

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.245 OF 2003

Uttam s/o Shankar Suryawanshi
Age 34 years, Occ. Labour,
R/o Halad-Wadona, Taluka Jalkot,
District Latur

... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of
Judicature at Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Shri R.P. Bhumkar, Advocate for applicant
Shri R.V. Dasalkar, A.P.P. for State
.....

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

DATED: 25th August, 2016.

Date of reserving order : 11th August, 2016
Date of pronouncing order : 25th August, 2016

JUDGMENT :

1. The appellant - accused has been convicted under Section 354 of the Indian Penal Code, 1860 (I.P.C. in brief) by Additional Sessions Judge, Udgir in Sessions Case No.37/2002 on 5.3.2003. He has been convicted under Section 354 of the I.P.C. and sentenced to suffer rigorous imprisonment for two years and

to pay fine of Rs. 5000/-, and in default to suffer simple imprisonment for two months. The accused was charged with offence under Section 376 of the I.P.C. also, but he came to be acquitted of the same.

2. The case of prosecution in short is as under :

- (a) The prosecutrix (hereinafter referred as "victim"), filed complaint mentioning the same as "application" at Police Outpost, Jalkot in the jurisdiction of Police Station Wadona on 14.4.2001. The same was received by Police Head Constable Ganeshsingh Thakur (P.W.4). He forwarded the same to Police Station, Wadona and Crime came to be registered at Police Station, Wadona at No.52/2001 at 00.30 Hrs. in the same night itself vide Exh.29, although date had become 15.4.2001.
- (b) The victim reported that, she resides at Halad-Wadona along with her parents and elder brother Dhanaji and does labour work. On 14.4.2001, she and her parents were at home. Lights went off and they were at home. She wanted to go for urinal and came outside for urinating and sat for urination on the side of road. At that time, accused Uttam

Shankar Suryawanshi, who resides in the neighbourhood, taking advantage of the darkness, came near her and with bad intention, caught hold of her hand and took her inside his house and started groping with her. She shouted. This attracted her parents and brother and one neighbour Balaji also came that side. At that time, the accused ran away. The time was about 8.30 - 9.00 p.m. Thus, action should be taken against the accused.

- (c) Registering such offence under Section 354 of the IPC, the matter was taken up for investigation by P.W.4 Ganeshsingh. He prepared spot panchanama Exh.20. He recorded statements of witnesses. The accused was arrested on 20.4.2011.
- (d) The victim, on next day of incident, complained of pain in her private parts to her mother and on enquiring, the mother came to know that the victim had actually been raped. The victim and her parents again took her to police. Later on they went to higher officers and supplementary statement of the victim came to be recorded on 23.4.2001. The Deputy Superintendent of Police sent the supplementary statement to P.W.5 A.P.I. Shankar Mali. Section 376 of IPC came to be added and the

investigation was done by P.W.5 Shankar Mali. Necessary procedure of getting the victim medically examined and collecting samples of vaginal swab of the victim and semen of the accused was carried out. The samples were sent to Chemical Analyser and C.A. reports Exhibits 22 and 23 were obtained. After completing the investigation, charge sheet came to be filed.

3. Prosecution examined 5 witnesses in Court. The accused admitted spot panchanama Exh.20 and medical examination report of the victim Exh.21. The defence of the accused is of denial. According to him, due to political rivalry the offence came to be lodged against him.

4. The trial Court considered the oral and documentary evidence as brought on record by the prosecution. Trial Court acquitted the accused with regard to Section 376 of the IPC as with regard to the alleged rape, the same was reported late and medical examination in that regard was lost. For such and other reasons recorded, the trial Court acquitted the accused as regards Section 376 of IPC. State has not filed appeal against acquittal on that count and discussion of evidence in that regard is not necessary. The accused, however, came to be convicted

under Section 354 of the IPC as the trial Court found the evidence in that regard appealing and the accused came to be sentenced as mentioned above.

