

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.436 OF 2005

The State of Maharashtra
(Through P.S. Majalgaon)

...APPELLANT
(Ori. Complainant)

VERSUS

Keshav Namdeo Chavan,
Age-30 years, R/o-Bhaduli Tanda,
Wadvani, Dist-Beed.

...RESPONDENT
(Ori. Accused)

...
Mr. K.D. Mundhe, A.P.P. for Appellant.
Mr. S.P. Katneshwarkar Advocate for Respondent.
...

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

DATE : 21ST JULY, 2016

JUDGMENT :

1. State has filed this Appeal against acquittal of the Respondent - original accused (hereafter referred as "accused") for offence punishable under Section 354 and 323 of the Indian Penal Code, 1860 ("I.P.C." in brief).

2. The case of the prosecution, in brief, is as follows :-

A). On 31st December 2000, victim, woman of 22 years of age filed F.I.R. at police station Majalgaon, Dist- Beed (I am not putting her name on record. I will refer to her as "victim". Her husband also deposed in the matter, I will refer to him as "husband of victim").

B). The victim reported that she is resident of Harishchandra Pimpri, Tq. Wadavni. With her husband she had come to Rajegaon Shivar as labour for cutting sugarcane. On 27th December 2000 at about 2.00 p.m. she had gone for collecting fire-wood at some distance from where sugarcane crop was there. On one side she was eating carrot, at which time the accused, who was part of the group of labour for cutting sugarcane, suddenly came there and held her hand. She got afraid and

got released her hand and ran. While running, she tripped and fell and injury was caused to her forehead. The accused came running behind her and caught her hand and pulled her inside the sugarcane crop and he put her down and kept his foot on her neck. He claimed that he wanted to sleep with her and so saying he pressed her chest. She shouted loudly. Because of her shout, her husband came running that side. At that time the accused ran away. The couple got afraid and went to the place of her parents at Chinchoti and told the incident. They stayed there and later on had come to the police station to file the F.I.R.

C). The offence was registered at Crime No. 206 of 2000 on 31st December, 2000 at 16.40 hours.

D). P.S.I. Baburao Rathod (PW-4) took over the investigation. He went to the spot on 1st January 2001 and did spot panchnama (Exhibit 20). Statements of witnesses were recorded and after

investigation the charge-sheet came to be filed.

3. The plea was explained to the Appellant-accused under Section 354 and 323 of I.P.C. The accused pleaded not guilty. His defence is that he was the only out-sider in the group of labourers who were otherwise from Harishchandra Pimpri. As his wife has a minor son, she was required to feed the child frequently and thus could not do equal labour work for cutting of sugarcane. The wages however, were being distributed equally and thus the complainant and her husband had grievance against him and they wanted him to leave the group and as he did not agree, false case has been filed.

4. State brought on record evidence of four witnesses. PW-1 is Panch Sukhdeo Rathod. PW-2 is the victim and PW-3 is her husband. P.S.I. Baburao Rathod, the investigating officer deposed as PW-4. The trial Court, after considering the oral and

documentary evidence, recorded reasons and acquitted the accused. Thus, this Appeal.

5. It has been argued by the learned A.P.P. that there was consistent evidence of the victim who was complainant, and her husband regarding the incident. It is stated that the trial Court wrongly acquitted the accused. The A.P.P. has taken me through the oral evidence. It is submitted by him that the trial Court wrongly gave benefit to the accused stating that on the spot there were no marks. According to him as the F.I.R. has been filed late because the couple was unable to decide whether they should file complainant, the marks would not remain on the spot. He wants the accused to be convicted.

6. Against this, the learned counsel for Respondent-accused submitted that spot panchnama does not show that there was dragging as claimed by victim and even there was no damage to the

crop. Thus, according to him, the trial Court rightly acquitted the accused. It is stated that although the victim claimed that she had gone to the doctor, no medical evidence was brought. Although it was claimed that she suffered abrasion and even injury to forehead, the medical examination of the victim was not got done. There is no other witness other than the couple although the record shows that the husband was working with other labours when he allegedly heard shouts. The counsel submitted that the Appeal may be dismissed.

