

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL REVISION APPLICATION NO. 348 OF 2001**

Tukaram Ganu Koli	}	
Age : 47 years,	}	
R/at Yadrav, Taluka Shirol	}	
Dist. Kolhapur	}	 Applicant.

Versus

1.	The State of Maharashtra,	}	
	(At the instance of Shirol Police	}	
	Station, Dist. Kolhapur).	}	
		}	
2.	Geeta Milind Koli	}	
	Age : Major,	}	
	R/at Korochi, Taluka Hatkanangale,	}	
	Dist. Kolhapur.	}	 Respondents.

Mr. Ganesh Gole a/w Mr. Ritesh Ratnam & Mr. Bhavin Jain for the Applicant.

Mr. A. R. Patil, APP for the Respondent No.1-State.

CORAM : A. S. GADKARI, J.

DATE : 18th MARCH, 2021.

ORAL JUDGMENT :-

The applicant has been convicted under Section 376 of the Indian Penal Code (for short, “I.P.C.”) and is sentenced to suffer rigorous imprisonment of 5 years and to pay a fine of Rs.3,000/-, in default of payment of fine to further suffer rigorous imprisonment for six months, by the learned 5th Assistant Sessions Judge, Kolhapur in Sessions Case No.145 of 1997 by its Judgment and Order dated 17th March 1998.

2. Criminal Appeal No.9 of 1998 preferred by the applicant, has been turned down by the learned Ad-hoc Additional Sessions Judge, Kolhapur by its Judgment and Order dated 18th October 2001. The present Revision Application under Section 397 of Cr.P.C. is therefore preferred by the applicant.

3. Heard Mr. Gole, learned counsel for the applicant and Mr. Patil, learned A.P.P. for the respondent-State. Perused record.

4. The prosecution case in brief is as under:-

(i) The applicant is the maternal uncle of the prosecutrix (PW-1). That, the prosecutrix was married with Mr. Milind Koli a year prior to the date of lodgment of crime, i.e. 23rd July 1997. There used to be domestic problems/quarrels between the prosecutrix and her husband since two months prior to the incident. The applicant was attempting to settle the said quarrel.

(ii) That, on 23rd July 1997 at about 7.00 to 7.30 am, the applicant had been to the house of the prosecutrix, which was situated at village Korochoi, by his vehicle namely, M-80. The husband of prosecutrix and wife of her brother-in-law were at home. The applicant told prosecutrix that, he had to inform certain facts to convince her and would take her to village Yadav. The prosecutrix accordingly informed her husband and after taking his permission, went away with applicant. She reached the house of applicant at village Yadav at about 9.30 to 10.00 a.m.. Grandmother of

prosecutrix was present there. Friend of applicant by name Mr. Sandip Kulkarni was curing the construction work of the house of the applicant. The applicant told the prosecutrix that, he would make her parents meet to her at about 4.00 p.m. and requested her to stay at that house. The applicant thereafter went to the town and returned at about 3.30 p.m. to 4.00 p.m.. The parents of prosecutrix were residing at village Yadrav itself. The applicant told prosecutrix that, her parents were not at their house and he would meet to them lateron, and then he would leave her to Korochi.

(iii) The prosecutrix thereafter, sat on the vehicle of applicant for proceeding towards Korochi. When they came near the temple of Gajanan Maharaj, the appellant told the prosecutrix that, there is short-cut and they would go by the said short-cut road. After proceeding sometime, the applicant asked prosecutrix whether they should go to Sangali to which the prosecutrix replied in negative. She told the applicant that, her husband is waiting for her. They thereafter came near village Tamadalge. Applicant asked prosecutrix, whether she wish to see the hill to which she replied in negative. The applicant thereafter stopped two wheeler vehicle and forcibly drag prosecutrix to the hill by holding her neck from backside. After coming to the hill, it is alleged that, the applicant committed forcible sexual intercourse with the prosecutrix. The prosecutrix thereafter kicked applicant, pushed him and after collecting her clothes ran away from the scene of offence.

(iv) The prosecutrix saw two women working in the field near the road. She narrated the incident to them and sought their help. The said two women concealed prosecutrix in a hut in the field. It is the prosecution case that, the applicant passed by the said road 5 to 6 times. The prosecutrix showed applicant to the said two women. She also narrated the incident to the said two women and requested them to drop her at village Yadrav. Village Tardal was a nearest place where the said two women dropped prosecutrix. Prosecutrix reached village Tardal at about 7.00 to 7.30 pm. She then went to the house of her close relatives and narrated the said incident to the occupants therein. Her relatives took her to village Yadrav from Autorikshaw. The prosecutrix narrated the incident happened with her to her relatives at Yadrav. A crime was registered on the next date i.e. 24th July 1997 at about 2.30 p.m.

(v) During the course of investigation, the applicant came to be arrested. After completion of investigation, the Police submitted charge-sheet in the Court of Judicial Magistrate, First Class Jaisingpur, District Kolhapur.

The learned Magistrate committed the said case to the Court of Sessions at Kolhpaur. After commital of the said case, the Trial Court framed charge below Exh.2. The said charge was read over and explained to the applicant in vernacular language, to which he pleaded not guilty and claimed to be tried.

