

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

CRIMINAL APPEAL NO.193 OF 2008

APPELLANTS : 1. Kamal D/o Seva Pawar,
Aged about 46 years, Occ: Labourer

As per Court's order
09/02/2021, Appeal is
abated against Appellant
No.2

2. Ibrahimkhan S/o Kalandarkhan Pathan,
Aged about 79 years, Occ. Agriculturist

Both R/o Malegaon Police Station,
Parawa, Tq. Ghatanji, District Yavatmal

--VERSUS--

RESPONDENTS : 1. The State of Maharashtra,
Through P.S.O. Parawa, Tq. Ghantaji,
District Yavatmal

2. Ramchandra S/o Kaslya Chauhan,
Aged about 59 years, Occ. Agriculturist,
R/o Malegaon Police Station, Parawa,
Tq. Ghatanji, Distt. Yavatmal.

Shri A.V. Bhide, Advocate for the Appellant
Shri I. J. Damle, Additional Public Prosecutor for the Respondent No.1.

CORAM : **N. B. SURYAWANSHI, J.**

DATED : **16/02/2021**

ORAL JUDGMENT :

The appellant is convicted under Sections 211 and 109 of the Indian Penal Code by the learned Ad-hoc Additional Sessions Judge, Yavatmal in Sessions Trial No.53 of

1994 and is sentenced to suffer rigorous imprisonment for six months and three months respectively and directed to pay a fine amount of Rs.2,000/- on each counts. By this appeal, the appellant challenges her conviction.

2. Initially, this appeal was filed by two appellants. During the pendency of this appeal, the second appellant expired. Hence, the appeal abated to the extent of second appellant.

3. Deceased appellant lodged a report in respect of commission of rape on the appellant by the second respondent. The same was registered at C.R No. 171/1982 under Sections 376 and 506 of the Indian Penal Code. After completion of investigation, charge-sheet came to be filed and the matter was committed to the Sessions Court and numbered as Sessions Trial No. 22/1982. The second respondent was charged for commission of offence punishable under Sections 376 and 506 of the Indian Penal Code. After recording the evidence, the learned Sessions Court acquitted the second respondent of all the charges.

4. After the acquittal, the second respondent filed a private complaint bearing Criminal Case No. 1/1982 against the appellants claiming that the appellants in collusion with each other lodged a false and concocted case against him. He, therefore, claimed that the appellants have committed an offence under Section 211 of the Indian Penal Code. The second respondent examined six witnesses in support of his case. The appellant examined two defence witnesses. The learned Sessions Court after recording the evidence, convicted the appellants for the offence punishable under Section 211 of the Indian Penal Code and sentenced the appellant to suffer rigorous imprisonment for six months and to pay a fine of Rs.2,000/- and under Section 109 read with Section 211 of the Indian Penal Code sentenced the appellant to suffer rigorous imprisonment for three months and to pay a fine of Rs.2,000/-. The appellant has challenged her conviction in the present appeal.

5. Heard the learned Advocate for the appellant and the learned Additional Public Prosecutor for the Respondent no. 1/State.

6. Learned Advocate for the appellant submitted that in the prosecution lodged at the instance of the appellant, acquittal was granted as the prosecution failed to prove the offence. There was a delay in lodging the F.I.R. Admittedly, the appellant was pregnant at that time when the F.I.R. was lodged. The learned Sessions Court acquitted the second respondent due to absence of corroboration to the testimony of the prosecutrix/appellant. The learned Sessions Court also noted the fact that the prosecution has not been able to prove the medical examination of the accused, after the incident. He pointed out the observation in the Sessions Court's judgment that F.I.R. came to be registered only after the intervention of the Additional Inspector General of Police (CID), Crime No.1. He further submitted that the prosecution has examined all interested witnesses. He states that there is no evidence on record to secure the conviction, hence, the appellant may be acquitted.

7. On the other hand, the learned Additional Public Prosecutor supported the judgment of conviction stating that the learned Sessions Court has given cogent reasoning. The

prosecution witnesses have corroborated the prosecution case, and no fault can be found in the impugned judgment and order of conviction. He, therefore, states that there is no substance in the appeal and deserves to be dismissed.

