

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 84 OF 2020

Shamrao Motiram Atram,
aged about 26 years, Occ. Labourer,
R/o Hindewada, Tah. Bhamragad,
District Gadchiroli.

...APPELLANT

Versus

State of Maharashtra,
through PSO, Police Station Laheri,
District Gadchiroli.

...RESPONDENT

Shri A.C. Jaltare, Advocate for the appellant.
Shri M.J. Khan, A.P.P. for the respondent.

.....

CORAM : PUSHPA V. GANEDIWALA, J.
DATED : JANUARY 12, 2021.

ORAL JUDGMENT :

Heard.

2. This appeal is directed against the judgment and order dated 05/12/2019 passed by the Sessions Judge, Gadchiroli in Sessions Case No.5/2019, whereby the appellant is convicted for the offence punishable under Section 376(1) of

the Indian Penal Code, 1860 (for short “IPC”), and is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.3,000/- (rupees three thousand), in default, to suffer further rigorous imprisonment for three months.

He is further convicted for the offence punishable under Section 456 of the IPC, and is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- (rupees one thousand), in default, to suffer further rigorous imprisonment for two months.

Both the aforesaid sentences were directed to run concurrently.

3. The case of the prosecution, in nutshell, is as under :

i. On the day of incident, the prosecutrix was residing in her father’s house. On 20/01/2018, at about 9.30 pm, when her father went to sleep outside, the appellant trespassed in her house, and committed rape on her. Immediately, she informed her father about the incident, and thereafter, the matter was

reported to the Police Station. On that basis, the First Information Report No.1/2018 came to be registered against the applicant for the offence punishable under Sections 376(1) and 456 of the IPC. The police started investigation. Spot panchanama was prepared. The clothes of the prosecutrix, which she was wearing at the time of incident, were sent for Chemical Analyser's report. After investigation, the chargesheet came to be filed. The Court of Magistrate, in its turn, committed the case to the Sessions Court. The Sessions Court, Gadchiroli, framed charge against the accused and examined witnesses as adduced by the parties. The prosecution examined in all seven witnesses including the prosecutrix, police witnesses and panch witnesses. The prosecution also brought on record certain documents to substantiate their case.

ii. The statement of the appellant under Section 313 of the Code of Criminal Procedure was recorded, and after hearing both the sides, the Sessions Court found that the charge against the accused have been proved by the prosecution and hence, passed the judgment of conviction. This judgment is impugned

in this appeal.

4. I have heard Shri Jaltare, learned counsel for the appellant, and Shri Khan, learned A.P.P for the State. I have also examined deposition of witnesses and the documents annexed, with the assistance of learned both the counsel.

5. At the outset, the evidence of the prosecutrix only is material on the point of rape. The relevant portion of her evidence is reproduced below :

“XXXX When I was sleeping, accused came and touched me. On being touched, I enquired as to who it is. On asking, he immediately pressed my mouth. On asking who it is, he said, he is Shamrao. On pressing my mouth, the accused lifted my Sari. He removed my knicker down and he raped me. The accused was about to commit physical intercourse, in the mean time I pushed him by leg and called my father and my father came. Whether accused removed the clothes, I did not see. Whether semen had fallen, I had not seen. After calling my father, accused fled away. XXXX”

6. In her cross-examination, she has admitted that at the time of incident, there was no supply of electricity in her house. She could not see the accused. She has taken the name of the accused, as he informed her at the relevant time that “he is Shamrao”.

7. With regard to forcible sexual intercourse, the prosecutrix, in her above reproduced part of evidence, at one place, deposed that the accused had raped her and immediately thereafter, she says that when he was about to commit physical intercourse, she pushed him by legs and called her father. On the point of actual intercourse, she is not clear and confirm.

8. In her examination-in-chief, she further states that she does not know whether the accused removed the clothes and whether semen had fallen.

9. Shri Khan, learned A.P.P, submits that the testimony of the prosecutrix is further corroborated with the positive CA report.

10. A perusal of the CA report shows that the clothes of the prosecutrix were seized after four days of the incident. Undisputedly, the prosecutrix is a married lady, and after the alleged incident, her husband had also visited her father's house and they all three went to lodge the report. So, there is no conclusive evidence that semen, found on the clothes of the prosecutrix, was of the accused or of her husband.

11. Careful examination of the relevant portion of the deposition of the prosecutrix does not inspire confidence of this Court for the alleged incident. It is a kind of distorted version of the incident. The other witnesses are formal in nature, they being carriers of muddemal and panch witnesses.

12. In view of the above discussion, in the opinion of this Court, the prosecution has miserably failed to prove its case beyond reasonable doubt. Hence, the following order :

ORDER.

- i) The Criminal Appeal is allowed.
- ii) The judgment and order dated 05/12/2019 passed by the Sessions Judge, Gadchiroli in Sessions Case No.5/2019 is quashed and set-aside. The appellant is acquitted of the offence punishable under Sections 376(1) and 456 of the IPC. He be released forthwith, if not required in any other case.

CRIMINAL APPLICATION (APPA) NO. 113 OF 2020.

In view of disposal of Criminal Appeal, this application does not survive. It is disposed of accordingly.

JUDGE

Sumit