



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 248 OF 2005

Ramprasad Haribhau Kale,
Age : 35 years, Occu. : Agriculture,
R/o. Yerandeshwar, Taluka : Purna,
Dist. Parbhani.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent

...
Mr. S. T. Shelke, Advocate for Appellant
Mr. K. K. Naik, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14 OCTOBER 2024

PRONOUNCED ON : 23 OCTOBER 2024

JUDGMENT :

1. Convict for offence punishable under section 354 of Indian Penal Code (IPC) is hereby challenging judgment and order dated 23.03.2005 passed by 1st Ad-hoc Additional Sessions Judge, Parbhani in Special Case No. 39 of 2001.

2. Appellant in trial court faced charge on accusation that, he visited house of informant, who was a nurse, in the night of 05.05.2000 and demanded nirodh (condom). She told him that she does not have it and that she would make it available on next day. Appellant asked her to accompany him. Because of such

utterance, informant felt that her modesty was outraged and therefore she lodged report Exh.18. On the basis of which, crime was registered and investigated by PW5 ASI Gajbhar and appellant was tried by learned 1st Ad-hoc Additional Judge, Parbhani, who, on appreciating the oral and documentary evidence adduced by prosecution, recorded the above guilt of the appellant, which is now taken exception to by filing instant appeal.

STATUS AND ROLE OF PROSECUTION WITNESSES

3. The prosecution has examined following 6 witnesses in support of its case. Their role and status is as under :

PW1 Suman is the informant.

PW2 Suresh is son of informant.

PW3 Nirmala is daughter of informant.

PW4 S.D.P.O. Marwalikar is the Investigating Officer.

PW5 Govindrao, is first Investigating Officer.

PW6 Dr. Zanwar, Medical Officer, who examined PW1 and PW3 and issued certificates.

SUBMISSIONS

On behalf of Appellant :

4. Learned counsel for appellant submitted that, there was charge of section 354 along with section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act (for short, "SC & ST Act"). He pointed to the evidence on record and taking this court through the testimony of PW1 Suman, PW2 Suresh and PW3 Nirmala i.e. informant and children and submitted that they are not consistent and are not lending support to each other on various counts. He pointed out that, informant herself claims that, she was watching T.V. during alleged visit of appellant, whereas, her children PW2 and PW3 are giving different versions. He pointed out that there is reference of other boys also present at that time, but none of such independent persons are examined. He pointed out that there are allegations that appellant called informant outside and she being slapped and even daughter being hit, but these two witnesses, though claimed to be together, are not consistent. He submitted that at the outset there was no overt act, criminal force or utterance by appellant which was offending in nature or which would amount to outraging modesty. It is submitted that, in fact appellant had paid visit to P.H.C. where informant was posted as Nurse and she was supposed to distribute medicines and he had been to collect the same as his daughter was sick. Learned counsel submitted that learned trial court has not considered answers given by informant and children in cross, which are full of material omissions and contradictions. He also pointed out that, complaint was silent about caste or any utterance on caste abuse, of which charge has been framed and appellant was

made to face trial. He pointed out that even necessary ingredients for attracting charge under section 354 IPC are patently missing in the prosecution evidence. However, according to him, in spite of such weak evidence, case of prosecution has been unfortunately accepted by learned trial Judge and guilt has been recorded. He pointed out that even settled law has not been considered and so he seeks indulgence at the hands of this court for allowing the appeal.

On behalf of Respondent – State :

5. Per contra, learned APP strongly opposed by submitting that accused had visited house of informant at odd hours. His very offer of asking informant and her daughter to accompany him clearly indicates his ill intention. He submitted that there is no false implication as there was admittedly no previous enmity, and therefore, he supports the judgment and the findings of learned trial court and prays to dismiss the appeal.

ANALYSIS

6. Here, out of six witnesses, evidence of only three witnesses is crucial i.e. of PW1 informant, PW2 her son and PW3 her daughter.

On carefully scrutiny of informant's testimony, it is emerging that, she is admittedly a Nurse working in Sub-Center, Health Department, Zilha Parishad and was occupying residential

quarter. According to her, around 11:30 p.m. accused paid visit to her house and demanded condom. According to her, she told him that it was not available with her, but she would make it available on next day after she returned from meeting. Upon which, according to her, accused said that she should accompany him or she should send her daughter. When she asked him, not to use such language, she alleges that she was slapped. Her daughter came to her rescue, but she was also beaten. Because of the utterance, her modesty was violated and therefore she lodged compliant.

While under cross, she answered that she reported at the time of complaint that, she belongs to 'Bhilla Adivasi', but there is no reference to this in her complaint. She is unable to give names of boys, who were in her house watching T.V. at the time of incident. She answered that, her clothes were blood stained. She admitted that, accused had lodged complaint against herself, her daughter and son-in-law regarding the same incident, wherein there are allegations of beating to him. Rest is all denial.

7. Second witness is her son PW2 Suresh. He is examined at Exh.19. Even according to him, accused came to their house and demanded nirodh (condom) from his mother and she said that

it was not available and further told that she would bring it from Purna after the meeting. But accused said that, he wanted it instantly. He has deposed that, his sister PW3 came out of the house. Accused said that either mother should accompany him or her mother should send her daughter or mother should make some arrangement. Upon which, accused slapped her mother and when her sister came to her rescue, she also suffered injury to the left hand. According to him, accused dragged his mother.

