

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 633 OF 1998

Dilip Ratan Manera .. Appellant
Versus
The State of Maharashtra .. Respondent

Mr. Shailesh Chavan a/w Mr. Hrishikesh Avhad, for the appellant.
Mr. S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 25th AUGUST, 2023

JUDGMENT:-

1 The prosecutrix, aged 30 years approached the police station on 15/03/1994 and reported the incident, which had occurred in the post midnight of 15/03/1994, when she has gone to sleep in her house, accompanied by her tenant PW-8, residing in the neighbourhood, her stepson Santosh (PW-4) and her son Nitin, who is not examined during the trial.

 She recounted that, at around midnight, someone banged the door and when asked, the person outside disclosed his name and asked her to open it, or else, threatened that, he would break the same. He was accompanied with four to five persons.

 This person was the appellant (accused no.1), who drove the old lady and Santosh, out of the house and pulled her outside, but she somehow managed to free herself and entered into the house. He accompanied her and bolted the door of the room and switched off the light and thereafter committed forcible sexual intercourse upon her on two occasions.

After commission of the forcible act, he left her house at around 2:30 a.m. and her son entered in. She was bleeding, but continued to suffer the pain and in the morning hours, send her son Santosh, to one Waman Mhatre, who helped her to lodge the report and she was then taken to the hospital for medical examination.

The above narration resulted in registration of C.R, which invoked Sections 376 (2)(g), 452, 506 (2) r/w 34 of IPC along with Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 PW-9 carried out the investigation by recording the statement of the witnesses, preparing a panchnama, collecting the articles found on the spot and obtaining the reports of the same.

During the course of investigation, the clothes worn by the prosecutrix i.e. a Maxi and petticoat came to be seized and were forwarded for Chemical Analysis. The accused on being arrested was also subjected to medical examination and on completion of the investigation, the charge-sheet came to be filed.

The charge was framed by the Sessions Judge, Thane and five persons came to be charged in the C.R.

3 All the accused were subjected to trial, and except accused no.1, i.e. present appellant, all of them were acquitted of all the offences with which they were charged.

The accused no.1 is acquitted under the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, but was found guilty for committing an offence punishable under Section 452, 376 and 506(2) of IPC.

Upon the conviction under Section 376, he is sentenced to suffer R.I. for five years and to pay fine of Rs. 10,000/-, in default

of payment of fine to undergo R.I. for one year, no separate sentence was awarded for committing an offence under Section 452, 506 (2) of the IPC.

4 On the appeal being filed against the impugned judgment, it is admitted on 3/08/1998, and the appellant was directed to be released on bail by furnishing surety for the satisfaction of the trial court. Sentence imposed upon him was also suspended.

5 In order to establish the charge, the prosecution examined 9 witnesses, which included the prosecutrix, who stepped into the witness-box as PW-3.

She narrated the happenings which had occurred in her house at 12:00 midnight, three years ago and she reiterate her version in the complaint and specifically depose that after driving her children and the old lady, who were accompanying her in the house, the accused no.1 locked the door from inside, switched off the light and committed forcible sexual intercourse with her. She depose that she started bleeding from her private part and after the accused left, her step-son Santosh came in the house and sought help for her from the neighboring lady.

In the morning hours, she asked her son and the son-in-law of the old lady i.e. PW-5 to inform about the incident to one Mr. Waman Mhatre, who immediately sought help of the Social Worker, Mr. Bakshi, PW (6) and the complaint was lodged with the concerned police station on telephone. She was then taken to the police station, where she endorsed her thumb mark on the complaint, and thereafter was taken to the Civil Hospital.

The prosecutrix specifically affirm the statement in the complaint lodged (Exhibit-13) and deposed that, she resisted the accused, who raped her against her wishes, and the other accused

were standing outside the door.

During the examination, she identified the clothes worn by her, which included a maxi and the petticoat.

Being subjected to extensive cross-examination, she state that there were nail marks on her hands and legs. She did not recollect whether in the supplementary statement recorded by the police, she had told that, she was the keep of Mr. Waman Mhatre, prior to the incident but, she admit that she knew that the accused no.1 is the brother-in-law of Mr. Mhatre.

She was subjected to further cross-examination as regards Mr. Waman Mhatre, but I do not think that it bears any further relevance other than the one circumstance, that he was the brother-in-law of accused no.1.

