

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 853 OF 2015**

1 Prakash Bharat Aware,
Age 26 years, Occu;- Agriculturist.

2 Vaibhav @ Bhau Ankush Jadhav,
Both R/o. Tadvale, Tal. Barshi,
District : Solapur.
(At present lodged in Kalamba
Central Prison, Kolhapur).

.....Appellants
(Orig. Accused Nos.
1 and 2)

Vs.

1 The State Of Maharashtra
At the instance of Vairag
Police Station, Tal. Barshi,
District : Solapur.
C.R. No. of 2009.
(Notice to be served on the A.P.P
High Court, Mumbai)

2 Sou. Sheela Dipak Javanjat,
R/o. At and post Tadvale,
Tal. Barshi, District : Solapur.

....Respondents.
(No. 2 is Orig.
Complainant)

WITH
CRIMINAL APPEAL NO.1011 OF 2015

Samadhan Mahadeo Pawar,
Age 22 years, Occu;- Agriculturist,
R/o. Tadvale, Tal. Barshi,
Dist. Solapur.
(At present detained at Kalamba
Central Prison at Kolhapur)

.....Appellant
(Orig. Accused No.3)

Vs.

The State Of Maharashtra

....Respondent.

Mr. Ujwal R. Agandsurve for the Appellants.
Mr. S.S. Hulke APP, for the Respondent-State.

**CORAM : A. S. GADKARI AND
MILIND N. JADHAV, JJ.**

DATE : 27th JULY, 2022.

ORAL JUDGMENT (PER- A.S. GADKARI, J.):

Appellant No.1-Prakash Bharat Aware and Appellant No.2 Vaibhav @ Bhau Ankush Jadhav in Criminal Appeal No.853 of 2015 are original Accused Nos.1 and 2 respectively and Appellant Samadhan Mahadeo Pawar in Criminal Appeal No.1011 of 2015 is original Accused No.3 in Special Case No.28 of 2014.

For the sake of brevity, the Appellants hereinafter will be referred to as per their original nomenclature before the Trial Court. i.e.

'Accused No.1', 'Accused No.2' and 'Accused No.3'.

2 Appellants have questioned correctness of Judgment and Order dated 25th July, 2015 passed by the learned Special Judge, Barshi in Special Case No.28 of 2014 (Old Special Case No.40 of 2013), convicting the Appellants under Section 376D of the Indian Penal Code (for short, "*the IPC*") and is sentenced to suffer rigorous imprisonment for life, which mean imprisonment for remainder until natural life and to pay fine of Rs.10,000/- each and under Section 3(2)(v) read with Section 6 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, "*the SCST Act*") and is sentenced to suffer imprisonment for life and to pay fine amount of Rs.5,000/- each. Trial Court has also directed and prescribed in default sentence for non-payment of fine and has further directed both the sentences shall run concurrently.

3 Heard Mr. Agandsurve, learned Advocate appearing for the Appellants. Mr. Hulke learned APP for Respondent No.1-State. Perused entire record.

4 Shorn of unnecessary details, it is the prosecution case that, on 3rd September, 2013 in the evening at about 7.30 p.m. when the prosecutrix was returning from her job and was passing from the embankment of river Bhogavati, Accused No.1 held her hand and pulled her under the embankment of river near bushes of Chillari. Prosecutrix tried to resist, however he made her to fall on the ground and committed forcible sexual

intercourse with her. Prosecutrix shouted for help however, as nobody was nearby, her cries for help were unnoticed by anybody. After committing rape upon the prosecutrix, Accused No.1 called Accused Nos.2 and 3 and instigated them to commit rape upon the prosecutrix.

It is the further prosecution case that, Accused Nos.2 and 3 were concealing themselves behind the said Chillari bushes. Accused No.2 came forward, to whom the prosecutrix resisted and tried to rescue herself from his clutches however, Accused No.3 foiled her attempts and thereafter Accused No.2 committed rape on her. It is alleged that, Accused No.3 intimidated and threatened her that, if she resists, she would be killed. That, Accused No.3 thus abetted and facilitated other two Appellants in commission of the said offence against the prosecutrix.