5. After the appeal was filed, the accused was released on bail. However, as the accused and his advocate were not present,ailable warrants were issued, which returned unserved and the trial Court was directed to take steps for forfeiture of the bail bonds of the accused. Non-ailable warrant was issued and on securing presence of the accused, counsel for the appellant - accused appeared. The appeal has then been argued.

6. The counsel for the appellant - accused has been heard in the matter. It has been argued by the learned counsel for the accused that, the evidence of P.W.1 Malhari, the father of the victim shows that, he had strained relations with the accused. The victim, in the night of 14.4.2001, while filing the complaint, did not report regarding any rape and only after eight days such claims were made. The learned counsel submitted that, the evidence of the victim should be disbelieved as earlier she claimed only outraging of modesty, but subsequently claimed that she was raped. In the evidence of P.W.2 Venubai, contradiction was proved regarding her evidence claiming that when he had gone searching for the victim, she had a torch. It is

further argued that, no independent witness has been examined and thus, the parents of the victim and the victim should have been disbelieved. The counsel questioned as to why P.W.2 Venubai should go and search for the victim in the night at a house, which is further away and not first come to the house of the accused, which was closer.

7. The learned A.P.P. submitted that, the victim comes from rural background and initially did not tell her parents that she had actually been raped and only complained of outraging of modesty. The accused got benefit on that count under Section 376 of the IPC, but it would not be appropriate to disbelieve the victim due to such reason. It is submitted by the A.P.P. that, only because some political connections are referred, it cannot be presumed that the victim and her parents coming from rural background would falsely make such serious allegations against the accused. The A.P.P. supported the reasons recorded by the trial Court for convicting the accused.

8. The learned counsel for the accused, in reply, claimed that, the evidence shows that, the accused has a family and thus, according to him, it was unlikely that the accused would have committed such incident in the evening.

9. Learned counsel for the appellant relied on the following cases :-

- (1) Datta Jagannath Manera Vs. The State of Maharashtra
(2005(2) Bom.C.R. (Cri.) 910)
- (2) Vasant Hindurao Patil Vs. The State of Maharashtra
(2011 BCI 126)
- (3) Diwakar s/o Keshao Madpati Vs. The State of Maharashtra
(2012 BCI 124)
- (4) Kuwarlal Chandulal Patle Vs. The State of Maharashtra
(2012(4) Bom.C.R. (Cri.) 193)
- (5) Vasant Mahadeo Powar and another Vs.
The State of Maharashtra & another.
(2015(4) Bom.C.R. (Cri.) 796)

10. Referring to the above cases, the learned counsel submitted that, in those matters the accused were acquitted giving the benefit of doubt. I have gone through the concerned judgments. The judgments have their own facts, and evaluating the evidence in those matters, the accused persons were given benefit. However, I am keeping the above judgments in view while proceeding to discuss the evidence in present matter to see if there are grounds on the basis of which the judgment of conviction should be reversed into acquittal.

11. Firstly there is evidence of P.W.1 Malhari. He deposed that, he along with his wife, son and the victim were

residing at Halad-Wadona. It is deposed that, he and his family were at home and they had finished the dinner. The victim went out of the house for urinal at about 8.00 - 9.00 p.m. and that it was dark. He deposed that, he came out of the house waiting for the victim to reach for about 10 minutes. He deposed that, he then searched for the victim around and heard some noise of his daughter from the house of the accused. According to him, hearing their noise, the accused ran away from the house and thereafter his daughter came out from the house of the accused. According to P.W.1, the victim then disclosed the incident to her mother P.W.2 Venubai and in turn, the wife told this P.W.1 as to what had happened.

