

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 467 OF 1995

Pradudhan Sugriv Kamble
R/o Ahergaon, Tal. Madha,
Dist. Solapur.

.....Appellant

V/s.

The State of Maharashtra

....Respondent

WITH
SUO-MOTO APPLICATION NO. 7 OF 1995
IN
CRIMINAL APPEAL NO. 467 OF 1995

The Court on its own motion

....Applicant

V/s.

Pradudhan Sugriv Kamble
R/o Ahergaon, Tal. Madha,
Dist. Solapur.

....Respondent

Mr. Omkar Nagwekar Advocate for Appellant
Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

RESERVED ON : 02/12/2015

PRONOUNCED ON: 12/04/2016

JUDGMENT:

Appellant herein is convicted for offence punishable under section 376 of Indian Penal Code and is sentenced to suffer rigorous imprisonment for 3 years and fine of Rs. 2000/- in default to suffer rigorous imprisonment for 6 months by Additional Sessions Judge, Solapur in Sessions Case No. 167 of 1994 vide Judgment and Order dated 25/08/1995.

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

3) On 25/06/1994, prosecutrix lodged a report at Tembhurni Police Station alleging therein that she works as labour with an agriculturist. She goes for grazing cattle of the said agriculturist. Her wages are paid to her mother. On 25/06/1994, she had gone for work. She was sent to flour mill. The mill was closed and therefore, she returned. Then she went to attend the marriage in Ghade family. Thereafter, she returned home and had taken the cattle for grazing. She was sitting nearby the cattle. At that time, Parbya Kamble belonging to Mahar caste and Balu, the carpenter soon approached her. Balu had provoked Parbya to ravish

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her. Parbya had then asked her to accompany him. She refused on the ground that her mother would scold her and that she is not yet married. In the meanwhile, Parbya had ravished her. By then, Balu had asked him to rush home immediately. Thereafter, she tied the cattle. She went to the flour mill. On the way she met her mother. She informed her mother about the act of Parbya. She then asked her to narrate the incident to her employer. He sent them to Police Patil. She then narrated the incident to the Police Patil and thereafter, to the police. On the basis of her report, crime no. 98 of 1994 was registered against the accused for offence punishable under section 376 of r/w 34 of Indian Penal Code. After completion of investigation, charge-sheet was filed on 06/08/1994. Case was committed to the court of sessions and registered as Sessions Case No. 167 of 1994. Prosecution examined as many as 6 witnesses to bring home the guilt of the accused.

4) The case mainly rests upon the evidence of prosecutrix P.W. 5. She has deposed before the Court that on the day of incident, she had been to attend the marriage of Shankar Ghadge along with her parents. She had meals in the noon. Thereafter, she went to her work place and

carried the cattle from the house of her master for the purpose of grazing. Her mother had been to Modnimb and father had gone to attend the agricultural work in the land of Koli. At the time of incident, she was sitting on the stone, accused no. 1 had approached her. Accused no. 2 followed her. Accused no. 1 had started abusing her. He had then ravished her. She had informed him that she would complaint about him to her father and thereafter accused nos. 1 & 2 had fled from the scene. She has further deposed that she had been to the house of her master Bansode (Baman). She had gone to the flour mill. She met her mother and narrated the entire incident to her mother. She had informed about the same to her master who had sent them to the Police Patil. Police Patil had then accompanied her and her parents to the police station where she had lodged the report. She has proved the contents of F.I.R. which is at Exhibit 31.

5) It is elicited in the cross-examination that she used to leave for work early in the morning and return late in the evening. Other cowboys used to accompany her. She used to take lunch with all the boys between 12.00 to 12.30 p.m. They used to have fun with each

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other. In the cross-examination she has reiterated that she had attempted to resist the act of the accused. She has admitted in the cross-examination that the statement before the police was given by her parents and Police Patil whereas she was sitting outside the police station. That the police had brought the written paper and had obtained her thumb impression on it. She has specifically stated that she cannot assign any specific reason for the omissions in the F.I.R. There are inherent omissions and contradictions in the evidence of prosecutrix.

6) P.W. 5 has candidly admitted before the Court that it is true that since accused no. 2 had seen her in the company of accused no. 1 and therefore, she had narrated the incident to her mother out of fear. She has also admitted that she had missed her menstruation two times prior to the incident. Her parents had taken her to task. Her mother used to tell her often to behave properly since she was a grown up girl. She was sent for medical examination. She was examined on 26/06/1994. Her age was shown as 18 years. In her history to the doctor she has stated that she was ravished by accused Pradudhan Kamble on 25/06/1994.

There were no external injuries on her person. No fresh injury. There was old hymen tear. The opinion was reserved.

7) P.W. 4 Dr. Devkaran had examined the victim on 26/06/1994. She has proved the medical certificate at Exhibit 11. She has specifically stated that she could not give expert opinion as far as the age of the prosecutrix is concerned.

8) P.W. 1 Sadashiv Patil was the Police Patil of the village. He has deposed before the Court that the victim had narrated to him that accused no. 2 had instigated accused no. 1 to perform sexual intercourse with the prosecutrix.

9) P. W. 2 Vasudeo Bansode was the employer of the prosecutrix. That the prosecutrix used to take his cattle for grazing. That the prosecutrix is credulous in nature. He has deposed before the court that on 25/06/1994 at about 7.30 p.m., Yashodabai had come to his house along with her daughter and informed him that accused no. 1 has committed rape upon the prosecutrix. Prosecutrixd has narrated the incident and had informed P.W. 2 that the incident had occurred in the land of Ghadge which is adjacent to the land of P.W. 2 i.e. Gat No. 217.