(vi) The prosecution, in support of its case, examined in all 15 witnesses. The learned Trial Court, after recording evidence of the said witnesses and hearing the learned Advocates for the respective parties, was pleased to convict the applicant under Section 376 of IPC by its impugned Judgment and Order dated 17th March 1998.

As noted earlier, Criminal Appeal No. 9 of 1998 preferred by the applicant has been turned down by the Appellate Court.

5. The evidence of prosecutrix (PW-1) as appeared on record in her examination-in-chief has been briefly narrated in the forgoing para No. 4(i) to (iv) and reproduction of the same is hereby avoided for the sake of brevity. Certain omissions have been brought on record by the defence in the cross-examination of the prosecutrix. An omission has been brought on record that, 'it requires 5-6 minutes to go on the hill. The way to the hill is rocky'. Another omission has been brought on record to the effect that, though the prosecutrix told the Police that, she asked the women to hide her, it was not specifically mentioned in the complaint. In her cross-examination, the prosecutrix has admitted that, she did not shout as the accused had caught her neck. That, she did not make any attempt for shouting. She did not make any attempt to save herself. That, a construction was going on near the hill, at a distance at about 100 ft.. The applicant was sitting 4-5 ft. away from her. The construction was visible from the spot and the spot of incident was also visible from the site of

construction. The prosecutrix has further admitted that, she had worn bangles in both of her hands at that time. That, her bangles from one hand were broken. There were some abrasions due to breaking of the bangles. There was some bleeding from those abrasions. She showed the said abrasions to the Doctor. That, she suffered injuries on her left elbow. She showed those injuries to the Doctor. She showed broken bangles to the police. Police took the said broken bangles with them. That, the prosecutrix and applicant were on the hill for half an hour. Further omission has been brought on record that, though the prosecutrix has stated in the complaint that, she kicked the applicant, it was not written specifically in the complaint.

6. Mr. Dagadu B. Khurane (PW-6), is a panch witness to the spot panchanama/scene of offence panchnama (Exh.18). He has proved the said panchnama. In the said panchnama, it is categorically stated that, at the scene of offence, the land was rough and little grass was present there. That, nothing was found at the said place during search by the Police.

7. Dr. Mrs. Deepa R. Sangale (PW-10) was working with Civil Hospital, Sangali in Gynecological Department. She examined prosecutrix on 24th July 1997. Dr. Mrs. Sangale (PW-10) did not find any abrasions, contusions, bite marks on person of the prosecutrix. Her hyman admitted two fingers. The concerned Doctor therefore opined that, the prosecutrix was accustomed to intercourse.

8. The prosecutrix in her evidence, has referred two women who helped her in hiding in a hut in the field near the scene of offence. The names of said two witnesses are Smt. Sushila Patil (PW-11) and Smt. Mangal Patil (PW-12). The said two witnesses did not support prosecution case and therefore, were declared hostile. In their detailed cross-examination by the learned A.P.P., nothing fruitful was brought on record which would be of any help to the prosecution. The said two witnesses have categorically stated that, on the date of incident, they did not witness anything. That the prosecutrix did not approach her and they did not help her. They saw nothing abnormal on that day.

9. In this background, Smt. Vijaya Koli (PW-3), the mother of prosecutrix had deposed that, on 23rd July 1997, when she returned from her work, at about 6.00 to 6.30 p.m., the son of applicant by name Bandu came to her house and called her at his house. When she went to the house of applicant, the applicant told her that, he had brought prosecutrix to Yadav in the morning at the house of her brother by name Ashok to convince her. At about 4.00 p.m. they started to return to Korochoi. When he stopped near Khotwadi to have a Pan (betel leaf), the prosecutrix told him that, she will come back within five minutes after meeting her friend, left him and did not return. He tried to search her, however the prosecutrix could not be found and therefore, he returned to village Korochoi and informed the said fact to the mother (PW-3) of prosecutrix.

10. The version of the prosecutrix that, she was raped by the applicant on the rough surface on a hill, has been belied by the evidence of Dr. Mrs. Deepa Sangale (PW-10). As noted earlier, Dr. Mrs. Deepa Sangale did not notice even a single abrasion on the person of the prosecutrix. The claim of the prosecutrix that, her bangles were broken at the scene of offence has not been supported by the spot panchanama, which was conducted immediately after lodgment of the crime. It appears that, the prosecutrix is hiding something and has implicated the applicant in the crime to save herself.

It further appears from the testimony of the prosecutrix and the evidence available on record that, the testimony of prosecutrix is not trustworthy and the prosecutrix is not a reliable witness. The version of the prosecutrix and the conduct of the prosecutrix is shrouded with suspicion and therefore her testimony can not be relied upon. The defence adopted by the Applicant appears to be more probable.

11. In view of the above, the applicant is entitled for benefit of doubt, which is accordingly extended to him.

Hence the following Order :-

- (i) The impugned Judgment and Order dated 17th March 1998 passed by the learned 5th Assistant Sessions Judge, Kolhapur in Sessions Case No.145 of 1997 and the impugned Judgment and Order dated 18th October 2001 passed

by the learned Ad-hoc Additional Sessions Judge, Kolhapur,
are hereby quashed and set aside.

- (ii) Applicant is acquitted from the offence charged against him.
- (iii) Fine amount, if any, paid by the applicant be returned to him on production of certified copy of the present Judgment and Order.

12. Revision Application is accordingly allowed.

(A.S. GADKARI, J.)