12. P.W.1 is supported by his wife Venubai. She also deposed that, they had completed their dinner and it was day of 14.4.2001 and the time was about 8.30 - 9.00 p.m. They were chit-chatting in the house. The victim went outside for urinating at that time. She deposed that they waited for her, but when the victim did not return early, she came out and enquired about the victim from neighbours. When she was about to reach the third neighbour, she heard some noise from the house of Uttam and went near the house. Her evidence is that, she had torch and in the said light she saw the accused leaving his house and running away. She deposed that, her husband and son were also with

her. Thereafter the victim came out of the house. P.W.2 deposed that, she enquired with the victim and the victim at that time told her that when she stood after urinal, the accused pressed her mouth by hand and brought her to his house and that the accused had scuffled with her with intention to outrage her modesty. P.W.2 deposed that, thereafter she along with her husband, the victim and the son went to Jalkot Outpost where the victim filed the complaint and then they came back.

13. P.W.3, the victim herself has deposed that it was day of Jayanti of Babasaheb Ambedkar. In the night at about 8.00 p.m., she and her family were at home. She went for urinating, and when she stood up after urinating, (she deposed that), the accused Uttam came there and pressed her mouth and took her inside his house and forced her to fall on the ground. She deposed that, he put gag in her mouth. Her evidence then shows as to how then she was raped. She deposed that, because of the commotion, her parents came there and the accused ran away. She deposed that, her mother enquired with her, but due to shame she did not tell her mother as to what happened. She deposed that, she only told that the accused slept with her and scuffled with her person. Her evidence is that, her parents, brother and she then went by autorickshaw to Jalkot and she filed complaint Exh.29.

14. The evidence of P.Ws.2 and 3 then refers as to how on next day the victim started complaining pain in her private part. Then, part of incident regarding rape, she disclosed to her mother. The evidence is that, after 8 days, they went to Wadona Police Station and gave report of details of the incident to police.

15. This evidence of these witnesses has been accepted by the trial Court for convicting the accused under Section 354 of the IPC. The learned counsel for the accused is questioning the evidence by referring the evidence of P.W.1 Malhari, who deposed in cross-examination that he "was" Sarpanch of their village. He further deposed that, it was not true to say that he was also candidate in the last Grampanchayat elections. He accepted that, Gangadhar, the brother of accused was candidate for the last Grampanchayat elections and that he got elected. P.W.1 denied that, Gangadhar was from opposite party. He rather deposed that, accused is in his relation. P.W.1 denied that, accused does not follow P.W.1 in politics. However, he accepted that, he had strained relations with the accused. The cross-examination further brought on record, and the spot panchanama Exh.20 also shows that the victim and the accused are having their respective houses on the same road and the houses are nearby each other. The road is hardly 7-8 ft. wide.

There are other people residing in the neighbourhood. P.W.1 denied that due to political rivalry he had filed the false complaint.

On the basis of such cross-examination, the argument is that, due to political rivalry false case is filed. I am not impressed by the argument. The cross-examination of P.W.1 only shows that, at some point of time, this P.W.1 had been a Sarpanch. He denied that, in the last Grampanchayat elections, he either contested the elections or that he was from opposite panel of Gangadhar, the brother of accused. If P.W.1 would have had any grievance against Gangadhar, allegations would have been against Gangadhar, and there appears no reason on that count to make allegations against the accused, who himself does not claim to be political leader in his own right. P.W.1 fairly admitted that he had strained relations with the accused. The accused, however, did not probe further as to the cause of the said strained relations. Relations become strained also due to the incident in question by the time the witness is in the witness box. Only because he accepts that he had strained relations with the accused does not mean that the strained relations are since before the incident. On the basis of such vague cross-examination, no disadvantage can be taken by the accused.

16. The other argument that accused was married person having children and parents, and so could not have indulged in such incident, to drag the victim home also deserves to be rejected. Only because he has a family does not mean that at the concerned time the family was also staying in the same house or that they were present there. No suggestions are put to any of the witnesses that the family also was there. It cannot be simply presumed that only because the accused has a family, the family was present in the house in the concerned evening. P.W.1 did not admit that he had any political rivalry. As such, there is no reason to disbelieve prosecution witnesses. Merely because strained relations are there or even if there was political rivalry, it is unthinkable that in a rural background, the parents would put in jeopardy the name of their unmarried daughter and risk her marriage prospects by making such allegations. The evidence in present matter shows that, hurriedly after the incident, P.Ws.1 and 2 appear to have married off their minor daughter. For the incident dated 14.4.2001, when the victim came to depose on 30.11.2002, she was already married.

