

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 412 OF 1996

1. Pundlik Ramji Bhusare
2. Laxman Kashiram Hadas
3. Namdeo Hari Gaikwad
All residing at Kotambi,
Taluka Peth, District : Nashik

.....Appellants

V/s.

The State of Maharashtra and another

....Respondents

Mr. Prakash Naik Advocate for Appellants
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MARCH 7, 2016.

JUDGMENT :

Appellants herein are convicted for offence punishable under section 376 (2) (g) of Indian Penal Code and sentenced to suffer rigorous imprisonment for 5 years and fine of Rs. 3000/- in default to suffer further rigorous imprisonment for one year each by Additional Sessions Judge, Nashik in Sessions Case No. 23 of 1996 vide Judgment and Order dated 11/06/1996. Hence, this appeal.

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

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follows.

3) Complainant happens to be a married woman and was well acquainted with the appellants as they hailed from the same village. On 16/09/1995, complainant had learnt that her relatives were ill and that she needed to remain present with them immediately and therefore, she had been to village Paricha Pada. That she had requested her brother-in-law Pundlik to accompany her as it was late in the night. After walking for some distance, she and her brother-in-law had met present appellants. They had informed Pundlik that they would drop her to her village and that he should not unnecessarily travel for dropping her.

4) It is alleged that under the garb of dropping her at home, appellants had ravished her brutally. On the basis of the said complaint, crime no. 23 of 1995 was registered against the appellants for offence punishable under section 376 (2) (g) of Indian Penal Code. Investigation was set in motion. Upon completion of investigation, charge-sheet was filed on 04/06/1996. Prosecution examined as many as 12 witnesses to bring home the guilt of the accused.

5) P.W. 1 happens to be prosecutrix. She is resident of Ambegaon. She has

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deposed before the court that 7 months prior to recording of her evidence, she had received a message that her brother and sister were ill at village Kotambi. She had been to village Kotambi to visit them. That the patients were not responding to medicines and therefore one of the village had suggested that the patients be taken to Darga at village Mhasan Vihira. She had accompanied them to village Mhasan Vihira where they were advised to stay over night. P.W. 1 could not afford to stay over night as her minor daughter was at village Kotambi. She therefore, left Mhasan Vihira. She had to cross through village Kotambi and since it was late night, she requested one Piplya Nana to accompany her up to village Kotambi. He obliged her. They had reached up to Paricha Pada.

6) Her brother-in-law resides at village Paricha Pada. Her brother-in-law agreed to accompany her up to village Kotambi. While they were proceeding on foot, they met the accused persons who informed her brother-in-law that they would drop the prosecutrix to the house and that he should not worry. Accordingly, brother-in-law of prosecutrix had left her with the accused persons and had returned home. She has further deposed before the court that she had sensed that accused were little drunk at that time and therefore, was

scared of them. While they were proceeding on foot, all of a sudden, accused persons outraged her modesty and thereafter ravished her. That they attempted to give her Rs. 50/-, but she refused. She then rushed to village Kotambi. She narrated the incident to her parents. On the same night, she approached the Police Patil and reported the incident and thereafter, she went to Peth Police Station and lodged the report.

7) It is elicited in the cross-examination that distance between Kotambi and Mhasan Vihira is 2.5 Kms. On the way is Paricha Pada. The distance between Paricha Pada and Mhasan Vihira is 1 Km. She has admitted that in the F.I.R. she has not disclosed her relation with Pundlik Benda. It is only stated in the F.I.R. that she was acquainted with Pundlik Benda and that she was acquainted with him since long. According to her, Pundlik had also suspected the accused persons, however, he had left her with them. She was confronted with her F.I.R. and in the deposition she has corrected herself by stating that she was denuded of her Saaree on the road and then carried in the field. It is also admitted by her that there is no reference to Rs. 50/- offered by the accused. According to her, since the incident, her husband had lost faith in her. She has also admitted that it was not disclosed in the F.I.R. that they had

approached the Police Patil. A suggestion was given that she was seen with Pundlik Benda by the accused persons and she suspected that they would disclose it to her family members and therefore, a story was concocted, however, the said suggestion is denied.

8) In the case of **Sadashiv Ramrao Hadbe vs State of Maharashtra And another** reported in (2006) 10 SCC 92 the Hon'ble Apex Court 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.”

9) P.W. 2 Govind Chaudhari is the father of P.W. 1. He has deposed before the Court that his son and daughters had been to Darga on 16/09/1995 at village Mhasan Vihira. His daughter had returned home and informed that she had been raped by the accused persons. Therefore, they approached Police

Patil and then to the Police Station. He has also admitted that they had not reported to the police that they had approached the Police Patil.

10) P.W. 3 Pandurang Bhusare has been declared hostile by the prosecution. P.W. 4 Pundlik Chandrakant Bhusare is also declared hostile. P.W. 5 Balu Waghchoure has also been declared hostile. P.W. 6 Mohan Shirsat has also been declared hostile.

11) P.W. 7 Pundlik Laxman Bhusare who has claimed that he is brother-in-law of P.W. 1. According to him, the date of incident is 16/09/1995. P.W. 1 had requested him to accompany her to village Kotambi as her child was sleeping at village Kotambi. On the way, they met accused persons who expressed their willingness to accompany P.W. 1. He has clarified in the cross-examination that in fact, his father's name is Laxman who is popularly known as Benda.

