

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 52 OF 2023

Jitendra @ Pappu Bhimraj Shinde

Age : 35 yrs, occ : driver

R/o Akolenaka, Bharadwasti,

Sangamner, District Ahmednagar

Appellant

Versus

1. The State of Maharashtra
Through Sangamner City
Police Station, Tal.Sangamner,
District Ahmednagar

2. XYZ

Respondents

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Mr. K.N. Shermale, Advocate for the appellant.

Mr. P.M. Kulkarni, A.P.P. for respondent No.1 – State.

Mr. A.B. Jagtap, Advocate for respondent No.2.

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CORAM : **SANDIPKUMAR C. MORE, J.**

Judgment Reserved on : 17th October 2023

Judgment pronounced on : 10th November 2023

Judgment :

1. The appellant/accused has challenged the judgment and order dated 10.01.2023 passed by the learned Additional Sessions Judge, Sangamner (hereinafter referred to as “the learned trial Court”), whereby he is convicted for the offences under Sections 376(1), 323 and 506 of the Indian Penal Code. The appellant is sentenced to suffer Rigorous Imprisonment for 10 years and fine of Rs. 25,000/- for the

offence under Section 376(1) of I.P.C., whereas for the remaining charge under Sections 323 and 506 of I.P.C. he is sentenced to suffer Simple Imprisonment for one month each.

2. The case of the prosecution in brief is that the appellant/accused and the prosecutrix are close relative of each other. The appellant is son of aunt of prosecutrix i.e. sister of her father. The appellant, since last 2-3 years prior to the incident, was harassing the prosecutrix and asking her to keep love relations with him. The appellant also used to give threats to her of killing her daughter, for establishing sexual relations with him. Accordingly, the appellant had forcible sexual intercourse with the prosecutrix from last one year till the date of incident i.e. 16.04.2020. On 16.04.2020 at about 9.15 p.m. when the prosecutrix had gone to attend nature's call, the appellant came there and slapped her and on the point of knife, he committed forcible sexual intercourse with her.

3. According to the prosecutrix, though she tried to lodge complaint of the incident of rape against the appellant on 16.04.2020 but the Sangamner City Police despite writing her complaint torn the same and falsely recorded only non-cognizable complaint. Thereafter the prosecutrix made

various applications to various Authorities and ultimately filed writ petition in this Court. As per the order of this Court, she lodged report of incident on 29.07.2020 in Sangamner City Police Station as per Exh.18. Thereafter the investigation was conducted and appellant was charge-sheeted for the aforesaid offence. The learned trial Court, by conducting the trial, convicted the appellant/accused has aforesaid. Therefore, this appeal.

4. Learned Counsel for the appellant submits that the prosecutrix has lodged false complaint against the appellant which is evident from so many circumstances on record, but the learned trial Court did not properly appreciate the evidence on record and convicted the appellant on the basis of sole testimony of the prosecutrix. According to him, though it is alleged that the appellant committed rape on prosecutrix on 16.04.2020, but there is no reference to that effect in the N.C. report filed by the prosecutrix on the very day. He pointed out that despite the incidents of alleged forcible sexual intercourse for one year prior to the incident, the prosecutrix did not lodge a single complaint. Moreover, she also did not state any specific date and details as regards those incidents of forcible sexual intercourse. He pointed out

that even the learned trial Court falsified the version of the prosecutrix in respect of earlier alleged act of forcible sexual intercourse, but wrongly convicted the appellant by relying too much on the sole testimony of the prosecutrix. In addition to the submissions, he relied on the following judgments :

- (i) Santosh Prasad @ Santosh Kumar vs State of Bihar delivered by Hon'ble Apex Court in Criminal Appeal No. 264 of 2020.*
- (ii) Md. Ali vs Stat of U.P., (2015) AIR (SCW) 1711*
- (iii) State of Karnataka vs F. Nataraj, (2015) AIR (SCW) 6241*
- (iv) Prakash Chand vs State of Himachal Pradesh (2019) AIR (SCW) 1037*
- (v) Ganga Prasad Mahto vs State of Bihar & another (2019) 2 ACR 1103*
- (vi) Davinder Singh vs State of Punjab (2023) 2 LawHerald (SC) 1465*
- (vii) Munna Mohammed Shaikh vs State of Maharashtra (2022) ALL MR (Cri) 79*

