

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

CRIMINAL APPEAL NO. 472 OF 2015

Mr. Binoy Badal Datta
Aged about 26 years, Occ:
Nill, R/o Vishwanathnagar,
Post. Koparali, Tah. Mulchera,
Dist. Gadchiroli.

.... APPELLANT

Versus

The State of Maharashtra,
Through Police Station Officer,
Gadchiroli,
Tah. & Dist. – Gadchiroli

.... RESPONDENT

Shri R.H. Rawlani, Advocate for the appellant.
Shri H.D. Dubey, APP for the respondent – State.

CORAM : PUSHPA V. GANEDIWALA, J.
JANUARY 21, 2021.

ORAL JUDGMENT :

Heard Shri R.H. Rawlani, learned counsel for the appellant and Shri H.D. Dubey, learned Assistant Public Prosecutor for the respondent – State.

2. This appeal is directed against the judgment and order dated 14/12/2015 passed by the Additional Sessions Judge and Special Judge, Gadchiroli in Sessions Case No. 30/2015, whereby

the appellant/accused is convicted for the offence punishable under Sections 376 and 323 of the Indian Penal Code, 1860 (for short “IPC”).

For the offence punishable under Section 376 of the IPC, the appellant/accused is sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 5,000/- (rupees five thousand), in default, to suffer rigorous imprisonment for six months.

For the offence punishable under Section 323 of the IPC, the appellant/accused is sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs. 5,00/- (rupees five hundred), in default, to suffer rigorous imprisonment for two weeks.

3. The prosecution case, in brief, is as under :

i. The date of incident is 03.02.2014. The prosecutrix is a married lady, aged around 21 years at the relevant time. The appellant/accused was the friend of husband of the prosecutrix. He had been to the house of prosecutrix for his competitive exams. He was residing in Vishwanathnagar, which is at a distance of around seven kilometers from the house of the prosecutrix.

ii. It is the case of the prosecution that on 03.02.2014, when the husband of the prosecutrix had gone out of the house for some work, and while the prosecutrix was busy in cooking, the appellant/accused bolted the door of kitchen from inside and came into the kitchen, hold her hands from behind, made her lie down on the cot that was lying in the kitchen, pressed her mouth, removed her clothes and committed forcible sexual intercourse with her. Somehow, she rescued and came at the door, and in the mean time, her husband reached to the house, to whom she explained about the incident. On the next day morning, her husband reached the appellant/accused to his place.

iii. The report of the incident came to be lodged on 09.02.2014. Initially, the offence punishable under Sections 354, 323 and 504 of the IPC was registered against the appellant/accused, and on the basis of the supplementary statement of the prosecutrix, which was recorded on 10.02.2014, the offence punishable under Section 376 of the IPC was added.

iv. After investigation, police filed charge-sheet before the Court of Magistrate, who in turn, committed the case to the Sessions Court. The Sessions Court framed charge against the

appellant/accused for the offence punishable under Sections 376 and 323 of the IPC. The charge was read over and explained to the appellant/accused in his vernacular, to which he pleaded not guilty, and claimed to be tried.

v. In order to substantiate the charge against the appellant/accused, the prosecution examined in all four witnesses. The prosecutrix (PW1), Kailash (PW-2), Sahadeo – husband of the prosecutrix (PW3) and Vishakha – Investigating Officer (PW4).

vi. The trial Court recorded the statement of the appellant/accused under Section 313 of the Code the Criminal Procedure, 1973. His defence is of total denial. He states that the husband of the prosecutrix was suspecting that he misbehave with the victim and at the instant of her husband, she lodged the report.

vii. The trial Court found the appellant/accused guilty of the charge framed against him and passed the judgment of conviction. This judgment is impugned in this Criminal Appeal.

4. I have heard Shri Rawlani, learned counsel for the appellant/accused and Shri Dubey, learned Assistant Public Prosecutor for the respondent – State. I have also perused the

record of the trial Court with the assistance of learned both the counsel.

5. At the outset, the evidence of the prosecutrix is only material on the point of incident. In her report, she alleged the incident with regard to outraging her modesty by the appellant/accused. However, in the evidence before the Court, she has deposed about the incident of rape. She has not given any explanation as to why the earlier report about incident of rape was not given to the police. However, the same could not be proved through the Investigating Officer, as the Investigating Officer, who had taken her report on 09.02.2014, was not examined by the prosecution and for non-examination of the Investigating Officer by the prosecution, proved fatal to the case of the appellant/accused. Serious prejudice is caused to the appellant/accused, as in the First Information Report, the prosecutrix does not state about the incident of rape, and on the next date, without any possible explanation, she gave her supplementary statement and brought the story of rape.

6. Furthermore, the other facts on record, which could be pointed out by the learned defence counsel for not believing the story of prosecution are that i) in the night of the alleged incident,

the appellant/accused stayed over night in the house of the prosecutrix, and the next morning, the husband reached to his place ii) there was a delay of six days in lodging the First Information Report iii) it has come on record that on 07.02.2014, the prosecutrix and her husband were in the house of the appellant/accused at Vishwanathnagar and there was scuffle between the appellant/accused and her husband and therefore, the possibility that Section 376 of the IPC might have been added, considering the scuffle between the husband of the prosecutrix and the appellant/accused, cannot be ruled out.

7. Apart from this, there are lots of omissions, which could be brought on record by the learned defence counsel from the testimony of the husband of the prosecutrix Sahadeo (PW3).

8. The appellant/accused have been convicted under Section 376 of the IPC, and has been sentenced for rigorous imprisonment of seven years. For conviction for the offence of rape, sole testimony of the prosecutrix is sufficient, however, subject to the riders that her testimony must be cogent, consistent, trustworthy and of sterling quality.

9. In the instant case, considering the major omission with regard to the incident of rape, and considering the other doubtful circumstances, as discussed above, in the opinion of this Court, the prosecutrix is not the full proof witness and cannot be relied solely for fixing criminal liability of rape upon the appellant/accused. This Court found substance in the probable defence with regard to consensual relations between the duo. Apart from the sole testimony of the prosecutrix, there is no other corroborating evidence to believe her story.

10. In such circumstances, this Court is of the opinion that the appellant/accused is entitled to have benefit of doubt. Hence, the following order :

ORDER.

- i. The Criminal Appeal is allowed.
- ii. The judgment and order dated 14/12/2015 passed by the Additional Sessions Judge and Special Judge, Gadchiroli in Sessions Case No. 30/2015, is quashed and set aside. The appellant stands acquitted of the offence punishable under Sections 376 and 323 of the IPC.

iii. The bail bonds of the appellant stands cancelled and sureties stand discharged.

JUDGE

C.L.Dhakate