8. In support of its case, six witnesses have been examined by the prosecution. PW-1 Ramchandra is the complainant, who has lodged the private complaint. He deposed that there were two rival groups in their village. At the relevant time, he was working as Diwanji of Ramrao Gopalrao Dakhore. He knew the appellant and she had been an agricultural labourer. He gave her date of birth as 18.12.1962. He produced on record the Kotwal Book of village Malegaon bearing entry at page No. 31, pertaining to the birth of the appellant. He contended that the incident took place in the last week of July 1981. The deceased appellant called a meeting of the villagers, as the appellant was found pregnant. PW-1 intimated Ramrao Dakhore and Datta Rathod that he would not attend the meeting. When they told him that he was responsible for the pregnancy of the appellant, who was demanding land and money from

him. PW-1 denied the accusation and reiterated that he would not attend the meeting. After the meeting, the deceased appellant and Seva Ramaji Pawar came to his house and threatened him that they will lodge a Police complaint against him for the offence of rape, if he did not give money and land to the appellant – Kamal. Thereafter, the deceased appellant held a meeting in Malani Bagicha, Yavatmal. PW-1 had gone to Yavatmal on 27.07.1981. At that time, the deceased appellant demanded that he must give 7 acres of land to the appellant – Kamal and cash of Rs.5,000/- to the deceased appellant. The deceased appellant also told Ramrao Nagorao Patil to give 10 acres of land to one Venu Tekam and cash of Rs.10,000/- to the deceased appellant. The deceased appellant further threatened both of them to lodge a false case against them, if his demand was not fulfilled. PW-1, thereafter, lodged a report (Exh-58) to the Police Station Parwa. Thereafter, the deceased appellant in consultation with the advocate lodged a false complaint on 04.08.1981 alleging that the appellant – Kamal was repeatedly raped by PW-1. He stated that the incident narrated in the complaint was false. The said

complaint (Exh-59) was given after the medical checkup of the appellant. At the time of medical examination, the age of the appellant was deliberately given as fifteen years. The Deputy Inspector of Police conducted the inquiry, on the basis of the said report (Exh-59) and found that the complaint was false. No crime was registered. Thereafter, the appellants pressurized through political leaders and succeeded in C.I.D. inquiry. Thereafter, the charge-sheet was filed and the trial was conducted against him and Ramrao for the offence punishable under Section 376 in two different cases. They both were acquitted. He filed on record the certified copy of the judgment of the Sessions Case at Exh-60. He, therefore, claimed that a false report (Exh-59) was lodged against him, which damaged his reputation. Therefore, he filed a private complaint against the appellant.

9. In the cross-examination, he admitted that he did not instruct his advocate regarding :

“* Ramrao Gopalrao Dakhore and others asking him to attend the meeting of the villagers held in their village.

* The accused threatening him as to admit illicit relationship with the appellant - Kamal and she becoming pregnant, otherwise they would file a false report against him".

* The accused deceased appellant had demanded Rs.5,000/- for himself.

* The accused had threatened him to falsely involve in a rape case".

He could not give reason why these facts were not incorporated in his complaint.

10. He also admitted that he did not refer to Malani Bagicha in his complaint. He also admitted that his complaint/report Exh-58 did not bear the endorsement of acknowledgment. He admitted that in his private complaint and in the private complaint lodged by Ramrao against the other prosecutrix, the witnesses were common and they were interse related and that they were also related to Ramrao Patil Dakhore. He also admitted that D.G.P. Gadbaile was the brother-in-law of Ramrao Nagorao Dakhore Patil. He denied the suggestion that they succeeded in making arrangements

for not registering the crime on the report of the appellant till CID inquired into the matter. He admitted that there was political rivalry between the deceased appellant and Nagorao Patil Dakhore. He also admitted that the deceased appellant was Sarpanch for about 20 to 25 years. He denied the suggestion that the deceased appellant had no concern with lodging of the report.