He had then summoned the Police Patil to his house. P.W. 2 informed the police patil about the incident as narrated to him by the prosecutrix and her mother and thereafter the duo was taken to the police station for recording the statement. He has evaded to answer as to whether prosecutrix and her mother had attended the marriage ceremony of Shankar Ghadge.

10) P. W. 3 Yashodabai Chavan is the mother of prosecutrix. She has deposed before the Court that on the day of incident, marriage of Shankar Ghadge was to be performed. She along with her husband and daughter had been to attend the marriage. Thereafter, she had gone to the weekly Bazar and her daughter gone for grazing the cattle. In the evening, on the way, she met her daughter. Initially her daughter did not disclose anything to her since Hirabai was present, however, after departure of Hirabai, prosecutrix narrated the incident to her. Then they went to the house of P.W. 2 and narrated the incident. Their statement was then recorded by the police in Tembhurni Police Station. One Pishu Khadtare had accompanied them to Tembhurni Police Station. There are inherent omissions and contradictions in her

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deposition which are proved by Investigating Officer. The material contradiction is exhibited as portion mark 'A'. It is admitted in the cross-examination that she and her husband used to take their daughter to task and were keen insisting upon her to behave properly.

11) P. W. 6 is Mohd. Haneef, the Investigating Officer. He has proved the omissions and contradictions in the evidence of witnesses.

12) At the time of admission of the appeal, this Court (Coram: Vishnu Sahay, J.) had taken note of the fact that learned Sessions Judge has convicted the appellant for offence punishable under section 376 of Indian Penal Code but has awarded a sentence less than minimum prescribed and therefore, issued notice of enhancement registered as suo-moto application no. 7 of 1995.

13) Upon perusal of substantive evidence of prosecutrix, more particularly her admission that it is true that accused no. 2 had seen her in the company of accused no. 1 and she had apprehended that he would disclose about the same to her parents and to save herself from any humiliation before her parents, she had informed her mother that she was ravished by accused no. 1. This admission by itself would

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speak volumes. Prosecutrix was 18 years old at the time of incident. Her mother had also deposed before the Court that she and her husband had, time and again, asked their daughter to behave properly and not to stay in the company of the boys would also speaks volumes for itself. Medical examination report also does not show that she had any external injuries and that there was no fresh tear. Doctor has also reserved the opinion as to whether she had recent sexual intercourse.

14) It is true that conviction under section 376 of Indian Penal Code can be awarded on the solitary testimony of the prosecutrix, however, it should be a sterling testimony. The substantive evidence of prosecutrix should not only appear to be truthful but should also inspire the confidence of the Court. It is only in that eventuality that corroboration would not be necessary.

15) In the case of **Sadashiv Ramrao Hadbe vs State of Maharashtra And another** reported in (2006) 10 SCC 92 Hon'ble Apex Court has observed that :-

“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 of

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.”

16) In the present case, the conduct of the prosecutrix would not inspire the confidence of the Court for the following reasons.

- (i) That she was acquainted with accused persons.
- (ii) That soon after the incident, she had returned to the house of her master.
- (iii) She had then taken the cattle for grazing and then tied them.
- (iv) She had not informed her master at that time about the incident.
- (v) She had proceeded to flour mill to fetch the flour which she had kept for grinding.

(vi) It was coincidence that she met her mother on the way.

(vii) Her mother's evidence would show that initially she had not disclosed the incident on her own.

(viii) On her way to her house, she had informed her mother about the incident. The court cannot be oblivious of the admission of the prosecutrix in the cross-examination that she had apprehended that accused no. 2 would disclose to her parents about her intimacy with accused no. 1 and therefore, she on her own had told her mother, however, the story appears to be twisted.

(ix) The medical evidence does not corroborate her narration of the incident.

17) Hence, the story put forth by the prosecutrix cannot be believed.

It is pertinent to note that in her testimony before the Court she has deflected from her story in the F.I.R., more particularly, the prelude to the incident. In the substantive evidence, she has nowhere stated that accused no. 2 had instigated the accused no. 1 to have sexual intercourse with her and hence, accused no. 2 has been acquitted of the

offence punishable under section 376 r/w 34 of Indian Penal Code.

18) The reasons assigned by the Court for awarding of sentence less than the minimum are not justifiable. It is only stated that accused is not married, he is a labourer and taking into consideration his young age, he was shown leniency on the ground of young age or any sympathy that accused has old aged parents. It appears that the moment the evidence of prosecutrix inspires confidence of the Court, there is no reason for showing any leniency to the accused person. In the present case, prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The possibility of consensual sex cannot be ruled out. Hence, accused deserves to be acquitted of the charges levelled against him. Since the accused is being acquitted of the charges levelled against him. Suo-moto notice is disposed of accordingly.

ORDER

- (i) Appeal is allowed.
- (ii) The Judgment and Order dated 25/08/1995 passed by Additional Sessions Judge, Solapur in Sessions Case No. 167 of 1994 is hereby

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quashed and set aside.

(iii) Appellant is acquitted of offence punishable under section 376 of Indian Penal Code.

(iv) Fine amount, if paid be refunded to the appellant.

(vi) Bail bonds of the appellant stand cancelled.

(vii) Suo-moto application stands disposed of accordingly.

(viii) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)