

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.238 OF 2006

The State of Maharashtra,
(Through Sakhubai Ravindra
Gavhane of Bahute, in Cr. No.
151/1997 of Parola P.S.)

... APPELLANT
(Original Complainant)

VERSUS

1. Chotulal Kalu Patil
Age 39 years,
2. Kashinath Kalu Patil
Age 51 years,
3. Bhatulal Kalu Patil
Age 51 years,
4. Ranjit @ Ashok Bhatulal Patil
Age 20 years,
5. Hirabai w/o Bhatulal Patil,
Age 45 years
6. Shilabai w/o Chotulal Patil,
Age 35 years
7. Hirabai @ Sulochana w/o Kashinath
Patil, Age 38 years

All R/o Bahute, Tq. parola
District Jalgaon

... RESPONDENTS
(Original Accused No.1 to 7)

.....
Shri V.M. Kagne, A.P.P. for appellant/ State
Shri A.K. Tiwari, Advocate for respondents
.....

CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

DATED : 19th January, 2018.

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. Vires of the judgment dated 29.10.2005, passed by Adhoc Additional Sessions Judge, Amalner in Sessions Case No.7/1998 is challenged by the State, wherein accused No.1 was acquitted of the offence punishable under Section 376 of the Indian Penal Code and all accused Nos.1 to 7 were acquitted of the offense punishable under Sections 452, 313, 504, 506 read with Section 34 of the Indian Penal Code and of the offence punishable under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short the Atrocities Act) as well as under Section 7(1)(d) of the Protection of Civil Rights Act (P.C.R. Act for short).

2. The prosecution case is that, the prosecutrix widow used to reside at village Bahute, Taluka Parola, District Jalgaon along with her three minor children, jointly with her mother Dagubai Baburao Bawiskar and family members of two brothers namely Pundlik Baburao Baviskar and Ravindra

Baburao Bawiskar. Accused Nos.1 to 7 are also residents of same village. Accused No.1 is financially sound agriculturists. Accused Nos.2 and 3 are brothers of accused No.1. Accused No.4 is son and accused No.5 is wife of accused No.3. Accused No.6 is wife of accused No.1. Accused No.7 is wife of accused No.2.

3. Six months prior to registration of F.I.R. at Police Station Parola, the prosecutrix (P.W.2) was engaged by accused No.6 along with other female labours for performing certain agricultural work in the field of accused Nos.1 to 7. On that day, as the victim was not having the required articles for performing the said agricultural work, she requested the accused No.6 to provide those articles. In response, the prosecutrix was directed to get those articles from the hut situated nearby the field of accused persons. However, when the prosecutrix alone went to that hut to fetch those articles, that time, suddenly accused No.1 entered in that hut and without consent of prosecutrix, despite her resistance, had forcible sexual intercourse with her inside the said hut. After occurrence of this incidence, the prosecutrix performed the agricultural labour work in the field of accused persons as she was threatened by accused No.1. Being unprotected helpless woman, the prosecutrix kept mum. However, two days

thereafter, again when prosecutrix went to nearby forest area at village Nagaon to collect fuel, that time again accused no.1 committed rape on the prosecutrix in the nearby water streamlet. Despite this second incident of rape, the prosecutrix maintained silence only on account of threatening by accused No.1. Thereafter for number of times in the same forest area the accused No.1 had committed rape on the prosecutrix, which resulted into her pregnancy. When the prosecutrix disclosed this condition to her mother Dagubai and when she disclosed the name of the accused No.1 as a person responsible for her pregnancy, Dagubai and brothers of the prosecutrix approached accused no.1 and informed him about the condition of the prosecutrix. However, they were also threatened by accused No.1. That time, accused No.1 informed the family members of the prosecutrix that he would arrange for termination of pregnancy of the prosecutrix. As the accused No.1 was financially sound and politically influential person, due to his terror in the area, even the family members of the prosecutrix did not take any action against the accused persons.

4. On 9.8.1997 at about 3.00 p.m., accused persons paid visit to the residence of the prosecutrix and they took her and her mother Dagubai to Godawari hospital at Jalgaon by

private Matador. At Godawari Hospital, Jalgaon, the prosecutrix was admitted under fictitious name and ultimately her pregnancy was terminated against her wishes. After this occurrence, prosecutrix and her mother returned to her residence. However, even thereafter accused kept watch on the prosecutrix and her family members. Thereafter accused persons started abusing the prosecutrix and her family members on account of their caste and thereby insulted them. At last, on 31.8.1997, the prosecutrix lodged report to Police Station, Parola. In the result, above said offences came to be registered. Accused were arrested and after completion of investigation, charge sheet was filed before the Judicial magistrate, First Class, Parola against accused Nos.1 to 7.

5. The offence punishable under Section 376 of the Indian Penal Code being exclusively triable by Sessions Court, this case was committed to Additional Sessions Judge, Amalner. The then Additional Sessions Judge framed charge Exh.8 against accused No.1 for the offence punishable under Section 376 of the Indian Penal Code and against accused Nos.1 to 7 for the offence punishable under sections 452, 313, 504, 506 read with Section 34 of the Indian Penal Code; under Section 3(1)(xi) of the Atrocities Act and under Section 7(1)(d) of the P.C.R. Act.

6. Prosecution examined total 7 witnesses. After considering the oral and documentary evidence placed by the prosecution, the learned trial Court pleased to acquit the accused persons of all the charges. The said judgment is challenged in the present appeal by the State of Maharashtra.

