

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 522 OF 1996

- 1 Tanaji Rau Mane
Age : 25 years.
- 2 Maruti Nivrutti Jadhav
Age : 22 years.
Both residents of Rethare,
Tal. Shahuwadi,
Dist. Kolhapur. ... Appellants.

Versus

- 1 The State of Maharashtra.
- 2 Sou Indubai w/o Ananda Patil
r/o. Rethare, Tal. Shahuwadi,
Dist. Kolhapur. ... Respondents.

Mr. S.V. Sadavarte, advocate for appellants.

Mr. H.J. Dedhia, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : APRIL 5, 2016

JUDGMENT :

1 The appellants herein are convicted for the offence punishable under Section 376 read with Section 34 of the Indian Penal Code and sentenced to suffer R.I. for 10 years and to pay fine of Rs. 5,000/- I.d. R.I. for one year, they are also convicted for the offence punishable under Section 506 read with Section 34 of the Indian Penal Code and sentenced to suffer R.I. for one year and to pay fine of Rs. 500/- I.d. to suffer further R.I. for 2 months by 5th Additional Sessions Judge, Kolhapur in Sessions Case No. 111 of 1995. Hence, this appeal.

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

(i) That Superintendent of Police, Kolhapur had received an anonymous letter. The Superintendent of Police, Kolhapur called upon P.W. 11 Shankarrao Jadhav and directed him to record statement of the prosecutrix. Pursuant to the said directions, PW 11 had called upon the prosecutrix P.W.1 and recorded her statement.

(ii) On 6th March, 1995 the statement of the prosecutrix was recorded. She disclosed to the police that she resides with her husband Ananda Patil and two sons namely Sandeep and Sanjay. That they work as labourers.

(iii) That she was acquainted with six persons named in the FIR. Tanaji used to visit her house quite often. They were also working as labourers. Sometimes, they had to work at night also.

(iv) That a month prior to the lodging the report, she had been for cutting sugar cane alongwith her husband at 6 a.m. At about

8.30 a.m. she went to work at brick kiln of Balu Pawaskar. She returned home at about 8.30 p.m.

(v) Tanaji had been to her house and had informed her that there is work and had asked her to come alongwith him. Her husband had asked her to go with Tanaji to see the nature of the work.

(vi) On the way, just near her house they had met Maruti Jadhav. She accompanied both of them. At a distance, they both had stopped. She had enquired with Tanaji about the nature of work. That Tanaji had gagged her mouth and thereafter, she was ravished by both of them. At that time, other four accused had come on the spot and she was ravished by all of them.

(vii) She had specifically stated in the FIR that all the accused had committed rape on her. Thereafter, the accused had brought her at her house.

(viii) That her husband told her that he had searched for her. She disclosed the incident to her husband. The couple was scared that the accused would cause some danger to them. That the accused had threatened her of dire consequences and therefore, they did not lodge report.

(ix) On the following day, they had been to Dadu Patil and informed him about the incident. He told him that it was a time of election and that it would not be proper time to initiate prosecution. Then they met Sarpanch R. B. Patil. He directed them to approach police station and lodge report. However, she was not keeping good health and therefore, they did not approach police station. Similarly, she was worried that by disclosing the incident to the police, she would be humiliated and that she had to go to Kolhapur.

(x) She was then summoned by the police and her statement was recorded. On the basis of her statement, Crime No. 13 of 1995 was registered against 6 persons for offence punishable under Section 376 read with Section 34 of the Indian Penal Code and under Section 506 read with Section 34 of the Indian Penal Code at Shahuwadi Police Station. After completion of investigation, charge-sheet was filed on 31st March, 1995. The case was committed to the court of Sessions and registered as Sessions Case No. 111 of 1996.

3 The prosecution examined as many as 11 witnesses to bring home the guilt of the accused.

4 P.W. 1 is the prosecutrix. She has deposed before the Court that the incident had occurred on Sunday at night. The accused

No.1 had called her for some work. She had proceeded with the accused No.1. The accused No. 2 was just beside her cattle shed. Thereafter, she has deposed about the incident in consonance with her FIR. In her examination-in-chief, she has specifically deposed that she had disclosed the incident before Dr. Ranga. In the cross-examination, it is elicited that she was working as mason at the brick kiln of Balu Pawaskar. That she has not enquired with the accused No. 1 the nature of work for which she was being called. The incident seems to have occurred near her cattle shed. From there, she was taken to canal and was gang-raped by all of them. She has admitted that there were abrasions on her back. However, she had not shown the said injuries to Dr. Ranga. It is admitted that there is no provisions of light at the place where the incident had occurred. That she has not identified the accused Nos. 3 to 6 at the time of incident. She has specifically corrected herself by

saying that she had identified the accused Nos. 1, 2 and 5 at the time of commission of this offence and she had narrated the names of the accused, who were present at the time of commission of offence. That she had not disclosed about the said incident to anybody much less to Dr. Ranga. She had been to Dr. Ranga alongwith Balu Pawaskar. Dr. Ranga had also advised her to lodge a report at the police station.