11. PW-2 Anand Jagtap deposed that the deceased appellant was the Sarpanch of the Grampanchayat Malegaon in the year 1981. He, Ramkrushna Patil and Surendra Shinde were at Vijay Lodge, Yavatmal. The deceased appellant came to them at the Lodge on 28.07.1981. He stated that in his presence, the deceased appellant asked Ramrao Patil to give 10 acres of land to Venu Tekam and Rs.10,000/- for himself for settling the matter. The deceased appellant also asked PW-1 to give 7 acres of land to the appellant and Rs.5,000/- for settling the matter. PW-2 told him that it was impossible as both the persons Ramrao Patil and PW-1 were reputed persons and false allegations should not be made against them. This witness claims that in his presence, both Venu

Tekam and the appellant Kamal denied that Ramchandra Chavhan and Ramrao Patil had sexual relations with them. According to him, the deceased appellant was repeatedly making demands for land and money and was threatening the complainant and Ramrao Patil to involve them in a false criminal cases.

12. During the cross-examination, he admitted that Ramrao Patil Dakhore was his distant maternal uncle. He belonged to Rashtrawadi Congress, whereas the deceased appellant belonged to National Congress. He was resident of Yavatmal and did not own any agricultural land at Malegaon. He deposed that they were staying at Vijay Lodge in two separate rooms and he was not occupying the house at Yavatmal at that time. He went to Yavatmal for purchasing agricultural instruments and at that time Ramkrushna Patil and Surendra Shinde visited Yavatmal for the same purpose. He admitted that when Ramrao Patil refused to accept the proposal of the deceased appellant, a Police complaint was filed.

13. PW-3 Ramkrushna Sitaram Raut deposed in similar terms like PW-2. In the cross, he admitted that Ramrao Patil was his distant maternal uncle. He denied that he was present at Malani Bag to represent Ramrao Patil for settling the matter. He admitted that he came to know about the pregnancy of the appellant – Kamal and the other prosecutrix from the deceased appellant at Yavatmal for the first time.

14. PW-5 is Ramrao Gopalrao Dakhore, deposed on the lines of PW-1 complainant. In the cross-examination, he admitted that except Ramrao Chavan, Nagorao and him i.e. 4 to 5 persons, none from the meeting stood up and protested that the allegations were false. PW-5 was not told the purpose for calling of the meeting. In the year 1981, his brother Namdeorao Dakhore was Upsarpanch. He deposed that the deceased appellant belonged to the group of Shivajirao Moghe and he belonged to the group led by Uttamrao Patil. Previously, he was running a Government Fair Price Shop and the deceased appellant had made a complaint that he sold the food-grains by charging more price. That complaint was made before one month of the

incident, and his license of Fair Price Shop and Kerosene Shop was cancelled on 30.11.2007 because of the complaint of deceased appellant.

15. PW-6 Ramrao Fakira Rathod, supported the case of the complainant. In the cross-examination, he admitted that he was defeated in the Gram Panchayat Election by Member of the panel of deceased appellant. Even his wife was defeated in the year 2005-06 by the panel member of the deceased appellant. At the time of deposition, he was cultivating the land of Ramrao Dakhore on Batai. He deposed that Police Patil Gulabrao might have given false reports against him, appellant and appellant's father, and Dayaram Rathod alleging assault on him by them. He deposed that he remembered the dates of the meeting, but he did not remember the date of his marriage in the year 1972. According to him, the dates of meeting were mentioned by him in the diary kept at home and he was ready to produce the diary. He stated that he did not remember whether he had stated before the Police that it was decided in their community meeting to amicably settle

the issue. He also did not remember, whether he stated to the Police that in the said meeting, Ramchandra Chavhan and Ramrao Dakhore had not come. He denied that he had stated to the Police that five Panchas were sent to the appellant and she told them that she was pregnant from Ramrao Dakhore Patil. He admitted that he did not take any objections in the meeting for making false allegations against Ramrao Dakhore and Ramchandra Chavhan. He deposed that about 100 villagers were present in the said meeting and about 8 to 10 persons stood up and raised objections and opposed the discussion. He had opposed allegations against Ramrao Dakhore and Ramchandra Chavhan in the meeting. He admitted that they all had to come Yavatmal to seek solution to the issue by holding a meeting. That time the meeting was held at Malani Bagh, but he had gone to the house of his co-brother at the time of meeting. He admitted that he came to Yavatmal with other people. The appellant was his sister's (daughter). He also admitted that he came to Yavatmal with an object to help the appellant as injustice was done to her. He denied the suggestion that Ramrao and Ramchandra had no concern with the pregnancies of the

prosecutrix.

