

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.1178 OF 2018**

Shanur Hajisab Shaikh	]	
C/7034, Age 32 years, Occup: Convict	]	
Presently lodged at	]	
At Kolhapur Central Prison, Kolhapur.	]	Appellant
Vs.		
The State of Maharashtra	]	
[At the instance of Miraj Rural	]	
Police Station in C.R No.309/16	]	
under section 376 r/w 511 and 506	]	
of I.P.C.	]	Respondent

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Mr. Sachin B. Chandan – Appointed Advocate for Appellant.

Mr. H.J. Dedhia, A.P.P for Respondent-State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.**DATE : 3rd January, 2022.****JUDGMENT:**

1. The appellant has been convicted by the learned Additional Sessions Judge, Sangli vide judgment and order dated 1st January, 2018 in Sessions Case No.34 of 2017 of an offence punishable under section 376 r/w 511 of the Indian Penal Code and is

sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.50,000/-, in default to suffer rigorous imprisonment for three months. He has also been convicted of an offence punishable under section 506 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.5000/-, in default, to suffer rigorous imprisonment for one month. The substantive sentences were directed to run concurrently.

2. It is brought to the notice of this Court that the appellant had already undergone the sentence awarded by the trial Court and has been released from the prison on 5th November, 2020.

3. The prosecution story goes like this.

4. On 19th October, 2016 around 10.30 a.m, the first informant (for short 'victim') had been to Vasant Bhandara streamlet of the Village along with two to three women. They had been to the streamlet for washing clothes. After some time, the women left the spot except the victim. At that time, the appellant came over there and noticing the victim alone, uttered some obscene words and thereafter started removing the chain of his pant. The appellant pulled the left hand of the victim and pinned her on the ground. He gagged her mouth with one hand and torn out her *saree* and blouse by the other hand. Thereafter, he pulled his pant down and attempted to commit forcible sexual intercourse upon the victim. The victim raised shouts. The appellant also tried to throttle the victim and threatened her to kill as she was raising shouts.

5. Having heard the commotion and shouts of the victim, P.W.2-Vinayak Salunkhe came over there on his motorcycle. After noticing Mr. Vinayak Salunke, the appellant tried to escape from the spot, however, he was chased and nabbed by the villagers. During his search, his *Aadhar* Card was found on his person. His identity was established on the basis of his Aadhar Card. The appellant was brought to the village and he was severely beaten by the villagers. He sustained injuries and, therefore, was admitted at Civil Hospital, Miraj.

6. An First Information Report came to be lodged on the same day at 7.11 pm. P.W.6-Raju Dhondiram More-the Investigating Officer visited the scene of occurrence. He recorded the statements of the witnesses. He had seized the clothes of the victim. Spot *panchanama* was prepared. The victim and the appellant were referred for medical examination. After investigation, a charge-sheet was filed.

7. On committal, the learned Additional Sessions Judge framed a charge against the appellant under section 376 r/w 511 and 506 of the Indian Penal Code. The appellant pleaded not guilty and claimed a trial.

8. The defence of the appellant from the line of the cross-examination as well as from his statement under section 313 of the Code of Criminal Procedure was that he has been falsely implicated in this case. It is the contention of the appellant that he had gone to the jungle to answer nature's call. Since he had no

water to clean himself, he approached the streamlet with his pant down. The victim after noticing him half naked raised shouts. The villagers assaulted him. He sustained serious injuries. Due to an apprehension that in case of his death, the villagers will be prosecuted for committing an offence, a false case of attempt of rape has been concocted. No defence evidence has been adduced.

9. After recording the evidence of prosecution witnesses and after hearing prosecution and the defence, the learned Additional Sessions Judge found the appellant guilty of the aforesaid offences and convicted him as above.

10. I heard learned Counsel for the appellant at length and the learned APP. With the assistance of the learned Counsel for the appellant, I have meticulously gone through the evidence of prosecution witnesses, more particularly, testimony of the victim which remained unrebutted during the cross.

