



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 398 OF 2002

1] Parmeshwar s/o Raoji Ade,
Age 22 years, Occu. Agril.,
R/o. Sankarala, Tq. Jintur,
Dist. Parbhani.

2] Vitthal s/o Sawairam Ade,
Age 20 years, Occu. Agril.,
R/o. Sankarala, Tq. Jintur,
Dist. Parbhani.

... Appellants
[Orig. Accused]

Versus

1] The State of Maharashtra,
Through Police Station, Bamani,
Tq. Jintur, Dist. Parbhani.

2] X.Y.Z.

... Respondents.

.....

Mr. S. B. Bhapkar, Advocate for the Appellants.
Mr. N. D. Batule, APP for Respondent No.1-State.
Mr. K. B. Jadhav, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 13.02.2024

Pronounced on : 21.02.2024

JUDGMENT :

1. Instant appeal arises out of judgment and order of conviction passed by learned 1st Adhoc Assistant Sessions Judge, Parbhani dated 18.07.2002 in S.T. No. 158 of 2000 in which both the appellant are held guilty and convicted for commission of offence punishable under Section 376(g) of the Indian Penal Code [IPC].

FACTS GIVING RISE TO THE SESSIONS TRIAL ARE AS UNDER

2. On 05.11.1999, victim, a 15 years old girl, was carrying meals for her grandfather, who was working in the field. While going to the field, she was required to pass through the fields of appellants Parmeshwar and Vitthal. Around 10.00 a.m., she was intercepted by Parmeshwar. Later on appellant Vitthal joined him and they both lifted victim and took her to the cotton crop and took turns to have forcible sexual intercourse with her. She informed her mother, but initially she reported only regarding occurrence of outraging her modesty. In the evening, it is case of prosecution that, she disclosed about pains to her private part and thereafter she narrated the facts about both accused committing rape on her.

Therefore, on the strength of such statement, crime initially registered for offence under Section 354 IPC came to be converted to 376(g) IPC. She was subjected to medical examination. PW6 carried out investigation and after its completion, both accused came to be chargesheeted and tried by learned trial court, who, on appreciating testimonies of six witnesses and documentary evidence, recorded guilt for offence under Section 376(g) IPC and sentenced both accused to suffer 10 years rigorous imprisonment and to pay fine. Such order dated 18.07.2002 is now taken exception to by filing instant appeal.

SUBMISSIONS

3. Learned counsel for the appellants pointed out that there is apparently false implication. He emphasized that initially incident reported by victim herself was of merely outraging modesty. Even crime was registered on her such statement, but later on false and afterthought complaint alleging commission of rape has been registered. He pointed out that there is no convincing evidence about victim being taken by accused in the field and raped. He pointed to the medical evidence and submitted that there are no injuries and even medical report is about old hymen tear and victim to be habituated to sex. Therefore, according to him, even medical evidence does not support prosecution. He took this court to the testimony of victim in witness box and also to her cross-examination and would emphatically submit that answers given in cross clearly show that version has been improvised. Her entire testimony is full of material omissions and contradictions.

He also took this court through the testimony of mother and would point out that her cross also clearly shows that it is full of material omissions and contradictions and improvised version. That, except testimonies of these two witnesses, there is no other independent witness. Therefore, it is his submission that with such

quality of evidence, guilt ought not to have been recorded. He finally submitted that very testimony of victim has failed to inspire confidence. That, according to him, it is not possible to commit such offence during day time, that too in a cotton crop when people were admittedly working around the alleged scene of occurrence due harvesting season. That, victim also has not raised any hue and cry or alarm. Therefore he questions the reasoning and the conclusion reached at by the trial Judge. For all above reasons, he prays to allow the appeal by quashing the impugned judgment of conviction.

4. In answer to above, learned APP pointed out that firstly, victim was below 16 years of age at the time of occurrence. She is a village girl and an illiterate. That, taking disadvantage of her loneliness, both accused known to her have committed rape by taking turns. That, accused Parmeshwar had committed rape twice. That, when one was raping, the other held her. They had threatened to throw her in the well, but on her pleading not to throw her in well and assurance not to disclose the incident, they had let her off. Same day she had narrated the occurrence to her mother and had approached police. There is no delay. According to him, in such cases, even otherwise delay is insignificant. He lays much stress that though in the FIR, victim had not narrated about rape, he pointed out that being a minor

and furthermore FIR not being encyclopedia, mere failure to report rape also in the FIR was not fatal for prosecution. Her testimony was inspiring confidence. Medical evidence though is about no injury and habituated to sex, it is his submission that, accused persons had no right to have forceful sex when victim herself had opposed. Thus, it is his submission that learned trial court has rightly appreciated the evidence as well as applied the settled law and therefore, according to him, no fault can be found in the appreciation and conclusion drawn by learned trial court.

5. Here, both accused are chargesheeted for offence punishable under Section 376(g) of IPC. To bring home the said charge, prosecution seems to have examined following six witnesses:

PW1 Medical Officer Maske who examined both accused.

PW2 is the victim.

PW3 is mother of victim.

PW4 Deorao is pancha to spot panchanama Exhibit 44.

PW5 Pandurang has acted as pancha to seizure of clothes of victim vide seizure panchanama Exhibit 48.