16. Medical Officer PW-4 was examined to prove the medical report of the appellant at Exh-65. As per the medical report, on the date of medical examination on 12.08.1981, the appellant was carrying 26 weeks pregnancy.

17. The defence examined Sau. Chabu Pawar as D.W.
1. She deposed that at the time of the incident, there was discussion in the village in the form of rumor that the appellant was pregnant from Ramchandra Chavhan. Therefore, a meeting of their community was called. It was attended by 50 to 60 persons. It was also attended by the appellant and her father. In the meeting, the appellant was asked from whom she became pregnant and the appellant told that Ramchandra Chavhan was responsible for the pregnancy. Ramchandra Chavhan was not present in the meeting. Though he was called in that meeting, he did not attend the same. The persons who attended that meeting suggested to recover expenses for the marriage of the appellant from Ramchandra Chavhan. They also suggested

lodging a case if Ramchandra Chavhan did not give the money. After the lapse of two to three days, the second meeting was held at Maruti Temple at Malegaon. The said meeting was of the villagers belonging to all communities. She attended the second meeting also. Both Venu and the appellant Kamal also attended the meeting.

18. In cross-examination, she stated that the first meeting was called by Datta Rathod at Tanda and she had political enmity with Datta Rathod. Thereafter, she stated that she did not attend the meeting called by Datta Rathod. She admitted the political rivalry between the parties. She admitted that in the meeting, the deceased appellant said that he would extract money and land from Ramrao and Ramchandra. She admitted her cordial relations with the appellant. She denied the suggestion that she did not attend the meeting.

19. Gauri Narayan Chavhan was examined as defence witness No.2. She belonged to Banjara Community. She stated that she attended the meeting of Banjara Community.

In the said meeting, both Venu and the appellant Kamal told the names of the persons from whom they became pregnant. She did not attend the second meeting called by the villagers. In the cross-examination, she stated that D.W. 1 was not present in the first meeting. She denied the suggestion that no disclosure was made by both Venu and the appellant Kamal that from whom they became pregnant.

20. The learned Sessions Court, after recording the evidence, convicted the appellant, hence, the present appeal.

21. It transpires from the evidence on record that F.I.R. was lodged against the second respondent claiming that he repeatedly raped the appellant. Admittedly, at that time, the appellant was pregnant. The record further indicates that to settle the issue of pregnancy of the appellant, meetings were held in the village as well as at Yavatmal. Venu the other girl was also pregnant from PW-5 at that time. Even for her, meetings were held. The second respondent and PW-5 were asked to pay money to the appellant Kamal and Venu

respectively to settle the matter. However, they refused to do so. Thereafter, the deceased appellant lodged a report against the second respondent claiming that he repeatedly committed rape on the appellant.

Though in the decision of Sessions Trial No.22 of 1982 (Exh-60), it was held that F.I.R. of rape was belatedly lodged. The said finding was by ignoring the aspect that initially though the complaint was sought to be lodged, no cognizance of the same was taken by the Police Authorities. Ultimately, under the orders of Additional Inspector General of Police, C.I.D.- Crime No.1, the offence of rape on the appellant came to be registered, and thereafter, only the investigation was conducted. Therefore, the delay in lodging F.I.R. was properly explained by the prosecution.

22. The learned Sessions Court did not believe the testimony of the appellant/prosecutrix on the ground that when rape was committed on her in the house of Ramrao Patil, she raised shouts, but nobody came there. The learned Sessions Court ought to have considered the fact that the

labours were working in the field, whereas rape was committed in the house of Ramrao Patil, may be that the shouts of the prosecutrix could not be heard by the labours working in their field.

23. The learned Sessions Court also observed that the prosecutrix failed to narrate the incident to anybody including her parents. The prosecutrix had deposed that she was under the threats of the accused and she feared that she might be killed, if she reveals her story to anybody. The said explanation was acceptable in the facts of that case.

24. The learned Sessions Court further held that “only the corroboration to the testimony of the prosecutrix was that she was pregnant at the relevant time.” However, the learned Sessions Court further observed that as per the evidence, the prosecutrix was already pregnant on 19.03.1981, therefore, the Sessions Court came to the conclusion that the pregnancy was not material to the extent of the question of alleged rape by the accused.