5 Prosecutrix thereafter rushed to her home and narrated the said incidence to her mother (PW-4) and father. Prosecutrix along with her mother thereafter immediately approached to the Vairag Police Station, Taluka Barshi, District Solapur and lodged crime bearing No.160 of 2013 under the aforesaid Sections.

Criminal law was thereafter set into motion. Prosecutrix was immediately referred to Dr. Gurudev S. Thengal (PW-2) who at the first instance examined her and issued Medical Certificate (Exh-30). He also prepared necessary medical case papers (Exh-31). Prosecutrix was thereafter referred to a Forensic Medicine Expert namely Dr. Santosh B.

Bhoi (PW-3) who was then serving in Civil Hospital, Solapur. He noticed following injuries on the person of prosecutrix:-

- “1) Abrasion present over back on right scapular region,
size 1 cm x 5 cm. Red scab present.*
- 2) Abrasion present over back of left scapular region,
size 1 cm x 1 cm red scab present.*

He opined that, those injuries were simple, possible due to hard and blunt object and caused within 24 hours before examination of prosecutrix. He accordingly issued Medical Certificate (Exh-36). He opined that, the aforestated injuries were possible while committing rape on ground.

During the course of investigation, the clothes of prosecutrix were seized by effecting panchnama (Exh-39) in presence of panch witness Kishor D. Sali (PW-5). Accused No.1-Prakash Aware, on 6th September, 2013 when was in the custody of police expressed his desire to show the spot of incident. He led the police to the spot of incident and spot panchanama (Exh-43) was accordingly drawn in presence of Amol M. Dalse (PW-6).

6 After receipt of necessary reports from the Forensic Science Laboratory and completion of investigation, the investigating agency submitted charge-sheet in the Court of Judicial Magistrate First Class, Barshi.

Learned Magistrate, took cognizance of the said offence and

committed the said case to the Court of Sessions as contemplated under Section 209 of the Code of Criminal Procedure, 1973 (for short, "*the Cr.PC.*") as the offence alleged against the Appellants is exclusively triable by the Court of Sessions.

Learned Judge of the trial Court initially framed charge against the Appellants below Exh-2 on 11th February, 2014. As the said charge was defective and was requiring modification thereof, the successor-in-title of the trial Court modified it and framed a precise charge below Exh-59. The contents of the said charge were read over and explained to the Appellants in vernacular language to which they denied, pleaded not guilty and claimed to be tried. The defence of the Appellants was of total denial and false implication.

7 From the line of cross-examination of material witnesses, it can be discerned that, the Appellants put forth theory of false implication due to political enmity in their village, at the behest of the opponent group; as the prosecutrix is a member of it, the opponent group has put forth her to implicate Appellants in the present crime of such heinous nature. In their defence, the Appellants examined Smt. Rita R. Lokhande (DW-1) who was then working in Bhagwati Children Home, Village Tadvale, where the prosecutrix claimed that she was working.

Trial Court after recording the evidence of the witnesses and hearing the learned Advocates for the Appellants and the Public Prosecutor

for the State has convicted and sentenced them by its impugned Judgment and Order.

8 Mr. Agandsurve, learned Advocate for the Appellants submitted that, Medical Reports submitted by Dr. Gurudev S. Thengal (PW-2) suggested that, the prosecutrix was habitual to the sexual intercourse. That, the medical evidence is silent about commission of rape by more than one person on the date and time of incident, as alleged by the prosecutrix. He further submitted that, there were two political groups in the village Tadvale, Taluka Barshi, District Solapur and the prosecutrix and her mother were belonging to the opponent group of the Appellants. That, at the instance of leaders of the opponent group, the prosecutrix and her mother have falsely implicated Appellants in the present crime. He submitted that, the prosecutrix was an accused in Sessions Case No.4 of 2018 for an offence punishable under Sections 366 and 376 read with Section 34 of the IPC and was convicted by the trial Court for the said offences and was sentenced to suffer rigorous imprisonment for seven years. He submitted that, thus the character of prosecutrix is questionable and not up to the mark to believe her testimony blindly.