6 To corroborate the version of the prosecutrix, the prosecution has examined Santosh, the stepson of the complainant, who was present in the house, PW-8 the lady in the neighborhood as well as PW-5, the son-in-law of PW-8 residing in the neighborhood.

There is some inconsistency in the version of the said witnesses about what they did after they were driven out of the house by the accused no.1 but, as far as the incident that someone knocked at the victim's door at midnight and asked them to leave the house, is the consistent version.

Santosh was knowing the accused and he categorically state that it was the accused no.1, who was at the door and he started beating him and he went inside the house and closed the door from inside.

PW-8, the lady, who was sleeping in her house, though was not knowing the accused no.1, she corroborated the prosecutrix

to the extent, that some people visited the house at around 1:00 am and putting on the light, when the door was opened, one person came in and he put off the lights. She also corroborated PW-3, by stating that she was driven out of the room, though in her cross-examination, she state that those persons and the victim asked her to go out and therefore she left the place and came in the room of her son.

7 As far as P.W 5 is concerned, he is not an actual witness to the incident, but was aware that her mother-in-law was sleeping with the prosecutrix in her room.

In his examination in chief, he state that he woke up at 7:00 am in the morning and some commotion had taken place during the night and his deposition is hearsay as he was not present in the house of the prosecutrix when the accused persons entered her house. However, he went to call Waman Mhatre and in fact, this witness even do not identify the accused no.1, obviously for the reason that he was not aware that it is this man, who had visited the house of the prosecutrix in the night.

8 Against the aforesaid set of witnesses, there is the evidence of the Doctor, who had examined the prosecutrix immediately on the next day i.e. on 15/03/1994 and issued the certificate (Exhibit-20).

PW-1, Medical Officer, attached to the Civil Hospital, who examined the prosecutrix, had recorded as under:

“6. *Blood and clots present in vagina.*

7. *Vaginal tear present in right fornix of size 1-1/4” x 1/1” x1/3” deep semicircular, bleeds on touch. Age less than 24 years.”*

PW-1 depose that the injury of vaginal tear was noticed during the internal examination and this injury was possible in case

of forcible penetration, if the penis is unusually large, when erect. In cross-examination, P.W. 1 state that no definite opinion can be given about forcible sexual intercourse and such injury is possible if the foreign object is inserted in the vagina.

Exhibit-20 record the vaginal tear and it is specifically recorded that it was bleeding when touched, as the injury was caused within 24 hours.

9 P.W-2 is the Doctor, who has examined the accused no.1 and found him to be capable of performing sexual intercourse. He found two external injuries on the accused in form of:-

“Minor abrasion over left deltoid region. 1/4”x 1/2” superficial and minor abrasion over the left knee joint superficial in nature” and the age of the injury was opined to be more than 24 hours.

10 During the course of investigation, the articles collected, which were forwarded for analysis were received from the Assistant Chemical Analyzer, Forensic Science Laboratory, Bombay and the report which is admitted in evidence by the accused clearly mention the presence of blood stains on the quilt at Exhibit-1 and quilt at Exhibit-2. Exhibit-2 has also presence of semen stain about 4 cms in diameter. Exhibit-3 and Exhibit-4 are the clothes worn by the prosecutrix and the report of the analysis record the following, in respect of these clothes:

“Exhibit 3 has innumerable blood stains ranging from 0.1 to 20 cms.

Diameter spread at places.

Exhibit 4 has innumerable blood stains ranging from 01. to 15 cms.

In diameter spread at places

Exhibit 4 has one semen stain of about 1 cm in diameter and one semen

Stain of about 2 cms in diameter on one side”

Further analysis of the blood and semen noticed on the Exhibits, however, gave inconclusive results about its grouping, except that the blood and semen found is ‘Human.’

11 The Investigating Officer P.W-9 in support of the prosecution case has deposed that he had prepared the spot panchnama and arrested the accused on the date of the registration of the subject FIR. He also support the case of the prosecution submitting that seized articles were sent to Chemical Analyser for examination and the report received was placed on record.

He admit that he had recorded the statement of Mr. Waman Mhatre, though he was not called to depose before the Court.

The spot panchanama (Exhibit-35), which form part of the charge-sheet also refer to the presence of the blood stains on the spot.