5 P.W. 2 Sushila Patil is the neighbour of the prosecutrix. She was declared hostile by the prosecution.

6 P.W. 3 Balu Pawaskar is the owner of brick kiln, where the prosecutrix was working as mason. According to him, one day she did not attend the work and therefore, he enquired with her husband and he has disclosed that she was not feeling well. On the

next day, the prosecutrix had attended the work and had disclosed to P.W. 3 that accused Nos. 1 and 3 i.e. the present appellants had committed rape on her. She had not disclosed the names of the other accused persons. According to P.W. 3, rest of the accused had admitted before him that they had committed rape on the prosecutrix. P.W. 3 had advised her not to compromise the matter. He had taken the prosecutrix to Dr. Ranga. She was treated by Dr. Ranga. In the cross-examination, he has admitted that he had not produced the record to show that the prosecutrix had not attended work on a particular day. On the day when she had disclosed the incident, she had attended the work, but had not actually worked. It is further elicited that the prosecutrix had disclosed the names of accused Nos. 1 and 2 for taking her from her house. A meeting was called in the village and it was decided that the matter should be settled. In the said meeting, the accused had allegedly,

voluntarily disclosed about the commission of rape. It is admitted by P.W. 3 that this aspect was not disclosed to the police.

7 P.W. 4 Nathaji Shelke is the panch for scene of offence panchanama which is at Exh. 20. It appears from the record that the incident had occurred near the canal.

8 P.W.5 Pradip Mhapsekar had acted as panch for the seizure of clothes of the prosecutrix, which is at Exh. 22.

9 P.W.6 Gulab Sutar had acted as a panch for seizure of chappal of the prosecutrix. She has been declared hostile by the prosecution.

10 P.W. 7 Namdev Yadav is also declared hostile by the prosecution.

11 P.W. 8 Ananda Patil happens to be the husband of the prosecutrix. In the cross-examination P.W. 8 has deposed that he had narrated the incident before the police that Maruti had accompanied Tanaji when Tanaji had come to call his wife. It is the material omission that he had enquired at the house of accused nos. 1 and 2. He had not disclosed about the incident at night to anybody.

12 P.W. 9 Jagganath Patil is declared hostile by the prosecution.

13 P.W.10 Laxman Jadhav is the police Patil of the village Rethare. He has deposed before the Court that after 4 to 5 days of

the alleged incident, the prosecutrix had disclosed before him that the accused have committed rape upon her and that she did not wish to file any complaint. It is admitted in the cross-examination that he has not noted down this information in his occurrence report. He had not informed the police personnel although he was aware that it is cognisable offence. He has also admitted that there is dispute between him and the accused No. 1 on account of landed property.

14 P.W.11 Shankarrao Jadhav is the investigating officer. He has specifically deposed before the Court that the Superintendent of Police had called upon him and directed him to record the statement of the complainant. He had accordingly called upon the complainant and it was treated as her complaint on the basis of which, Crime No. 13/1995 was registered against the accused. He

has specifically stated that Balu Pawaskar had not stated before him that the prosecutrix disclosed to him the incident and that the accused Nos. 1 and 2 committed rape upon her. P.W. 8 had also not stated before him that the accused No. 2 had been to his house alongwith the accused No. 1.

15 Upon perusal of the substantive evidence, learned Sessions Judge has been pleased to acquit the accused Nos. 3 to 6 on the ground that the said names were not disclosed to the investigating officer either by P.W. 8 or P.W. 1. According to the learned Sessions Judge, there was no cogent and convincing evidence against the accused Nos. 3 to 6 and therefore, they have been acquitted.

16 It is a matter of record that the prosecutrix had been advised by more than 2 to 3 persons including Dr. Ranga, Police Patil and Balu Pawaskar that she should approach police station and lodge a report. However, she denied to lodge the report. According to P.W.1 and P.W. 8, they had been threatened of dire consequences and therefore, she did not wish to initiate any proceedings.