25. In respect of the incident of rape in the Primary School, the learned Sessions Court observed that the prosecutrix disclosed the incident to PW-2 Datta. However, PW-2 Datta deposed that he did not know anything about that incident. The learned Sessions Court, therefore, was of the view that the testimony of the prosecutrix could not be believed without there being any corroboration and it would be unsafe to base the conviction and/or finding of guilt on the evidence of the prosecutrix without any corroboration. The learned Sessions Court further held that there were no injuries on the person of prosecutrix and she failed to offer any explanation for it. The absence of medical examination of the accused also weighed with the learned Sessions Court. Considering these aspects, the learned Sessions Court, therefore, concluded that there was no corroboration with the testimony of the prosecutrix and her testimony cannot be a basis for recording a finding of guilt of the accused/second respondent for the offence punishable under Section 376 of the Indian Penal Code. It was therefore held that the prosecution failed to prove any offence against the accused, and hence, the accused (second respondent) was acquitted.

26. Exh-58 is the report forwarded by the second respondent to the Police Station on 30.07.1981, wherein he has stated that the prosecutrix and her father had filed a false report against him and they tried to deceive him. It is necessary to mention here that the report was lodged by the prosecutrix on 04.08.1981 against the second respondent alleging repeated commission of rape on her. Thus, it appears that the second respondent apprehended that the appellant was likely to lodge the complaint against him for the commission of rape, and therefore, has forwarded the said report on 30.07.1981. The second respondent has admitted that Exh-58 did not bear the acknowledgment.

27. The second respondent filed the present case alleging the commission of offence under Sections 197 and 211 by the appellants, by placing heavy reliance on the judgment of acquittal passed in the learned trial Court. The learned trial Court however held that "it cannot be disputed that in view of the provisions contained in Sections 41, 42 and 43 of the Evidence Act, the judgment in Sessions trial, which resulted in acquittal of the complainant for the

offence of rape is of no relevance.” The learned Sessions Judge has misread and misconstrued the provisions of Sections 41, 42 and 43 of the Evidence Act. The learned Sessions Judge has ignored the fact that the present case is filed by the second respondent on the basis of acquittal recorded by the learned Sessions Court. Therefore, the said finding recorded by the learned trial Court is unsustainable.

28. The second respondent has admitted in his evidence, the efforts made by the villagers and others to amicably settle the matter between him and the appellant. He also admitted that he refused to settle the matter. The position on record therefore is clear that only after the efforts of settlement failed, a complaint of rape was lodged.

29. Material omissions were brought on record in the cross-examination of the second respondent in respect of the threats given by the deceased appellant to him, to admit his illicit relationship with the appellant, otherwise false report would be filed against him. Omissions of demand of deceased appellant of Rs.5,000/- for himself and threat to

falsely involve in rape case were brought on record in the cross-examination of the second respondent. He was unable to give any explanation why these facts were not mentioned in his complaint. He has admitted the political rivalry between the deceased appellant and Dakhore Group. He has also admitted that he was working as Diwanji of Ramrao Dakhore for fifteen years. The witnesses examined by him i.e. PW-2, PW-3 and PW-5 were his relatives, they all were interested witnesses. PW-6 was an independent witness, who belonged to the community of the appellant. He tried to support the case of complainant/second respondent. However, he categorically admitted in the cross-examination that he came to Yavatmal with an object to help the appellant Kamal, as injustice was done to her. He further admitted that "we all came to Yavatmal to seek solution to the issue by holding a meeting." This admissions indicate that there was an issue of pregnancy of the appellant from the second respondent, and therefore, the meetings were being held. Even he was of the view that injustice was done to the appellant, and therefore, he came to Yavatmal to help her. These facts indicate that the appellant was pregnant at the

relevant time from the second respondent and the villagers were of the view that injustice was done to her and the matter was tried to be settled.

