband disclosed all the facts to police, police wrote down it and then the police obtained my signature on the complaint". The accused is trying to take advantage of this to claim that it was the husband who gave such FIR and not the victim.

. Firstly, I find that it is a compound sentence which was put to this rustic witness. One does not know as to on which part of the question, stress was laid so as to distract the witness to concede admission. Apart from this, it may have

happened that the husband may also have disclosed the facts. It does not mean that the victim accepts that she did not tell the facts. The later part of the sentence was naturally undisputed that the police did write down and did obtain her signature on the complaint. The attention of the witness may have been on this part.

(e) Similarly, the admission of the victim that on the day of her evidence she was not aware as to what was written in the complaint, would only be a memory test. This is so specially when the complaint is not being read over to her at the time of cross-examination.

18. For such reasons, I agree with the trial Court with its observations in Para 17 of the Judgment that in the cross-examination of the victim there is no specific suggestion given to her as to why she has stated in her examination-in-chief regarding the incident and that only

general suggestions were given to the victim that nothing else happened on the day of incident. Trial Court noted that the victim has not specifically stated that the details of incident which were deposed by her on oath are false or that she had deposed those contents on the say of her husband. Regarding the FIR, trial Court found that the victim was also corroborated by PW-3 Revba who had stated that he had also gone along with the victim and at the police station the victim had given details of the incident to the police.

19. For reasons discussed above, I do not find that there is any substance in this Appeal. Considering the evidence which is available on the record, and the reasons recorded by the trial Court, there is no doubt that the offence against the accused has been established beyond reasonable doubts. The accused has been rightly convicted. The sentences as passed are also in order.

20. There is no substance in the Appeal. The Appeal is dismissed.

[A.I.S. CHEEMA, J.]

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