

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 1148 OF 2019

Shobeb Salauddin Thakur	]	
Age:48 years, Occupation: Businessman	]	
Residing at United Crystal Building,	]	
Flat No.1202, 12 th Floor, Opp. Baby Garden,	]	
Agripada, Mumbai – 400 008.	]	Appellant

Vs.

1. THE STATE OF MAHARASHTRA	]
At the instance of Bandra Police Station,	]
In C.R. No.237 of 2019.	]

2. Ms. Priya Shankar Kale,	]
Aged 37 years, H/q: Victory House,	]
Room No.202, B Wing, 2 nd Floor,	]
Mahim (West), Mumbai – 400 016.	] Respondents.

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Mr. Pradyumna Waghmare, for the Appellant.

Dr. Abhinav Chandrachud, Special Public Prosecutor a/w S. Shetye a/w
Mrs. M.H. Mhatre, A.P.P, for Respondent No.1.

Mr. Vinod P. Sangvikar, for Respondent No.2.

Mr. Dattatray Bhargude, A.C.P., Bandra Division Present.

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CORAM: PRITHVIRAJ K. CHAVAN, J.

RESERVED ON: 3rd MARCH, 2020.

PRONOUNCED ON: 2ND JUNE, 2020.

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JUDGMENT:

By this appeal, the appellant impugns an order of rejection of his pre-arrest bail passed by the Additional Sessions Judge, in City Civil and Sessions Court, Greater Mumbai in C.R. No.237 of 2019 on 29th July, 2019.

2. Briefly stated, the appellant and the victim (respondent No.2) were in consensual relationship since the year 2009.

3. The appellant had hired a flat for respondent No.2 of which he used to pay rent. The appellant had also put forth a proposal of marriage to respondent No.2 by expressing his love and wanted to support her because respondent No.2 is a single parent of her school going child. It is the contention of respondent No.2 that under the said pretext, the appellant had raped her on several occasions under a false promise of marriage. At times, he used to abuse and assault as well as threatened her.

4. Sometime in the month of September, 2015, when respondent No.2 conceived and the said fact was revealed to the appellant, he had caused some tablet to be inserted into the vagina of respondent No.2, due to which, she had experienced unbearable pain and ultimately an unborn fetus

was required to be aborted by a Gynecologist, Dr. Shetty. (Threatened abortion).

5. There is no dispute that respondent No.2 belongs to scheduled caste community, whereas the appellant does not belong to either scheduled caste or scheduled tribe. Respondent No.2, apart from the allegations of rape, hurt, threats has also alleged that she was subjected to unnatural intercourse, meaning thereby, the appellant had forced carnal intercourse upon her. It is also an undisputed fact that the appellant is married, having two children and respondent No.2 had separated from her husband.

6. Subsequently, when respondent No.2 noticed that the appellant was trying to avoid her despite establishing sexual relations and subjecting her to unnatural intercourse, she approached the Police and lodged a report.

7. The appellant preferred an application seeking pre-arrest bail before the Sessions Court, Mumbai bearing A.B.A. No.551 of 2019. He was granted interim relief during the pendency of the main application. Subsequently, by an order dated 29th July, 2019, the application seeking anticipatory bail came to be rejected.

8. I heard the learned Counsel for the appellant Mr. Waghmare as well as Mr. Chandrachud, Special Public Prosecutor and Mr. Sangvikar, representing respondent No.2.

9. The appellant has been booked by Police Station Bandra, Mumbai vide C.R. No.237 of 2019.

10. The appellant is a businessman and manager of company. Respondent No.2 was working as a Sales Executive. The appellant got in touch with her due to office work and thereafter, they came close to each other. Respondent No.2 was residing with her child. The appellant by exploiting the aforesaid situation, proposed to marry her and the same was accepted by respondent No.2. The appellant, in the month of June, 2009 had taken a separate room for respondent No.2. One night respondent No.2 came to respondent No.2 and on a false promise of marriage, he established sexual relations with her.