He submitted that, the Appellants have been sentenced to imprisonment for life as contemplated under Section 376D of the IPC which according to him is a severe and harsh punishment. He further submitted that, if the Court is not inclined to allow the present Appeal in that event,

the sentence imposed upon the Appellants of life imprisonment be commuted to rigorous imprisonment for 20 years as the minimum sentence prescribed under Section 376D of the IPC. He submitted that, the provisions of the SCST Act have been applied to the present crime only because of the fact that, the prosecutrix is belonging to Scheduled Tribe and none else. He therefore prayed that, present Appeal may be allowed by setting aside the impugned Judgment and Order or in the alternative, the sentence imposed upon the Appellants be reduced to 20 years jail term.

9 Per contra, learned APP vehemently opposed the Appeal. He submitted that, the prosecutrix along with her mother immediately reported the ordeal faced by her to the police without any delay. Their testimonies in examination-in-chief have not been shaken in their elaborate cross-examination. That, the opinion expressed by Dr. Santosh B. Bhoi (PW-3) supports the contention of prosecutrix regarding forceful sexual intercourse by Appellant Nos.1 and 2. He submitted that, record discloses that the Appellants in a pre-planned manner committed gang rape upon the prosecutrix when she was returning from her duty and therefore no leniency be shown to the Appellants and the conviction and sentence imposed upon them by the trial Court be upheld. He therefore prayed that, the present Appeal may be dismissed.

10 Prosecutrix (PW-1) in her testimony has deposed that, on the date of incident, she was returning from her work, the children home. She

was walking to her house from the bank of river. It was about 7.30 p.m.. Accused No.1 tried to draw her attention by gestures, however she did not respond to him and proceeded to her house. At that time, Accused No.1 held her hand and dragged her in the bank of river against her wish and initially tried to outrage her modesty. Prosecutrix resisted him, however Accused No.1 did not budge to it. He forcefully removed her clothes and committed rape on her. Prosecutrix cried for help however, nobody came for her rescue. After Accused No.1 committed an act as contemplated under Section 376 of the IPC, he called Accused Nos.2 and 3. At that relevant time, prosecutrix tried to rescue herself from the clutches of Accused Nos.2 and 3 and tried to run away from the scene of offence, however Accused No.2 obstructed her way and again caused her to fall on the ground and committed rape. Accused No.2 also threatened prosecutrix with dire consequences if she discloses this fact to anybody. Accused No.3 assisted Accused No.2 actively in committing the said crime against the prosecutrix.

Prosecutrix thereafter immediately rushed to her home and told the ordeal faced by her to her mother. Mother took her to Vairag Police Station and lodged first information report against the Appellants. She has categorically stated that, she is belonging to Hindu Mahar caste, a Scheduled Caste and the Appellants belonging to Maratha Community.

11 In her elaborate cross-examination by the Appellants, nothing

beneficial to them has been brought on record which may discredit the examination-in-chief of the prosecutrix. In her cross-examination, the Appellants have given suggestion that, due to the Grampanchayat Election of the said village, at the behest of opponent group they have been falsely implicated in the present crime. The said suggestion has been denied by the Prosecutrix. Various other suggestions given by the defence to the Prosecutrix have been denied by her. At the cost of repetition, it is to be noted here that, her deposition in chief before the Court regarding offences committed by Appellants under Section 376D of the IPC has not at all been shaken by the defence.

12 Smt. Laxmi S. Davane (PW-4) is the mother of prosecutrix. She has deposed that, on the date of incident at about 7.30 p.m. prosecutrix came home crying and narrated the ordeal faced by her at the hands of Appellants. She has also deposed that, Accused Nos.2 and 3 administered threat of dire consequences if she discloses this fact to anybody. In her lengthy cross-examination, nothing beneficial to the Appellants has been extracted and the fact that after returning home immediately prosecutrix narrated her ordeal to her mother has not at all been disturbed.