PW6 PHC Thakur is the Investigating Officer.

6. Evidence of victim is crucial and of significance. She seems to be a girl, 15 to 16 years of age. In her evidence at Exhibit 40 she has stated that on that day, while she was taking meals for her grandfather and while she was passing through the way which goes through the fields of both accused, accused Parmeshwar first stopped her, thereafter accused Vitthal joined him. According to her, they both lifted her, took her to the cotton crop, first Parmeshwar committed rape while Vitthal held her, whereas after him, Vitthal took turn to rape her while Parmeshwar held her. She has named Parmeshwar for raping her twice.

7. It is true that on visiting her cross, what she reported in FIR was only about pressing her breasts, that too only by accused Vitthal, but on next day she seems to have given supplementary statement which is noted by PW6 IO and he has deposed to that extent in the witness box. Therefore, whatever is shown to be improved version or material omission and contradiction, is finding place in the supplementary statement given on 06.11.1999. It is pertinent to note that victim is barely 15 to 16 years of age and moreover, resides in a small village. She is apparently illiterate. She may not have reported to her mother about rape and only reported about outraging of modesty. But on the next day i.e. on 06.11.1999, actual incident has

been disclosed and therefore, on the strength of her such supplementary statement, crime was converted from 354 to 376(g) of IPC. Charge to that extent was also framed and explained to the accused before commencement of trial. Therefore, her version is as per her supplementary statement which is also given immediately i.e. on the next day.

Taking such circumstances into consideration and particularly when the victim was a girl from small village, said reporting after a day cannot be the sole ground to disbelieve her version.

8. Though attempt is made to show false implication on account of refusal of accused Parmeshwar's father to perform Parmeshwar's marriage with elder sister of victim and so parents of victim having grudge against accused Parmeshwar, in the considered opinion of this court, merely on such count, allegations of such serious nature would not be raised by a small girl.

9. Learned counsel for the appellants would strenuously submit that here, medical expert is not examined and secondly, medical examination report is about old hymen tear and girl to be habituated to sex. Therefore, it is tried to be submitted that present allegations of rape cannot be considered.

10. Law is fairly settled that mere medical opinion about 'habituated to sex' would not relieve accused from the charge. Victim has every right to refuse to submit herself to sexual intercourse. It would be fruitful to refer cases of same nature which are decided by the Hon'ble Apex Court which are as follows:

In *State of Maharashtra v. Madhukar Narayan Mardikar* (1991) 1 SCC 57 ; *State of Punjab v. Gurmeet Singh and others* (1996) 2 SCC 384 ; *State of U.P. v. Pappu @ Yunus* AIR 2005 SC 1248 and *State (Govt. of NCT of Delhi) v. Pankaj Chaudhary* (2019) 11 SCC 575/AIR 2018 SC 5412, the Apex Court observed that even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law.

In *State (Govt. of NCT of Delhi) v. Pankaj Chaudhary* (supra), in para 29 the Apex Court has held as under:

"29. It is now well settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra (2006) 1 SCC 283]. It is well settled by a catena of

decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K. (2000) 5 SCC 30]”

In *State of Orissa v. Thakara Besra & Another* AIR 2002 SC 1963, the Apex Court held that testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

In *Vijay @ Chinee v. State of Madhya Pradesh* (2010) 8 SCC 191, the Apex Court, after referring *State of Maharashtra v. Chandraprakash Kewalchand Jain* AIR 1990 SC 658, *State of U.P. v. Pappu @ Yunus* (supra), *State of Punjab v. Gurmit Singh* (supra), *State of Orissa v. Thakara Besra* (supra) and few other judgments, has held that the law that emerges on the issue is to the effect that

statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.

11. Therefore, above defence is not sufficient to absolve the serious charge of rape. Victim has categorically stated that she was lifted, made to lie down on the ground, rendered immobile by one while raped by other. After being raped, she claims to have pleaded not to throw her in the well and on her assurance of not telling the incident to anybody, both accused let her lose. Same day she had reported the occurrence.

12. As regards non examination of medical evidence, it is clear that before commencement of trial, under Section 294 Cr.P.C., defence itself has admitted the medical report and therefore, under such circumstances, it is not open for them to question the medical evidence.

13. Here, this court is also of the considered opinion that there is no reason to disbelieve or discard the evidence of victim. She has named both accused and has identified them. As such, learned trial Judge has correctly appreciated and accepted her evidence. Law is

also fairly settled that if sole testimony of victim inspires confidence, the same can be accepted and even relied for fixing guilt. For above reasons, this court does not find any reason to interfere in the judgment. Hence, finding no merits in the appeal, I proceed to pass the following order:

ORDER

- I. The appeal is hereby dismissed.
- II. The bail bonds furnished by both the appellants stand cancelled.
- III. The Superintendent of Police, Parbhani is directed to see that both the accused-appellants surrender to undergo sentence as ordered by the learned Ist Adhoc Assistant Sessions Judge, Parbhani in S.T.No.158/2000 on 18.07.2002 forthwith and send compliance report to this court within two weeks from the date of receipt of this judgment.
- IV. The record and proceedings be sent back to the concerned court forthwith.
- V. The Criminal Appeal is accordingly disposed of.

[ABHAY S. WAGHWASE, J.]