11. At the outset, learned Counsel for the appellant contends that there is no whisper of atrocity alleged to have been committed *qua* respondent No.2 by the appellant in the First Information Report. It is contended that only by way of supplementary statements which came to be

recorded on 27th March, 2019 by way of an afterthought, it had been shown that the atrocities were committed on the basis of caste of respondent No.2. It is contended that some of the witnesses, more particularly, witness Sayyed Atiq Mohamed is a got up witness of the Investigating Agency. It is submitted that it cannot be lost sight of the fact that the appellant and respondent No.2 were in consensual relationship for more than 10 years and almost all the expenses of the respondent No.2 were incurred by the appellant.

12. The incident in question alleged to have occurred in the month of September, 2015. They got separated in the month of October, 2015. Learned Counsel has drawn my attention to the fact that it was the appellant who took respondent No.2 to the Doctor which shows his bona fides and the fact that he did not commit any of the offences as alleged. The learned Counsel has also drawn my attention to the exchange of Whats App messages, especially the vulgar language sent by respondent No.2 while addressing the appellant. Lastly, it is contended that the appellant would co-operate with the Investigating Officer as and when his presence would be required and, therefore prayed for allowing the appeal.

13. On the other hand, Mr. Chandrachud, the learned Special Public Prosecutor strongly objected the relief prayed for by the appellant by contending that custodial interrogation of the appellant is essential in view of the fact that he had inserted a pill into the vagina of respondent No.2, due to which, she suffered extreme pains and had profusely bled. Unless the appellant is interrogated by remanding to the Police Custody, it would be very difficult to unearth the source or place from where he had procured those pills. It is submitted that assistance of some quack in obtaining such pills by the appellant cannot be ruled out, and, therefore, it would not be proper to grant him protection from arrest even if the charge-sheet has been filed by the Investigating Agency. The learned Counsel drew my attention to section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which, according to him, is so clearly worded that there is hardly any scope of entertaining any application under section 438 of Cr. P.C. Section 18-A of the SC ST Act reads thus;

“18. Section 438 of the Code not to apply to persons committing an offence under the Act._ Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act”.

“Section 18-A (i) for the purpose of this Act, _

(a) preliminary inquiry shall be required for registration of a First Information Report against any person; or”

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made, and no procedure other than that provided under this Act or the Code shall apply.

(ii) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.”

14. The learned Counsel has pressed into service a recent judgment of the Hon’ble Supreme Court in **Writ Petition No. 1015 of 2018 (Prathviraj Chavan Vs. Union of India & Ors.)**. My attention is invited to paragraphs 41, 48, 49 and 51 of the judgment which read thus;

41. As to prevailing conditions in various areas of the country, we are compelled to observe that SCs/STs are still making the struggle for equality and for exercising civil rights in various areas of the country. The members of the Scheduled Castes and Scheduled Tribes are still discriminated against in various parts of the country. In spite of reservation, the fruits of development have not reached to them, by and large, they remain unequal and vulnerable section of the society. The classes of Scheduled Castes and Scheduled Tribes have been suffering ignominy and abuse, and they have been outcast socially for the centuries. The efforts for their upliftment should have been percolated down to eradicate their sufferings.

48. The particular law, i.e., Act of 1989, has been enacted and has also been amended in 2016 to make its provisions more

effective. Special prosecutors are to be provided for speedy trial of cases. The incentives are also provided for rehabilitation of victims, protection of witnesses and matters connected therewith.

49. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper Castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care in proceeding under section 482 of the Cr.PC.

51. As a matter of fact, members of the Scheduled Castes and Scheduled Tribes have suffered for long, hence, if we cannot provide them protective discrimination beneficial to them, we

cannot place them at all at a disadvantageous position that may be causing injury to them by widening inequality and against the very spirit of our Constitution. It would be against the basic human dignity to treat all of them as a liar or as a crook person and cannot look at every complaint by such complainant with a doubt. Eyewitnesses do not come up to speak in their favour. They hardly muster the courage to speak against upper caste, that is why provisions have been made by way of amendment for the protection of witnesses and rehabilitation of victims. All humans are equal including in their frailings. To treat SCs. and STs. as persons who are prone to lodge false reports under the provisions of the Scheduled Castes and Scheduled Tribes Act for taking revenge or otherwise as monetary benefits made available to them in the case of their being subjected to such offence, would be against fundamental human equality. It cannot be presumed that a person of such class would inflict injury upon himself and would lodge a false report only to secure monetary benefits or to take revenge. If presumed so, it would mean adding insult to injury, merely by the fact that person may misuse provisions cannot be a ground to treat class with doubt. It is due to human failings, not due to the caste factor. The monetary benefits are provided in the cases of an acid attack, sexual harassment of SC/ST women, rape, murder, etc. In such cases, FIR is required to be registered promptly.