7. Heard strenuous arguments submitted by learned A.P.P. for the State and Shri A.K. Tiwari, learned counsel for the accused persons. Learned A.P.P. submitted that, the prosecutrix being unprotected helpless widow, the delay in lodging the F.I.R. cannot be viewed with suspicion. His next submission is that, the testimony of prosecutrix, though not supported by any witness, can be relied upon to base the conviction of the accused. He has drawn our attention towards the testimony of Dr. Patil (P.W.4), who has identified the accused at Blood Bank.

8. Learned counsel for the respondents/ accused submitted that, no evidence has been placed on record by prosecution to prove that the victim belongs to Scheduled Caste and, therefore, the provisions of Atrocities Act or P.C.R. Act are not attracted. His next submission is that, the testimony of victim is so contradictory that reliance cannot be

placed to base the conviction.

9. With the help of learned counsel for both sides, we have gone through the evidence of all prosecution witnesses. Dilip Akhade (P.W.1) is a panch witness. He deposed regarding the preparation of the spot panchanama (Exh.29) in the hut. However, as per recitals of the panchanama Exh.29, no incriminating article was seized from the said hut. Therefore his evidence is useless piece of evidence. Dr. Bhanudas Patil (P.W.3) examined the accused No.1 and opined that the accused No.1 was capable of committing sexual intercourse. However, evidence of this witness is also of no use unless the testimony of prosecutrix is proved to be trustworthy to establish the occurrence of the incident.

10. The prosecutrix entered in witness box as P.W.2. She deposed regarding commission of rape by accused No.1 inside one hut and the second incident of rape near forest area. However, it cannot be ignored that, after these two incidents of rape, the report was lodged after nearabout six months. Learned A.P.P. for the State tried to give explanation that due to threatening by accused No.1 the prosecutrix might have kept mum. However, as rightly pointed out by learned defence counsel, after commission of the rape, when

prosecutrix returned to home, she was in the company of her mother and two brothers. At least at her house she had no reason to keep mum if she was really raped by the accused No.1. Keeping total silence by prosecutrix till she conceived the pregnancy period of four months is definitely abnormal behaviour of the prosecutrix.

11. Another important aspect is that, despite commission of the rape, for that entire day prosecutrix worked in the field of accused No.1. In natural course, she would have definitely disclosed the occurrence of such mishap to other female companion labours. Total inaction on the part of prosecutrix for the period of six months from the alleged incident of forcible sexual intercourse by accused No.1 is absolutely doubtful circumstance. Thus, possibility cannot be ruled that, prosecutrix had sexual intercourse with the accused No.1 with her full consent.

12. Another important aspect is that, the prosecutrix named the accused No.1 as responsible person for her pregnancy. From the testimony of Dr. Ulhas Patil (P.W.4), who was the incharge of Godawari Hospital, Jalgaon, where the pregnancy of prosecutrix was terminated, it emerges that, on 9.8.1997 the prosecutrix visited the Godawari Hospital with

her mother and not with anyone of the accused person. Dr. Ulhas Patil (P.W.4) has only identified the prosecutrix in the Court as the same woman whose pregnancy was terminated. From the cross-examination of Dr. Patil (P.W.4), it becomes clear that, though he enquired with the prosecutrix (P.W.2), she did not inform him about the alleged commission of rape by accused No.1 or even regarding presence of accused No.1 in the hospital. Even the testimony of Dagubai (P.W.5), who is the mother of prosecutrix, falls short to connect the accused with the alleged crime for the simple reason that, from her cross-examination, it becomes clear that, she deposed before the Court as per the instructions of her daughter. Thus, the testimony of Dagubai (P.W.5) was rightly discarded by learned trial Court. Even the evidence of Dr. Ulhas Sonwane (P.W.6), who used to work as Blood Transfusion Officer at Pravara Medical Trust, Loni, can only establish that, on 9.8.1997, he received request letter from Godawari hospital for Unit of Blood of Group B+. From his further testimony, it emerges that, one Kashinath Patil and Pramod Chavan donated blood to the said Blood Bank. However, this witness did not identify accused No.2 as the same Kashinath Patil who donated blood on 9.8.1997. Therefore, the evidence of Dr. Sonwane (P.W.6) is nothing but useless piece of evidence.

13. Laxman Dusane (P.W.7) is the investigating officer, who investigated this crime. However, his evidence is only formal in nature. Thus, after careful scanning of the evidence placed on record, it emerges that, no substance is placed on record to prove that the victim belonged to Scheduled Caste. Therefore, obviously provisions of the Atrocities Act or P.C.R. Act will not be attracted in the present matter. As observed above, due to total abnormal behaviour of prosecutrix (P.W.2), her evidence regarding commission of rape by accused No.1 in hut as well as in water streamlet is not acceptable without any corroboration. No evidence is on record to show that at any time accused Nos.1 to 7 took the prosecutrix to Godawari Hospital for termination of her pregnancy. There remains no evidence on record to connect the accused No.1 even with the alleged pregnancy of the prosecutrix. In the circumstances, when testimony of prosecutrix (P.W.2) is not trustworthy, there is no evidence on record to establish any offence against any of the accused person. In the circumstances, we have no hesitation to hold that the view taken by the learned trial Court while acquitting all accused persons of all the charges is most possible view and cannot be interfered in the present appeal. The appeal being devoid of merits, deserves to be dismissed. Hence the following order :

ORDER

- (i) The Criminal Appeal No.238/2006 is dismissed.
- (ii) Bail bonds of respondents/ accused shall stand cancelled.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/