Exhibit-35 refer to the location where the incident had taken place and it make reference to the quilt lying in the room along with the clothes kept in one corner belonging to the victim, which were found to be blood stained. It is these clothes which were seized during the course of investigation and forwarded for Chemical Analysis.

12 In the wake of the aforesaid material compiled in the charge-sheet and placed as evidence before the learned Sessions Judge, who believed the prosecutrix and who dispelled the case of she being a consenting party to the sexual intercourse and by ignoring the minor inconsistencies in the version of the prosecution witnesses, the learned Judge chose to believe the prosecutrix and coupled with the evidence of the chemical analysis, recorded a finding of guilt

against accused no.1 for committing the offence of rape punishable under Section 376 of IPC.

13 On hearing the learned counsel for the appellant as well as the learned APP, and on perusal of the Record and proceedings included in the impugned judgment, I cannot reach a conclusion, different from the one which is recorded by the Judge, based on the evidence placed before him.

The version of the prosecutrix is consistent, when she lodged the complaint in the police station and when she stood in the witness-box in support of the accusations levelled against the accused no.1, of he committing forcible sexual intercourse with her. The prosecutrix categorically stated that after the accused no.1 entered into the house in the midnight, he continued to remain there for a period of around to 2 to 2 ^{1/2} hours and he bolted the door from inside and caught her in a trap and despite her son and stepson being standing outside the house, she could not call them to rescue her, on account of the threat administered to all of them.

An argument which was advanced before the Trial Court that, the sex was consensual, has been rightly brushed aside, since she had categorically deposed that upon forcible sexual intercourse, she started bleeding and the traces are tracked on the clothes, which she was wearing and also the quilt lying on the cot/bed, where the incident of rape had occurred. The blood and semen traces on these articles is found to be human.

In any case, it is not the defence of the accused that after the intervening night i.e. between 14/03/1994 and morning of 15/03/1994, there is any possibility of any other person committing the act, as according to the prosecutrix, she was in a completely distressed condition and continued to lie on the bed and because of

the repeated sexual intercourse, she had become totally weak. She was required to be carried to the police station and thereafter to the hospital in an Ambulance and though PW-7 has deposed that when she was brought to the police station at around 7:00 to 7:15 a.m in the morning, she was in an unconcious condition.

It can be infered from her own version, which find support from the circumstances, that the bedsheet spread on her bed, where the act was committed and her clothes are also found to be blood stained and had semen on it. The seizure of the clothes is immediate i.e on the next date and it is not the case of the accused that there was any opportunity to tamper the articles.

14 Since the prosecutrix version inspire confidence and there is no reason to doubt her, merely because there is some minor inconsistency in the version of the prosecution witnesses, when she has come clear that the accused no.1 barged an entry into her house, in the minight and forced himself upon her, which resulted into a vaginal tear, which has been opined by PW.1 to be on account of forcible penetration and since the prosecutrix has deposed that the accused no.1 had repeated the act on two occasions and continued to remain in the room almost for periof of 2 hours, there is no reason why the conviction cannot be sustained on her sole testimony, which is truthful & reliable, coupled with the evidence of P.W-1, the Medical Officer, who has noticed the injury as she was examined within a period of 12 hours from the date of occurrence of the incident and referred to the vaginal tear as 'Fresh'.

The finding of guilt recorded in favour of the accused by the learned Judge therefore do not warrant any interference and the same is upheld.

15 The appellant was on bail and while the appeal is being heard, and his counsel has failed to mark the attendance, which has constrained me to appoint Advocate. Shailesh Chavan, the counsel on the Panel of Legal aid Services Authority, and the appeal is decided with his able assistance.

16 Since Advocate Mr. Shailesh Chavan has been appointed by legal aid for the purpose of espousing the cause of the appellant, and I would like to record my appreciation for the strenuous efforts taken by him.

 The legal services authority is directed to pay the legal remuneration to him within a period of six weeks from today.

17 Upon the sentence imposed by the learned Sessions Judge in Sessions Case No. 344 of 1994 having being upheld, the Sessions Judge, Thane, shall take appropriate steps to ensure the arrest of the appellant by issuing directions to the In-charge of the Police Station for committing him to prison, for undergoing the sentence.

 Upon his arrest, the copy of the judgment shall be served upon the appellant through the concerned Court.

(SMT. BHARATI DANGRE, J.)