12) P.W. 8 Tulshiram Chaudhary is the cousin of P.W. 1. He has deposed before the court that at about 9.30 p.m., P.W. 1 had been to his house. She was weeping. She was alone. She had disclosed the names of three accused persons. P.W. 8 claims to have visited the house of all the three accused persons whom she had met, however, none of them was found at home. He

then took Yamunabai to the Police Patil. Father of Yamunabai had accompanied them. According to him, three accused persons had been to his house and the said message was given to him by his daughter in front of Police Patil. Police Patil had directed the daughter of P.W. 8 to get the three accused persons before him. Accordingly all the three accused came to the house of Police Patil. Police Patil had directed P.W. 8 and others to approach the Police Station. Accordingly, they had approached the police station.

13) There appeared to be inherent omissions and contradictions in the substantive evidence of P.W. 8 which are elicited in the cross-examination. He was confronted with his previous statement and he has admitted that he had not disclosed to the police that pursuant to the directions of the Police Patil all the three accused persons had appeared before Police Patil.

14) P.W. 9 Durgadas Dhas was Medical Officer at Nashik Civil Hospital. Three persons were referred to him for medical examination on 17/09/1995. He had examined them at about 6.10 p.m. Appellants are the three persons examined by him on 17/09/1995. At the time of examination, it was revealed that there was history of consumption of alcohol, but there was no apparent evidence of drunkenness. There were abrasions on the person of accused no.

1. Clinically, there was no evidence of recent sexual intercourse. Same was the case with accused nos. 2 & 3. It is elicited in the cross-examination that he had not written the age of injuries of accused no. 1 on the M.L.C. Witness has accepted the suggestion that abrasions could be caused due to scratches on his own nail.

15) P. W. 10 Pandit Bagul was posted at Peth Police Station as A.S.I. He had registered the crime on the basis of the statement of P.W. 1 Yamunabai. He had handed over the investigation of crime no. 23 of 1995 to P.S.I. More and had no track of the nature of investigation thereafter or the evidence collected by the investigating agency, thereafter.

16) P.W. 11 Ramakant More was posted as P.S.I. at Peth Police Station in September/October 1995. He had been entrusted with the investigation of crime no. 23 of 1995. He had recorded the statements of witnesses. Witness has denied the suggestions put up by the defence.

17) P.W. 12 Dr. Puja Vadgaonkar was attached to Civil Hospital, Nashik as Medical Officer. She had medically examined the prosecutrix on 17/09/1995. History given by the victim was rape by three persons on earlier night. She had not seen any marks of violence on the body of the patient. The internal

organs of the patient were normal. Medical certificate is at Exhibit 43 and the same is proved by P.W. 12. She has specifically stated on the medical certificate as follows:

“On examination I opined that there were no signs of violence clinically and exact opinion about vaginal intercourse could not be given as the victim is a married lady.”

18) It is elicited in the cross-examination that there were no signs of semen and there were no signs of recent intercourse. Upon perusal of Exhibit 43, it is more than clear that the certificate would show that victim was a fully developed lady. There were no signs of violence. 'Exact opinion about vaginal intercourse cannot be given'.

19) Evidence adduced by the prosecution has to be appreciated in view of the substantive evidence adduced by the prosecution at the time of trial. It is only at the time of recording of substantive evidence, P.W. 1 has stated for the first time that there is no mention that Pundlik Benda was her brother-in-law. The omissions in the cross-examination are admitted by the witness. She has also admitted that Pundlik Benda has not been referred as her relative/brother-in-law in the F.I.R. She has also admitted that she could not believe that three accused were drunk at the time of incident. Witness has admitted in the cross-

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examination that her contention that she was disrobed in the field and on the road was incorrect. According to her, she was denuded of her clothes on the road itself. It is admitted that there is no reference to Rs. 50/- being paid by the accused persons. It is also admitted that ever since the incident, her husband is not behaving normally with her. She has also admitted that in the F.I.R. there is no reference that she had been to the house of Police Patil.

20) Upon appreciation of evidence adduced by the prosecution, it is clear that evidence of P.W. 1 victim, by no means can inspire the confidence of the Court. It cannot be believed that in small village, she has raised hue and cry, but was not heard by anybody. The medical evidence is specific that there was no evidence of recent sexual intercourse and this aspect would go to the root of the matter. It is not necessary that in every matter, the evidence of the prosecutrix should be corroborated by cogent and convincing evidence, however, it is necessary that the evidence of the victim should be a sterling testimony which would stand the test of truth and inspire the confidence of the Court. There are inherent omissions and contradictions in the evidence of the victim and hence, it cannot be said that her testimony is of a sterling nature.

21) In view of this, accused/appellants deserves to be acquitted of all the charges levelled against them. Hence, following order.

ORDER

- (i) Appeal is allowed.
- (ii) The Judgment and Order dated 11/06/1996 passed by III Addl. Sessions Judge, Nashik in Sessions Case No. 23 of 1996 is hereby quashed and set aside.
- (iii) Appellants are acquitted of all the charges levelled against them.
- (iv) Bail bonds of the appellants stand cancelled.
- (v) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)