17. The argument of the learned counsel for the accused that no independent witness has been examined although the spot panchanama and the evidence shows that there are people in the neighbourhood also cannot be accepted so as to disbelieve

the witnesses already examined. No doubt in the F.I.R. Exh.29 the victim had, while reporting, mentioned that one neighbour Balaji Suryawanshi had also reached when she had shouted and the accused ran away, but even if Balaji has not been examined, if the evidence is properly appreciated, it can be seen that, evidence of P.Ws.1 to 3 shows that, after the accused ran away and the victim came out from the house of accused, it is not that the victim was asked openly by the parents and her brother in presence of this Balaji as to what happened. The evidence shows that, the victim talked to only her mother as to what had happened and the mother in turn told the father. Thus, the victim confided only in her mother. Such conduct is natural. It does happen with young girls that in situations like present one, they would rather speak to their own mother than tell publicly and openly as to what has happened. There is no reason to doubt the evidence of P.Ws.1 and 2 and the victim regarding the incident of outraging of modesty. If no witness other than family was told, there may not be such other witness.

18. In the cross-examination of P.W.2 Venubai, omission has been proved regarding her evidence that, when she had gone out searching for her daughter, she had a torch. Even if this contradiction has been proved and even if the evidence of her's that she had a torch is to be ignored, there is sufficient evidence

against the accused regarding the act alleged. P.W.1 Malhari also deposed that, when they heard noise from the house of accused and went there, he had seen the accused running away from there. This evidence of P.W.1 was not challenged in the cross-examination by any denial that he could not have seen the accused running away from there. Similarly, there is no reason to discard the evidence of P.W.3, the victim herself. Admittedly the accused was residing in the neighbourhood and there is no dispute regarding the fact that the victim and her family were knowing the accused. If the lights went off and victim took opportunity to go out for urinating on the road and the accused caught her and dragged her in his house, the victim apparently had much more opportunities to see the accused. The victim was dragged and taken by the accused in his own house and thus, the victim being able to see the accused and identifying him, is clearly there. After incident, when parents reached, victim coming out from house of accused is also circumstance against accused. Even if it was dark, looking to the act alleged, if the neighbour is indulging in such act, the victim would definitely be in a position to identify the person. It would be unthinkable and sheer imagination to contend that the victim would have gone outside her house in pitch darkness where even if you put a finger in your own eye, you would not be able to see. When she had gone out for urinal, and when her parents went out

searching for her, clearly there was some visibility which would be enough at least to see persons or objects which are nearby. It was thus possible for the victim to identify the neighbour, who was holding and dragging her inside the house.

19. The learned counsel for accused argued that, the cross-examination of P.W.2 shows that, she enquired for the victim by going at the house of her husband's brother, which is at longer distance from the house of accused. The learned counsel expressed surprise on this that, instead of searching nearby, the mother went to a house at a longer distance. There is nothing surprising in this. It would be natural for P.W.2 to think that the victim may have gone to her uncle's place which is nearby. It would be unnatural for her not to first check at the place of relative or friend nearby and to go and search directly at the house like that of the accused.

20. In para 12 of the judgment, trial Court recorded reasons not to convict under Section 376 of the Indian Penal Code. Delay leading to insufficient evidence on that count does not mean that evidence regarding Section 354 of Indian Penal Code should be doubted. Complaint on that count was immediately filed.

21. I have gone through the judgment of the trial Court and the reasons recorded to convict the accused under Section 354 of the Indian Penal Code. The reasons recorded by the trial Court need to be accepted. There is no substance in the arguments raised by the learned counsel for the accused. There is no substance in the appeal. The appeal is dismissed.

(A.I.S. CHEEMA, J.)