13 Dr. Santosh Bhoi (PW-3) is a Forensic Medicine Expert. He was serving in Civil Hospital, Solapur on 4th September, 2013. Prosecutrix was referred to him for expert opinion. He found injuries on the person of prosecutrix as noted in paragraph No.5 hereinabove. He has deposed that,

the said injuries were simple, possible by hard and blunt object and caused within 24 hours prior to examining the prosecutrix. He has proved the medical report (Exh-36). He categorically deposed that, above injuries were possible while committing the rape on ground.

14 It is to be noted here that, Appellants have examined Smt. Rita R. Lokhande, Superintendent of Bhagwati Children Home, situated at village Tadvale, Taluka Barshi, District Solapur.

This witness in her chief has deposed that, she did not know the prosecutrix as her name was not reflecting in the muster roll of the said institution. She has further deposed that, the prosecutrix was never working with the institution. However, in her cross-examination by the learned APP she has admitted that, on 3rd September, 2013, prosecutrix had cooked food in the morning and evening in the said institution. This vital admission given by the said defence witness, belies the defence of the Appellants that, the prosecutrix was never working in the said institution to contend that, she was returning from the said institution on the date of incident at about 7.30 p.m..

15 Perusal of entire evidence on record clearly indicates that, the testimony of prosecutrix is not at all shaken by the defence in her lengthy and elaborate cross-examination. The version of prosecutrix according to us, is fully reliable and trustworthy and there is no reason even to have a doubt about it. Prosecutrix after facing the ordeal at the hands of

Appellants, immediately rushed home and narrated the fact to her mother (PW-4). Prosecutrix along with her mother thereafter immediately approached Vairag Police Station and lodged the present crime on the same day. There is no delay in lodging the present crime against the Appellants.

16 The Hon'ble Supreme Court in the case of *Bharwada B. Hirjibhai Vs. State of Gujrat reported in AIR 1983 SC 753 : 1983 Cri.L.J. 1096* has held that, corroboration is not the sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complaints of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. It is further held that, a girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred.

 In the case of *Sheikh Zakir Vs. State of Bihar reported in AIR 1983 SC 911*, Hon'ble Supreme Court has held that, in absence of any injuries on the person of the prosecutrix who was the helpless victim of rape might not by itself discredit the statement of the prosecutrix and in such a situation the non-production of a medical report would not be of much consequence if the other evidence was believable.

In the case of *Aman Kumar & Ors. Vs. State of Haryana* reported in AIR 2004 SC 1497, the Hon'ble Supreme Court has held that, the evidence of a victim in rape case stands at higher pedestal than injured witness and needs no corroboration.

The Hon'ble Supreme Court in the case of *Moti Lal Vs. State of M.P.* reported in 2008 ALL M.R. (Cri.) 2583 (S.C.) has held that, testimony of a prosecutrix cannot be disbelieved even if the doctor finds no sign of rape. It is further held that, the Courts must deal with such cases with utmost sensitivity. That the Courts should examine broader probabilities of the case and not get swayed by minor contradictions or insignificant discrepancies in the statement of prosecutrix.

17 As far as the contention of the learned counsel for the Appellants that the prosecutrix was subsequently convicted in Sessions Case No.4 of 2018 by the learned Ad-hoc Sessions Judge-1, Barshi is concerned, it is of no avail to the Appellants. In the said case, the crime against the prosecutrix herein was that, she aided and abetted Accused No.3 therein in performing marriage with the informant therein and the Accused No.3 thereafter committed a rape on the informant against her will under the pretext of marriage. According to us, merely because the prosecutrix herein is convicted in some other crime, her substantive evidence before the trial Court which has gone practically unchallenged cannot be casually brushed aside. As noted earlier, the testimony of prosecutrix inspires confidence in

the mind of this Court.

18 In view of the above, we find that, the trial Court has not committed any error in convicting the Appellants under Section 376D of the IPC and under Section 3(2)(v) read with Section 6 of the SCST Act.

After perusing impugned Judgment and Order passed by the trial Court, we are of the considered view that, the trial Court has not committed any error either in law or on facts while convicting and sentencing the Appellants.

There are no merits in the Appeals.

Appeals are accordingly dismissed.

(MILIND N. JADHAV, J.)

(A.S. GADKARI, J.)

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