11. Learned Counsel would argue that the prosecution has failed to bring home the guilt of the appellant beyond all reasonable doubts. He submits that the appellant hails from State of Karnataka and is a Barber by profession, in the sense, he used to shave buffaloes. He had no intention or any *mens rea* either to outrage modesty of the victim or to commit rape upon her. Merely because the victim had seen him in half naked condition, she perhaps thought that he intended to commit rape upon her.

12. Learned Counsel has drawn my attention to the medical evidence *qua* the victim and the appellant by stating that there is absolutely no evidence of any resistance or bruises or scratches to indicate that the victim had resisted the so-called attempt of rape. According to the learned Counsel, it is a false case and the appellant has been falsely implicated by the villagers in view of the apprehension that they might be involved in a case of murder, had there been death of the appellant.

13. Per contra, learned A.P.P supported the impugned judgment of conviction by emphasizing that the evidence of the victim itself inspires full confidence which requires no corroboration. Even otherwise, there is a corroboration to her testimony on material aspect by an independent witness namely PW.2-Vinayak Salunkhe.

14. At the outset, the defence has not disputed presence of the appellant on the spot at the relevant time as well as he was in a half naked position when the victim was alone at the streamlet. The short question which needs determination is as to whether the appellant had, in fact, tried to take disadvantage of the loneliness of the victim and attempted rape?

15. In her evidence the victim testified that on the day of the incident around 10.30 a.m, she had been to the streamlet to wash clothes along with two to three women. After some time, those women left the streamlet after finishing their work. At that time, the appellant arrived on the spot and noticing the victim alone, asked her to accompany him for two minutes. Her evidence

further reveals that he started unzipping his pant, upon which, the victim got angry and said whether she should slap him. Her evidence further indicates that the appellant pulled her left hand and pinned her on the ground. He gagged her mouth with right hand and torn out her *saree* and blouse with other hand. Thereafter, he pulled his pant down and tried to lay on her person. She raised shouts, however, the appellant threatened her to kill.

16. After hearing her shouts, one Vinayak Salunkhe came over there. The appellant started running away from the spot after noticing P.W.2-Vinayak Salunkhe. Her evidence further reveals that thereafter one Annappa Patil, Laxman Salunkhe, Sanjay Salunkhe and Shankar Patil came over there after hearing the hue and cry. The appellant was caught by them. They found his Aadhar Card in the pocket and realized that his name was Shanur Shaikh. He was taken to the village and thereafter he was beaten by the villagers.

17. The victim thereafter lodged a report which is at **Exhibit 15**. The statement of victim was recorded by the Magistrate under section 164 of the Code of Criminal Procedure on the next date. The victim had identified her *saree* and blouse during the trial which are at **Articles A & B**.

18. A searching cross-examination of this witness by the defence was futile, in the sense, nothing could be brought out from her mouth rendering her testimony unbelievable. It was suggested to the victim that at the relevant time the appellant, after attending nature's call, came near the streamlet to clean himself with his

pant down. The victim shouted after noticing the appellant half naked and thereafter the villagers gathered due to her shouts. The victim, however, denied the said suggestion.

19. In her cross-examination, it has been reiterated that *saree* of the victim was found torn and the blouse **Article B** was also found torn at shoulder. It has not been suggested that the appellant was not responsible for tearing the *saree* or blouse. Several suggestions given by the defence during cross-examination have been denied by the victim. Evidence of the victim inspires confidence and I do not see any reason to disbelieve the same as there was no reason for the victim to falsely implicate the appellant.

20. The F.I.R is prompt and, therefore, there is no question of any embellishment or afterthought. Even the statement of the victim under section 164 of the Cr. P.C recorded by the J.M.F.C, Miraj on the very next day is in consonance with the F.I.R and the evidence before the trial Court. It is not the defence of the appellant that when he approached the streamlet for cleaning himself, he did not notice the victim.

