



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 84 OF 2004

. Vilas s/o Raghu Upade
Age: 23 yrs., Occu.: Student,
R/o. Waghala, Tq.Parli,
Dist.Beed

....Appellant /
Ori. Accused

Versus

1. The State of Maharashtra
thro. Police Station Officer,
Police Station, Parli City,
Parli, Dist.Beed.

2. Sau.Surekha Vilas Upade
Age: 27 yrs., Occu.: HH,
R/o. Waghala, Tq.Parli.

3. Aakash Vilas Upade
Age: 13 yrs., U/G.Mother Surekha,
R/o. As above.

.....Respondents

.....
Advocate for Appellant : Mr. Vivek Bhavthankar
APP for Respondent No.1: Mr.N.D.Batule
Notice of Respondent Nos.2 and 3 is served.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 01 AUGUST, 2024

PRONOUNCED ON : 09 AUGUST, 2024

JUDGMENT :-

1. Instant appeal is by appellant Vilas, who is convicted by
learned II Adhoc Additional Sessions Judge, Ambajogai, vide

judgment dated 23-01-2004 in Sessions Case No.73 of 2002 for commission of offence under Section 376 of the Indian Penal Code (IPC) and is accordingly sentenced to suffer rigorous imprisonment for seven years .

IN BRIEF PROSECUTION CASE

2. Victim PW3 Surekha, was studying in Milind College, Parli Vaijinath. Accused was taking education in Vaidyanath College. They both are childhood friends. Two years prior to the evidence, accused approached victim and forced her to accompany him under the bridge and allow him to have sexual intercourse. On knife point, he had forcible sexual intercourse with her. Similar incidence occurred after two days. Out of fear, she did not report it anyone. After her menses seized, she reported the occurrence to mother, who in turn reported to her father. After delivering male child, she lodged FIR on 30-03-2002, on the basis of which crime was registered and investigation was carried out.

After gathering sufficient evidence, Parali City Police Station, Dist.Beed, chargesheeted accused for offence under Sections 376 and 506(II) of the IPC.

Trial was conducted by learned II Adhoc Additional Sessions

Judge, Ambajogai, who on appreciating the evidence of prosecution, vide judgment dated 23-01-2004, convicted accused for offence under Section 376 of the IPC, but acquitted him of charge of Section 506(II) of the IPC. Hence, the appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant would strenuously submit that prosecution has miserably failed to prove the charges beyond reasonable doubt or by leading cogent, reliable and trustworthy evidence. According to him, age of victim is not proved as there is no legally acceptable evidence on the point of age. Taking this court through the testimony of victim, he submitted that victim was a college going student. That accused was acquainted with her. That complaint is lodged after delivering a child. That there was no previous reporting to anyone either parents or Police. According to learned Counsel, there is nothing in her evidence suggesting that she was forced upon or act was committed against her will and consent. That essential ingredients incorporated in Section 375 of the IPC are not available. That learned trial Court has not considered above aspects. That there is inordinate delay of almost 10-12 months in

filing FIR. Such aspects are not appreciated by learned trial Court. For all above reasons, he prays to allow the appeal.

On behalf of State :

4. In answer to above, learned APP submitted that there is evidence of date of birth as Principal of the College has placed on record admission extract and T.C. of previous School. According to learned APP, sole testimony of prosecutrix is sufficient to attract the charges. That she had categorically, in the witness box, stated that she was forcibly raped not once but more than once. That there are allegations of showing knife. That her such testimony has remained unshaken. Therefore, learned trial Court has rightly accepted prosecution version and recorded guilt and committed no error whatsoever. Hence, appeal is sought to be dismissed.

EVIDENCE ON RECORD

PW1 Kailash s/o Shrirang Dumane, Pancha to spot did not support prosecution.

PW2 Ranjeet S/o Rangnath Upadyay claimed that he knew both accused and victim. According to him, he learnt in the village

about illicit relations between accused and victim and that she gave birth to a child without performing marriage.