In cross, omission is brought to the extent that accused had said that he wanted nirodh immediately. He answered that, when his mother was being dragged, he raised shouts, due to which his sister came out from the house. He admitted that accused has filed criminal case against his mother, sister Nirmala and Shivilal.

8. PW3 Niramala sister of PW2 and daughter of PW1, testified that, accused came to their house at 12:00 to 1:00 a.m. and asked her mother that he wanted nirodh. Her mother told him she did not have it and would bring it when she would go for meeting. Upon which, accused said to her that either she should accompany her or should send her daughter. Therefore, she went out of the house and saw accused jostling with mother. Thereafter, accused beat both of them.

In her cross with regard to occurrence, she answered that, she does not remember whether she had told police that at 12:00 to 1:00 a.m. accused came to their house and asked the boys to call her mother and she went and woke her up. She admitted that, such version is not finding place in the statement to police. She admitted that, she did not inform police that, her mother came out and asked accused that what he wanted. She also answered that, she told police that accused said that as to why her mother would not give nirodh. But such materiel is not available in her statement and she was not in a position to assign reason. She also answered that, she does not remember whether she told that accused was jostling with her mother. She answered that, she did not handover blood stained clothes to police. She also admitted that accused filed complaint against herself, her mother and her husband on the same day.

9. PW6 Dr. Zanwar, who allegedly examined PW1 Suman and PW3 Nirmala and issued injury certificates regarding both of them suffering abrasion on right arm above right elbow and lacerated injury on posterior, respectively, but he admitted that, injuries are possible on account of falls on a hard surface.

10. Here, crime is registered for offence under section 354 IPC and section 3(1)(xi) of SC & ST Act, but guilt is recorded under section 354 IPC. For attracting section 354 IPC, following ingredients are required to be proved and established by prosecution :

“Firstly, there is assault on a woman.

Secondly, there is use of criminal force on her and

Thirdly, such force has been used on woman with sole intention of outraging modesty.”

Cardinal principle of law is that, burden is on prosecution to prove availability of necessary ingredients for attracting section 354 IPC. It must be demonstrated that, criminal force has been used upon a woman with sole intention of outraging modesty or there has to be knowledge that by such act, modesty of a woman would be outraged.

Law to this extent has been expounded in the cases of *State of Punjab v. Major Singh*, AIR 1967 SC 63 and *State of Himachal Pradesh Vs. Mango Ram*, (2000) 7 SCC 224.

11. Keeping above legal requirements in mind, evidence is re-appreciated.

Here, PW1 Suman, PW2 Suresh and PW3 Nirmala are speaking about accused coming and demanding condom from informant. There is no dispute that, she is a Nurse and is posted in Sub-center of Health Department, Zilla Parishad. Her very answer that it was not available with her and that she would arrange after returning from Purna after meeting, itself shows that, there was duty cast on her to supply medicines and such articles on demand. It is practice followed by health department to make articles like condom available for public at large and are distributed free at health centers. Therefore, it seems that accused had visited house of informant. On carefully scrutinizing the evidence of informant, her son and daughter, more particularly that of son and daughter, it is doubtful whether PW2 Suresh and PW3 Nirmala have heard the conversation. PW3 Nirmala apparently seems to have come in picture at later point of time as her brother PW2 Suresh in cross stated that, when his mother was dragged he raised shouts, after which his sister came out. This episode of jostling and dragging had taken place subsequent to some conversation. Therefore, virtually there is no corroboration to the testimony of informant.

12. Objection has been taken to alleged utterance by accused that informant should accompany him or should send her daughter and such utterance is viewed by her as violation of her

modesty, but her son PW2 Suresh has stated that, accused insisted for the article instantly. In such reference, it is possible that, if at all there is any utterance, then accused had asked informant to accompany and to arrange it. In the light of above discussion, asking Nurse in Health Department to accompany a direct inference that said request was with ill intention cannot be drawn straightaway so as to attract section 354 IPC. What he allegedly uttered was just to accompany and therefore several other meanings also could be drawn for such utterance. For attracting 354 there has to be use of criminal force. Such aspect is clearly missing in the evidence. Therefore main ingredients for section 354 are patently missing in the prosecution evidence.

13. Secondly, all witnesses are admitting about complaint lodged by accused due to same incident against present informant, her daughter and her husband and this is not denied. For said reason, implication as a counterblast cannot be ruled out.

14. For all above reason, essential ingredients being not established and no clear meaning emanating from alleged utterance, it is a case of benefit of doubt and hence the same has to go to appellant. Hence, I proceed to pass the following order :-

ORDER

- I) The criminal appeal is allowed.
- II) The conviction awarded to appellant Ramprasad Haribhau Kale in Special Case No. 39 of 2001 by learned 1st Ad-hoc Additional Sessions Judge, Parbhani on 23.03.2005 for the offence punishable under section 354 of Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under section 354 of Indian Penal Code.
- IV) The bail bonds of the appellant stands cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.

(ABHAY S. WAGHWASE, J.)