30. PW-4 Dr. Bhalchandra has proved the medical certificate (Exh-65). He has certified that on 12.08.1981, the appellant was pregnant for 26 weeks. The learned trial Court has recorded a finding that on 12.08.1981 as per the Medico Legal Certificate (Exh-65), the appellant was pregnant for 26 weeks. The 26 weeks are counted from preceding 12.08.1981 and it comes to middle of February-1981. However, the prosecutrix has stated the date of rape as 04.08.1981, which is irreconcilable and is indicative of falsity of complaint (Exh-51). The learned trial Court has lost sight of the fact that the complaint (Exh-59) was dated 04.08.1981, when the appellant/prosecutrix had stated that the first rape was committed on her on the earlier day of Holi of the year 1981, and she was threatened with life, if she disclosed the said incident to anybody or she dares to lodge a report. Thereafter again 4 to 6 times, she was raped by the second respondent. The learned trial Court has failed to take

into consideration that the prosecutrix was Rustic illiterate Scheduled Tribe girl, therefore, the learned trial Court could not have expected specific dates of alleged incidence of rape from her. In that view of the matter, the said observation is contrary to the record. The belated lodging of the complaint is also taken against the appellant/prosecutrix by the learned trial Court, ignoring the fact that only after the intervention of the Additional Inspector General of Police, CID, Crime No.1, the F.I.R. could be lodged and the investigation could be commenced, so that the circumstance could not be held against the appellant/prosecutrix. The learned trial Court also observed that there was absolutely no evidence or admission by the witnesses that at the material time, the appellant/prosecutrix was working as a Labourer and as maid servant at the house of Ramrao Patil, and therefore, it indicates that Ramchandra had no opportunity to have sexual intercourse with the appellant and make her pregnant. The learned trial Court has recorded the said finding ignoring the evidence of the second respondent that he knew the appellant/prosecutrix and she had been agricultural labourer. Unwarranted interferences are drawn by the learned trial

Court to arrive at a conclusion that Ramchandra had no opportunity to rape the appellant so as to make her pregnant. The learned trial Court has also considered that due to political rivalry, the second respondent was falsely implicated.

31. The appellant has examined two defence witnesses in support of her case, who have categorically stated that in the meeting, the prosecutrix disclosed the name of second respondent from whom she became pregnant. This evidence was not shattered in the cross-examination.

32. Taking into consideration the decision of the learned trial Court (Exh-60) and the evidence of the complainant/second respondent and his witnesses in the present case, it cannot be conclusively said that the second respondent was falsely implicated by the appellant. The learned trial Court in Exh-60 has specifically held that “since there was no corroboration to the testimony of the prosecutrix, the prosecution failed to prove the offence, and therefore, acquitted the second respondent.” That by itself

in my opinion does not prove the false implication of the complainant/second respondent.

33. The learned trial Court has ignored the facts of meetings held in the village at Yavatmal for settlement of the matter between the appellant and the second respondent, as there was no settlement, F.I.R. was lodged. Therefore, the conclusion drawn by the learned trial Court that the appellant had filed the false complaint in respect of offence of rape against the second respondent and the deceased appellant abated the appellant in committing the offence punishable under Section 211 of the Indian Penal Code by engaging her in conspiracy for filing the false complaint is unsustainable in the facts of the present case.

For conviction of offence under Section 211 of the Indian Penal Code, it is required to be proved on record that a false charge was levelled against a person of having committed an offence, knowing that there is no just or lawful ground for such proceedings or charge against that person and the same is done with an intention to cause injury to

that person. In the case in hand, the learned trial Court has nowhere held that the appellant has falsely charged the second respondent. The second respondent has failed to prove that with an intention to cause injury to him, the appellant instituted or caused to institute the criminal case of rape against him and said allegations were false. The second respondent has failed to prove the ingredients of Section 211 of the Indian Penal Code against the appellant. The impugned judgment, is therefore, unsustainable.

For the aforestated reasons, the appeal deserves to be allowed. Hence, the following order :-

1] The impugned judgment and order passed by the learned Ad-hoc Additional Sessions Judge, Yavatmal in Sessions Trial No. 53/1994, thereby convicting the appellant under Section 211 and 109 of the Indian Penal Code is hereby quashed and set aside.

2] The appellant is acquitted of all charges levelled against her.

3] The bail bond of the appellant stands cancelled.

4] Fine amount, if any, deposited by the appellant be refunded to her.

5] The appellant shall furnish bail bond of Rs. 10,000/- (Rs. Ten Thousand Only) with one or two sureties in the like amount before the trial Court, in terms of Section 437-A of the Code of Criminal Procedure.

The criminal appeal is allowed in the above terms.

(N. B. SURYAWANSHI, J.)

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