5. On the contrary, learned A.P.P. strongly opposed the submissions made on behalf of the appellant and supported the impugned judgment. According to him, the learned trial Court rightly relied upon the judgments of the Apex Court mentioned in the impugned judgment itself. He pointed out that leniency is already shown by the trial Court by awarding lessor punishment of 10 years to the appellant /

accused. As such, he prayed for dismissal of the appeal. He also relied on the judgment in the case of ***Phool Singh vs State of Madhya Pradesh*** reported in ***2022 AIR (SC) 222***.

6. On the other hand, learned Counsel for respondent No.2/prosecutrix also supported the judgment of the learned trial Court as well as the arguments advanced by the learned A.P.P. According to him, the evidence of prosecutrix alone is sufficient to convict the appellant/accused. Besides, he also relied on the judgments in the cases of ***Phool Singh vs State of Madhya Pradesh*** (supra) and ***Vishnu Alias Undra vs State of Maharashtra*** reported in ***(2006) 1 SCC 283***.

7. Heard rival submissions. Also perused the entire documentary as well as oral evidence on record in the light of the judgments cited by rival sides.

8. It is significant to note that the prosecution has examined in all seven witnesses. However, the learned trial Court has convicted the appellant/accused on sole testimony of the prosecutrix by relying on the observation of the Hon'ble Apex Court that conviction in rape cases can be based on the sole testimony of the prosecutrix. The evidence in respect of

spot, seizure of clothes, C.A. reports is not at all material since the prosecutrix as well as the appellant both are married. Moreover, the investigating of the crime was started after about 3 to 4 months, and therefore, the medical examination of the appellant as well as the prosecutrix is not at all significant.

9. On going through the citations filed by the rival sides, one thing is amply made clear that the sole testimony of prosecutrix in rape cases can be a base for conviction of the accused, but it must inspire confidence which can be ascertained from the facts of each case. This fact can be seen from the ratio laid down by the Hon'ble Apex Court in the case of *Phul Singh vs State of Madhya Pradesh* (supra). It has been held that the testimony of victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Thus, it is to be seen whether the sole testimony of prosecutrix inspires confidence and is reliable in the light of the facts of this case.

10. The prosecutrix has deposed that the

appellant/accused used to tease her since last 2-3 years prior to the incident by singing songs and whistling. According to her, the appellant used to compel her to keep sexual relations with him, otherwise he would kill her daughter. She also stated that he used to keep knife with him and whenever she used to go to attend nature's call towards brick kiln or river side in the night, he used to give threats to her on the point of knife. She herself stated that from last one year prior to the incident the appellant/accused committed forcible sexual intercourse with her against her will on many occasions. However, it is extremely important to note that despite such incidents of forcible sexual intercourse for about one year, she did not lodge a single complaint against the appellant. She has further stated that when she was avoiding the appellant after being fed-up by such forcible sexual relations, the appellant had beat her with slaps on 10.04.2020 near brick kiln. However, despite this also the prosecutrix did not lodge any police complaint against the accused. This very conduct is also condemned by the learned trial Court in the judgment itself and the learned trial Court specifically observed that it was difficult to accept the story of committing rape repeatedly by the appellant/ accused for about one year prior to the incident. However, the learned trial Court appears to have

believed the story of the prosecutrix as regards the incident dated 16.04.2020.