21. PW.2-Vinayak Salunkhe an independent and chance witness has supported the testimony of the victim in material particulars. The sum and substance of his evidence is that on 19th October, 2016 around 11.00 a.m when he was standing on the road going towards the streamlet of the village and chitchatting with Avinash Patil, Laxman Salunkhe, Sanjay Salunkhe, Shankar Patil and

Annappa Patil, he heard shouts from the streamlet. When he rushed towards the streamlet, he noticed the victim lying in a supine position and an unknown person was lying on her person. He categorically deposed that the said person was trying to outrage her modesty and the victim was shouting for help. When this witness tried to nab the appellant along with his friends, the appellant ran away. However, they could nab him and was brought to the village. It has been specifically testified by P.W.2-Viinayak Salunkhe that clothes of the victim were torn. During search of the appellant, they found his *Aadhar* Card and realized his name as Shanur Shaikh. His address was Village Ugar Budruk, Taluka Belgaum. He was beaten by the public and then was brought to *Talathi* office. The matter was reported to Miraj Rural Police Station.

22. This witness, too, has been cross-examined at length, however, his evidence remained intact. An unsuccessful attempt has been made to rebut the testimony of this witness by suggesting that he was on cross terms with the appellant because once the appellant had been to his house to shave his buffaloes. There was a quarrel between him and the appellant on account of injuring the buffalo of the witness while shaving. However, the witness has denied the said suggestion. The cross-examination, however, substantiates the fact that clothes of the victim were torn. It has also been suggested that the appellant has been falsely implicated by the victim at the behest of the villagers because due to severe thrashing of the appellant, there was likelihood of he succumbing to the injuries and the villagers could have been booked. However,

it has also been denied by the witness.

23. PW.4 - Dr. Vina Ashok Gavali had examined the victim on 19th October, 2016 at 4.10 p.m. Medical certificate is proved at **Exhibit 25**. There were neither injury marks on the person of the victim nor there is any evidence indicating attempt of rape. Naturally, there could not have been any evidence of rape for the reason that it was an attempt. Likewise, even the medical certificate *qua* the appellant indicates lacerated wounds, abrasions over his left elbow joints, right eye and inner surface of lips. It is difficult to ascertain whether those were injuries caused during resistance by the victim, for, it is the case of the prosecution that he was severely beaten by the villagers. The medical evidence, in the strict sense, cannot be looked into to seek corroboration on the aspect of attempt of rape. Be that as it may. Spot *panchanama* has been proved by P.W.3-Rama Maruti Shinde which is at **Exhibit 19**.

24. PW.5 -Dr. Surekha Vishnu Gavade had examined the appellant on 19.10.2016 at 9.00 p.m. She opined that after clinically examining the appellant, she did not notice any medical evidence by which it can be said that the appellant was incapable of performing sexual intercourse. She categorically testified that when she had examined the appellant, he gave a history that he tried to hold hand of the woman at *Shindewadi*. Apparently there can be no reason to disbelieve P.W.5- Dr. Surekha Vishnu Gavade - an independent witness who is a Doctor by profession to testify falsely about history given by the appellant himself when he was brought before her for medical examination. The medical

certificate **Exhibit 34** *qua* the appellant which appears to be in the handwriting of P.W.5-Dr. Surekha Vishnu Gavade herself specifically reveals that the appellant had given a history that he tried to hold hand of a woman at *Shindewadi* around 9.30 a.m. When a patient is brought to a Doctor, normally in the natural course of events, he narrates the history. This is a relevant fact in view of section 8 of the Indian Evidence Act. It demonstrates the previous conduct of the appellant going to the streamlet with half naked position only after noticing the victim alone. This is nothing but manifestation of his *mens rea* and motive to commit a crime. Thus, from the overall discussion made hereinabove, I do not deem it necessary to interfere with the impugned judgment of conviction.

25. The learned Additional Sessions Judge has rightly appreciated the evidence on record and reached a lawful conclusion in convicting the appellant of the offence punishable under sections 376 r/w 511 and 506 of the Indian Penal Code.

26. Consequently, the appeal being devoid of merits stands dismissed.

[PRITHVIRAJ K. CHAVAN, J.]