17 That an anonymous letter was written to Superintendent of Police and the proceedings were initiated on the basis of the anonymous letter. It is pertinent to note that the said letter is not placed on record. There was no enquiry about the same. The contents of the letter have not been disclosed either by the Investigating Officer P.W. 11 and that the prosecution has not examined the Superintendent of Police and therefore, the first

report disclosing cognisable offence has not been brought before the court.

18 The prosecutrix did not wish to initiate criminal proceedings for the reasons best known to her. The delay in lodging of FIR for the offence punishable under section 376 of the Indian Penal Code cannot be considered fatal to the prosecution in the process since the victim is faced with several contingencies.

19 In the present case, the prosecutrix had specifically stated that she would feel humiliated and therefore, she did not wish to lodge the report. However, it prima facie appears that there has been suppression of material facts. That the prosecution witnesses have stated that a meeting was conducted in the village and then there were talks of settlement between the prosecutrix and the

accused. The learned Counsel for the appellants submits that the settlement talks had failed and prosecutrix had lodged the complaint.

20 In any case, lodging of report does not appear to be voluntary gesture on the part of the prosecutrix. She had specifically contended that all the accused had ravished. However, for want of cogent and convincing evidence, the accused No. 3 to 6 have been exonerated and acquitted. In a case of rape, it is not necessary that the Court should look for any corroboration. However, the testimony of the prosecutrix should be of a sterling nature and that which appears to be voluntary, truthful and inspires the confidence of the Court.

21 In the case of **Sadashiv Ramrao Hadbe v/s. State of Maharashtra and another** reported in (2006) 10 SCC 92, the Hon'ble Apex Court had observed thus :

“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.”

22 In the case of **Sudhakar & anr. V/s. State of Maharashtra**, reported in (2000) 6 SCC 671, the Hon'ble High Court had taken into consideration the statement of the victim after she had died

and the statement alleging an offence punishable under Section 376 of the Indian Penal Code was narrated in her alleged suicidal note. In that case, victim had committed suicide on 22/12/1994 and she was subjected to rape on 9/7/1994. The accused were being charged for the offence punishable under section 306 and 376(2)(g) read with Section 34 of the Indian Penal Code. That the Court had treated the statement of the deceased as statement under section 32 of the Indian Evidence Act. The Hon'ble Apex Court has held that the said statement was not admissible in evidence. It was held that -

““Circumstances of the transaction” is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae". Circumstances must have some proximate relation to the actual occurrence.”

The statement of the deceased was held to be inadmissible and the accused were acquitted for want of legal evidence.

23 There are inherent omissions and contradictions. To test the admissibility of the testimony of the prosecutrix, it is necessary that the statement of the prosecutrix should be voluntary, truthful and should necessarily inspire confidence of the Court. In the present case, it is more than clear that the statement of the prosecutrix is not voluntary for the reasons best known to her. She did not wish to initiate the prosecution.

24 The deposition of the prosecutrix has to be taken as a whole. The allegation that she was ravished by all of them has not been considered by the learned Sessions Court although she has stated

on oath that she was raped by all of them. The learned Sessions Court has placed implicit reliance upon the statement of P.W. 3 Balu Pawaskar and P.W. 8 i.e. husband of the victim. What is considered by the learned Sessions Court is that she was taken from home by the accused Nos. 1 and 2 and therefore, they are convicted for the offence punishable under Section 376 read section 34 of the Indian Penal Code. Learned Court has not assigned any special reason for acquitting the accused Nos. 3 to 6. The statement of the victim cannot be split into parts and without assigning any justifiable reason cannot be segregated and therefore, the accused appellants deserves to be acquitted.

25 The appeal is of the year 1996. The appeal was not taken up for hearing for 20 years. The learned Counsel for the appellants submits that the appellants were enlarged on bail by an order

dated 9/9/1996 by this Court at the stage of admission itself. Now they are senior citizen and have families of their own. According to the learned Counsel, hearing of the appeal has not been protracted by the accused persons. That on 14/3/2016 the learned Counsel for the appellants has submitted that the appellants would remain present at the time of final hearing. Accordingly, the accused/appellants are present before the Court. It prima facie appears that they are almost 50 years old at present.

26 Taking into consideration the facts of case, perusal of the evidence on record and submissions advanced across the bar, the appeal deserves to be allowed.

27 Hence, following order is passed :

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The conviction recorded by 5th Additional Sessions Judge, Kolhapur vide Judgment and Order dated 26/8/1996 in Sessions Case No. 111 of 1995 is hereby quashed and set aside.
- (iii) The accused are acquitted of all the charges levelled against them in the present case.
- (iv) Their bail bonds stand cancelled.
- (v) The fine amount, if any, if paid by the appellants be refunded.

28 The Criminal Appeal stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)