11. So far as the incident of 16.04.2020 is concerned, the prosecutrix is claiming that at about 9.15 p.m. on that day she had gone to attend nature's call towards brick kiln and at that time appellant saw her and followed her. He slapped her and torn her blouse. Thereafter appellant again threatened her on the point of knife and by giving threat of killing her daughter, committed forcible intercourse with her. She further deposed that then she shouted, and therefore, the appellant/accused ran away. She also stated that she immediately went to Sangamner City Police Station for lodging the report, however, the police refused to record her report and called her on the next day. She is saying that on the next day when police reduced into writing her complaint and called the appellant, but thereafter prepared false N.C. case instead of rape incident. This is the version of the prosecutrix in respect of the incident dated 16.04.2020.

12. It is significant to note that the prosecutrix has admitted in the cross-examination that the brick kiln where the alleged incident had taken place, was situated by the side of river from where Bharadi area was situated at the distance

of 1000 ft. Thus, if the prosecutrix had shouted at the time of incident, then the persons residing in the Bharadi area could have easily heard such shouts. However, nothing of that sort had happened, and therefore, the say of prosecutrix that she shouted at the time of incident appears doubtful. Further, she has admitted that till the date of incidents she did not lodge any complaint against the appellant / accused in the police station in respect of earlier incidents of forcible sexual intercourse. She herself admitted that she used to sleep after such incidents of sexual intercourse and she did not tell about the same to anybody. This conduct of prosecutrix is definitely doubtful and it gives an impression that no such incidents had taken place.

13. Further, she is claiming that the concerned police station did not record her complaint about forcible sexual intercourse at the hands of the appellant, but in the cross-examination she stated that her complaint was reduced into writing by the police, however, in front of her police torn the said paper. She also admitted that there was no enmity between herself and police. Therefore, the incident of tearing the complaint of prosecutrix by the police as stated by her cannot be believed. Even the Investigating Officer i.e. PW-6

Nitin Patil in the cross-examination has clearly stated that it did not happen that the prosecutrix had been to the police station for lodging complaint of rape. On the contrary, he has specifically stated that there were cross complaints in form of non-cognizable cases between the prosecutrix and the sister of appellant. One such N.C. report is already on record at Exh.22 and on going through the same, it appears to be lodged by the present prosecutrix against the appellant as well as his sister and mother. On perusal of the same, it appears that there was quarrel between rival parties on account of old domestic reason. Not a single word is there that the appellant had committed forcible sexual intercourse with the prosecutrix. The cross-examination of PW-6 Nitin Patil i.e. the Investigating Officer further indicates that in-laws as well as husband of prosecutrix were not ready to support her, and therefore, they did not give their statements also. All these facts are clearly indicative of the fact that the evidence of prosecutrix in respect of the incident dated 16.04.2020 is highly unbelievable. On the contrary, it appears that the prosecutrix might have come with the story of forcible sexual intercourse on account of dispute between the family of appellant and her. On the other hand, if at all it is presumed that there were sexual relations between the

prosecutrix and the appellant prior to the incident, but it's non disclosure by the prosecutrix for about one year indicates that those must be consensual.

14. The Hon'ble Apex Court in the case of M.D. Ali vs State of U.P. (supra) has made the following observation :

“Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non- examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon. True it is, the grammar of law permits

the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a Court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely do not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the accused-appellants for the alleged offences and the High Court has fallen into error, without re-appreciating the material on record, by giving the stamp of approval to the same”.

15. In the instant case also, the testimony of prosecutrix does not inspire confidence in the light of the above-discussed facts and other circumstantial evidence also does not support the same. Therefore, conviction recorded by the learned trial Court against the appellant/accused on the sole testimony of prosecutrix definitely appears erroneous in this case. The appellant/accused is therefore entitled for benefit of doubt. In view of the same, interference in the impugned judgment is called for. In the result, following order is passed.

ORDER

- (i) The appeal is hereby allowed.

- (ii) The judgment and order dated 10.01.2023 passed by the learned Additional Sessions Judge, Sangamner in Sessions Case No.62/2020, is hereby quashed and set aside.
- (iii) The appellant is acquitted of the offences punishable under Sections 376(1), 323 and 506 of I.P.C.
- (iv) Since the appellant is in jail, he be set at liberty.
- (v) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)