7. I have gone through the evidence. PW-1 in this matter is one Sukhdeo Rathod. In his examination-in-chief, he claimed that the soil on the spot was disturbed. His cross-examination shows that sister-in-law of the complainant has been married to this witness. Then the evidence of PW-4 investigating officer Baburao Rathod shows that this Panch Sukhdeo Rathod is from his

brother-hood. Thus evidence of the investigating officer will also have to be carefully considered looking to the link between the investigating officer and the witnesses. The Panch PW-1 Sukhdeo Rathod admitted that the sugarcane crop in the field was not damaged. On the spot there were no pieces of bangles lying. To the south, there was sugarcane crop and on the north there was carrot crop. The spot panchnama Exhibit 20 does not show that any of crops were damaged. The learned counsel for accused has rightly argued that even if it was to be said that marks of dragging may not survive on the spot due to passage of couple of days, there was no material to show that even the crop was damaged.

8. The evidence of the victim is that she was working in the field of sugarcane at Rajegaon for cutting sugarcane with others, and at that time concerned had gone at a distance of about 50 - 100 feet away to collect fuel and she was

eating carrot when the accused came there and held her hand. She claimed that she gave jerk and started running and in the process, fell down when her foot dashed against the stone. Her evidence is that accused came and caught hold her hand and dragged her in the sugarcane and put her down on the ground and put his leg on her throat claiming that he want to sleep with her. Her evidence is that accused caught pressed her chest and she shouted, attracting her husband. According to her the accused then ran away.

9. The evidence of husband of the victim PW-3 is that at the time of incident, his wife went to collect fuel. According to him, "we were taking meals". So he was not alone and others were also there. He claims, at that time they heard commotion and shout of his wife. Thereafter, he claimed that, he rushed to the spot and saw the accused running away from there. In his evidence he claims that the details of the incident were

told to him by his wife. The cross-examination of PW-3 husband shows that they were cutting sugarcane at a distance about 100 feet from the spot and five persons were cutting the sugarcane. He admitted that even other persons there and heard the shout. Thus although there were other persons who also got attracted because of the alleged shout, there is no other witness coming forward or pointed out as witness of the incident to corroborate this couple. Victim of sexual assault can be believed even without corroboration. But in the present matter where there is admittedly delay in filing of the F.I.R. from 26th December 2000 till 31st December 2000 and even the spot panchnama has been comfortably done only on 1st January 2001 where nothing incriminating is found and no medical evidence is also available although in view of the incident claimed there should have been medical evidence available, circumstances are also not corroborating. There is no corroboration becoming

available either from the circumstances or from any other eye witness. The evidence of victim tries to show that she ran, she fell down, she got hurt to her forehead and the accused when pressed her chest, she suffered injuries to her chest, still no medical evidence regarding the injuries has been brought. Although the victim claimed that in the incident her clothes got spoiled because of the mud, the husband did not agree to this. There was no evidence brought of broken bangles or torn clothes of the victim.

10. I have gone through the Judgment of the trial Court. The trial Court considered that if the evidence of the victim was that she had shouted and the incident went for some time, no other witness is available. According to the trial Court, it is absurd that she was shouting continuously while her husband and others were standing at a distance of about 200 feet from the spot and they did not rush to the spot. Trial

Court considered that there was no evidence of broken bangles or damaged clothes available when it is alleged that much force was used by the accused for the commission of the incident. Trial Court considered that although the incident claimed that there was dragging of the victim inside the sugarcane crop, there were no signs of dragging or damage to the crop available. Trial Court noticed that the investigating officer pleaded ignorance regarding damage to the crop. Trial Court noticed that although the victim claimed that she had taken treatment at the place of one doctor Anandgaonkar, no evidence in that regard was brought on record. For such reasons, the trial Court acquitted the accused.

11. Going through the material available, I find that the reasons recorded by the trial Court to acquit the accused, is possible view of the evidence. I find that the victim is not corroborated by any independent witness although

such witness could be available and there is no circumstantial evidence also available to lend any credence to the evidence of the victim. Looking to the cross-examination of the witnesses and the defence taken by the accused, it would not be appropriate to interfere in this Judgment of acquittal recorded by the trial Court.

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

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

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