PW3 Surekha d/o Laxman Satpute alias Bhute. Sum and substance of her testimony is that, she took school education in Asubai Vidyalaya, Mandekhel from 6th Standard to 10th Standard, thereafter, she took education in Milind College in 11th standard. Her date of birth is 06-02-1980. That accused was also taking education but in Vaidyanath College. That while taking education in Milind College, rape was committed by accused by forcibly taking her under a bridge by showing knife. After two days, again on same spot, he took her and raped her. She missed her M.C. after two months and thereafter, she narrated incident to her parents. On 28-03-2002, she delivered a male child and on 30-03-2002, she lodged FIR. Again in paragraph 9 of examination-in-chief, she gave date of birth as 06-02-1986.

PW4 Dr.Vandana Shriram Chausalkar, is the Medical Officer, who examined victim and collected blood samples for C.A. analysis and DNA test.

PW5 Shri Uttam Pandurangrao Bade is Principal of College, who carried admission register and placed on record admission form of victim at exh.35. He also placed on record admission register extract of Milind College, Parli carrying date of birth of victim as 06-02-1986.

PW6 Luxman Kondiba Satpute, father of victim stated that victim is his daughter. That while she was studying in Milind college, accused committed rape on his daughter under a bridge near the College. That after two months, his wife disclosed it to him. After delivery, she gave birth to a child born because of rape.

PW7 Bhagabai Luxman Satpute, Mother of victim, stated that her daughter studied up to 11th standard in Milind College. That after three months, her daughter disclosed her that she missed mensuration cycle. After nine months, she delivered a child born due to rape committed by accused. According to her, her daughter disclosed about rape, after two months of occurrence.

PW8 Deorao Katalu Dake (ASI) is the Police Official, who recorded statement of victim on 30-03-2002 in S.R.T.C. Hospital at

Ambajogai.

PW9 Satayawan Ranghnath Balwante (PHC) is the Police Officials, who registered crime.

PW10 Ravindra Purushottamrao Dehadkar, is Investigating Officer, who completed investigation and chargesheeted accused.

ANALYSIS

5. Here evidence of PW3 Surekha, victim is crucial and also of significance. PW2 Ranjeet, an acquaintance of accused and victim apparently has hearsay information. Even he deposed about illicit relations between victim and accused. PW6 Luxman and PW7 Bhagabai i.e. parents' testimonies categorically show that they have learnt about the incident only after two months of alleged occurrence i.e. when their daughter missed menses.

6. For proper appreciation and comprehension, her testimony on the point of rape is reproduced as under :

“3. When I was taking education in Milind College at Parli Vajjnath, rape was committed on me by the accused about 5:30 p.m. but I cannot tell the date and month of it. Incident took place prior to two years. The incident of rape took place at the bridge near Milind College, Parli

Vaijnath.

4. At that time, accused met me and forcibly asked me to go under the bridge. I refused to join him. Accused took me forcibly under the bridge. Accused asked me to allow him to have sexual intercourse with me quietly. I again say that accused asked me to join his company quietly otherwise he would take me forcibly and commit rape on me forcibly. Accused took me under the bridge. Accused facen me down. He gave slap on my stomach. Accused removed belt of my panjabi suits. He removed my underwear. Accused removed chain of his pant. Accused removed and shoed knife to me. Accused asked me to do whatever he likes otherwise he would cause my death. Due to the fear, I allowed accused to have sexual intercourse with me. Accused took out his penis out of his chain side of pant and inserted into my private part. Accused gave jerks to me. Thereafter, there was bleeding out of my private part. It was the first occasion when accused committed sexual intercourse with me.”

In **cross-examination**, she is unable to give date of taking admission in the college, unable to give name of the Principal, number of divisions in 11th Standard. She admitted that she did not attend college regularly. She admitted that the bridge was near the college and there is traffic over it. According to her, as she was not going to college regularly, she had no friends. She admitted that she

knew accused since childhood. She further admitted in paragraph 12 that since accused asked her to join him quietly, otherwise he would rape her, therefore, she joined him. She admitted that she did not protest. She has answered that on second occasion, she and accused met at same bridge and at the same time and under the same bridge. She answered that she did not sustain any injury. She denied having stated portion marked "A" in FIR.

