

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 310 OF 2016

Bharat S/o. Kishan Kadam,
Age : 53 years, Occ : Labour,
R/o. Dharasur, Tq. Gangakhed,
Dist. Parbhani.

...Appellant.

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Sonpeth Police Station, Tq. Sonpeth,
Dist. Parbhani.

2. Shobha W/o. Madhukar Badad,
Age. 38 years, Occu. Agri. Labour Work,
R/o. Dharasur, Tq. Gangakhed,
Dist. Parbhani.

...Respondents.

Advocate for Appellant : Mr. S. K. Chavan.
APP for State : Mr. S.M. Ganachari.
Advocate for Respondent No. 2 : Mr. S.K. Naikwade
h/f. Adv. Mr. K.M. Suryawansh.

CORAM : Smt. Sadhana S. Jadhav, J.
Dated : 22nd July, 2019

Oral Judgment :

1. The appellant herein is convicted for the offence punishable under Sections 376, 452, 323 and 506 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/- in default, rigorous imprisonment for six months. The compensation of Rs.10,000/- was given to the victim by

Additional Sessions Judge, Gangakhed, in Sessions Case No. 14/2013 vide judgment and order dated 12.04.2016.

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

On 05.01.2013, the complainant P.W. 3 lodged a report at the Police Station alleging therein that on the date of the incident that is on 04.01.2013 in the afternoon at about 4:30 p.m., the appellant herein was plucking Drumsticks in the front of the house of the victim. She had objected for the same. The appellant had committed criminal trespass, entered her house and had ravished her without her consent. The victim had then rushed to the agricultural land where her husband was working. The employer of her husband Mr. Manoj Kadam was present in the agricultural land. She informed her husband that the appellant herein has ravished her. They rushed to the police station and a report was lodged against the appellant.

3. Crime No. 01/2013, was registered against the appellant for the offence punishable under Section 376 and 323 of the Indian Penal Code. After completion of

investigation the charge-sheet was filed. The case was committed to the Court of Sessions and registered as Sessions Trial No. 14/2013.

4. The prosecution examined as many as twelve witnesses to bring home the guilt of the accused. The case rests on the evidence P.W. 3 - the victim herself, P.W. 11 - Dr. Bharti Devidas Patond and P.W. 1 - husband of the victim Madhukar Munjaji Badal. According to P.W. 1, P.W-3 had approached him at his work place at about 5:00 p.m. with broken bangles and torn clothes, upon enquiry, she disclosed that the accused had ravished her. He had found scratches on her cheeks and breasts.

5. P.W. 1 has admitted in the cross-examination that prior to working with Manoj Kadam, he was working with Prataprao Kadam who happens to be a brother-in-law of the then member of Parliament Shri Ganeshrao Dudhgaonkar. The accused had contested Zilla Parishad elections against Prataprao Kadam. The accused was defeated. It is also admitted that P.W. 1 was father of two sons begotten from his first wife. His elder son was 22 to 23 years old. He had got married with P.W. 3 about twelve to thirteen years prior to the incident. His elder daughter begotten from P.W. 3 was

studying in 5th standard. Prior to her marriage with P.W. 1 she was married twice.

6. P.W. 3 is the complainant. She has deposed before the Court in consonance with her FIR and has submitted that the contents of the FIR are true and correct. Upon perusal of the First Information Report, it appears that the first informant is illiterate in as much as she has put her thumb mark on the FIR. In the cross-examination, she has also reiterated that there is political rivalry between the accused/appellant and Prataprao Kadam. She has admitted that prior to her marriage, she was initially married with Baban, she was also married to Bhima, however, she is not legally divorced from both the earlier husbands.

7. However, in the present case it would not be relevant as the character of the victim is not of any significance. The said admissions are therefore irrelevant. There is an admission in the cross-examination that she had not resisted the appellant.

8. P.W. 11 - Dr. Bharti Patond has proved the contents of Exhibit 55, which are the reports of clinical examination. It is seen that on 05.01.2013, P.W. 11 had examined the

victim. The victim had given history of rape upon her committed on 04.01.2013. It is specifically marked "As narrated by patient, she is in menses." Column No. 9 of the examination report also shows menstrual bleeding present. P.W. 11 has deposed before the Court that she found no injuries on the person of the victim and the patient had not changed her clothes since incidence till examined on the next day at 8:30 a.m.

9. It is admitted in the cross-examination that the patient was not using sanitary pad or any other material during her menses. She had found no injuries even on other parts of the body. She had not found stains of semen either on the vaginal swab or on the thighs. There was a linear abrasion on the non vital organs.

10. In the present case, it would be difficult to believe that the appellant had committed rape on the victim during her menses. It is neither her allegation in the FIR that she was under going bleeding at the time of incident.

11. It is also admitted by P.W. 2 who is the employer of her husband - P.W. 1 that he was present in the land when she had disclosed the incident of rape.

12. It is also admitted by all witnesses that the accused appellant had contested Zilla Parishad elections against Prataprao Kadam who also happens to be a relative of Manoj Kadam. Even, the defence of the accused is that there is political rivalry and due to which he is falsely implicated. The evidence of doctor is sufficient to prove that the victim was undergoing menstrual bleeding at the time of incident and the same was not stated in the FIR and nor in the deposition.

13. Learned APP submits that the CA report indicates that semen in the CA report which is at Exhibit 61 had showed that there were semen stains on the clothes of the appellant and, therefore, according to learned APP a case is made out that the appellant had forcibly ravished the victim. The appellant is a married man. He was examined at about 9:30 a.m. in the morning.

14. Taking into consideration the fact that the victim was in her menses, it could not be believed that there would be only semen stains on his clothes. There were no blood stains on his clothes. Hence, it is more than clear that the prosecution has failed to establish the guilt of the accused beyond the reasonable doubt and hence, the

accused deserves to be acquitted of all the charges levelled against him.

15. The Appeal is allowed. The appellant be released forthwith, if not required in any other offence. The fine amount be refunded.

(Smt. Sadhana S. Jadhav, J.)

S.P.C.