15. It is needless to reiterate anything more than what has been observed by the Hon'ble Supreme Court in the aforesaid judgment.

16. It is apparent from the record that in her supplementary statement dated 27th March, 2019, respondents No.2 had specifically alleged that when she met the appellant for the first time in the year 2009, she disclosed that she belongs to Hindu Chambhar community, meaning thereby, a scheduled caste community. Respondent No.2 even did ask the appellant as to how his surname is Thakur, upon which, the appellant had informed her that he being a Konkani Muslim, surname Thakur is quite common. He further alleged to have stated that since they were in love, there is no question of caste or religion. The statement further reveals that thereafter under the pretext of marriage, the appellant had established forcible sexual relations with respondent No.2 and whenever she used to remind him of his promise to marry her, he used to abuse her on caste by stating that women of lower caste are only meant for physical satisfaction.

17. The statement of a Gynecologist Dr. Shetty who did sonography and then aborted the unborn fetus stated that respondent No.2 was brought by her *so-called* husband and she had been given necessary treatment by removing some part of the fetus which remained in her womb.

(Threatened abortion).

18. As already stated, according to Mr. Sayyed he knew respondent No.2. In the month of October, 2008, he had been to the building namely, Victory House, Mahim where he used to visit for maintenance of room Nos.8 and 9. He states that he noticed a person with beard (appellant) abusing respondent no.2 in a filthy language. When he asked the said person not to visit respondent No.2 upon which the said person (appellant) asked him not to interfere into his personal matter.

19. At this stage, the learned Special Public Prosecutor contends that Section 3(1)(r) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act does not require that the accused should name caste, abuse or humiliate a member of a Scheduled Caste or Scheduled Tribe by actually naming the caste or by referring caste of respondent No.2. He contends that if it is shown that the accused humiliated member of the scheduled caste within a public view, the ingredients of Section 3(1)(r) are precisely attracted. There is indeed force in what has been stated by the learned Special Public Prosecutor.

20. The Hon'ble Supreme Court in case of **Manju Devi Vs. Onkar**

Jit Singh Ahluwalia, (2017) 13, SCC, while dealing with criminal appeal under the SC ST Act made following observations which are apt in the context of present set of facts which read thus;

22. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. In the instant case, after careful consideration of the materials on record, the trial court and the High Court have found that a prima facie case for taking cognizance against the respondents is made out. Section 3(1)(xi) of the SC/ST Act which deals with assaults or use of force to any woman belonging to a Scheduled Caste or Scheduled Tribe with the intent to dishonour or outrage her modesty is an aggravated form of the offence. The only difference between Section 3(1)(xi), SC/ST Act and Section 354 IPC is essentially the caste or the tribe to which the victim belongs. If she belongs to a Scheduled Caste or Scheduled Tribe, Section 3(1)(xi) applies. The other difference is that in Section 3(1)(xi) dishonour of such victim is also made an offence.”

21. *Prima facie*, it is apparent from the charge-sheet that respondent No.2 was subjected to molestation as well as rape and unnatural intercourse by the appellant fully knowing that she belongs to scheduled caste community, after giving a false promise of marriage.

22. Merely because respondent No.2 is said to have picked up quarrels with the appellant and had sent vulgar messages on the cell phone, would not itself mitigate the severity of the offence alleged to have been committed by the appellant. Medical certificate *qua* the appellant reveals that he is capable of doing sexual intercourse. Medical certificate *qua* respondent No.2 corroborates the allegations levelled by her to a considerable extent. No doubt, *prima facie*, ingredients of the SC/ST Act are attracted and, therefore, a bar under section 18 would definitely operate and, therefore, I do not find any substance in the appeal and as such it stands dismissed.

[PRITHVIRAJ K. CHAVAN, J.]