Omissions are brought to the extent that accused asked her to joined him quietly or else he would take her forcibly and rape her; that accused took out his private part and inserted in her private part and he gave jerks; that due to sexual contact, there was bleeding; that accused slapped her on the stomach after making her fall down; that accused removed belt of her punjabi suit and undergarments. She admitted that she did not attempt to lodge FIR with Police for a period of two months after the incident. In paragraph 15 she answered that her parents asked accused to perform marriage, but he refused. That she would not have lodged FIR, had accused consented to marry her. Rest is all denial.

7. On reanalyzing above evidence, it is emerging that firstly, at the relevant time, accused and victim were childhood friends and

were also taking education in College. At one point of time, victim gave her date of birth as 06-02-1980, but in paragraph 9 of examination-in-chief itself she gave her date of birth as 06-02-1986. PW5 Bade, Principal of College has been examined on the point of date of birth, but he has placed on record admission form and admission extract of College, but it is upto 10th standard. There is no birth certificate or school record of the first school where victim took education in first Standard. Therefore, as pointed out, there is no legally acceptable or cogent evidence on the point of age of victim.

8. As regards to offence of rape is concerned, victim has not given date of rape inspite of claiming to be a College going girl. Her testimony discussed above in paragraph 3 and 4, creates doubt as to whether she was forcibly taken and raped. She herself has admitted that merely because he allegedly said that she should join him quietly or he would take her forcibly, she accompanied him beneath the bridge. Her evidence shows that there was second episode, but at such time, she does not allege any force or threat. Though in examination-in-chief she stated that accused showed knife, in examination-in-chief itself in paragraph 7 she is unable to identify the knife allegedly used in the commission of offence. She admitted

that she had no injuries on her person even when alleged incident took place beneath the bridge, which she admitted to be full of traffic. Therefore, above testimony creates doubt.

9. Here as stated above, date of serious occurrence like rape is not given by victim i.e. either of first episode or of second episode. She claims that she missed menstruation cycle and thereafter, out of fear, she did not report anyone. Only when mother asked her, she seems to have reported her about the occurrence. Even at such point of time, FIR is not lodged, rather FIR is lodged after delivering a child i.e. on 30-03-2003. She has also claimed in paragraph 6 that rape was committed even while she was nine months pregnant. It is difficult to comprehend commission of rape while she was in her parents' house. Therefore, as pointed out, there is hopelessly inordinate delay in lodging FIR.

10. The answers given by victim in cross-examination does go to show that her parents had asked accused to perform marriage with her and only on refusal, she has lodged FIR, because she has answered that had he married her, she would not have lodged FIR. Therefore, it is obvious that on account of refusal of marriage, after

delivery of child, attempt has made to set law into motion.

SUMMATION

11. To sum up, there there is no cogent, reliable trustworthy evidence on the point of age. On the point of occurrence of forceful rape also, testimony of victim is not inspiring confidence. Report is apparently lodged after delivering a child and on refusal to marry.

12. On going through the impugned judgment, the above discussed aspects does not seem to be taken into account by the learned trial Judge i.e while accepting prosecution version as proved. Apparently, there is improper appreciation of law as well as evidence. There is no cogent evidence about forceful rape, hence, interference is called for. Accordingly, I proceed to pass following order.

ORDER

I) Criminal Appeal No.84 of 2004 is allowed.

II) The conviction awarded to appellant Vilas s/o Raghu Upade in Sessions Case No.73 of 2002 by the learned II Adhoc Additional Sessions Judge, Ambajogai on 23-01-2004 for the offence punishable under Section 376 of the Indian Penal Code, stands quashed and set aside.

III) The appellant stands acquitted of the offence punishable under Section 376 of the Indian Penal Code.

IV) **The bail bond of appellant stands cancelled.**

V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

(ABHAY S. WAGHWASE)
JUDGE