



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 383 OF 2003

Vinod s/o Tukaram Rathod,
Age : 23 years, Occu. : Agriculture,
R/o. Municipal Colony,
Parbhani.

... Appellant

Versus

The State of Maharashtra

... Respondent

...
Mr. Satej S. Jadhav, Advocate for Appellant
Mrs. Uma Bhosale, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 11th JUNE, 2024

PRONOUNCED ON : 14th JUNE, 2024

JUDGMENT :

1. Appellant, who stood convicted for offence punishable under sections 341, 354, 366 and 506(2) of Indian Penal Code (IPC) is hereby assailing the judgment and order of conviction passed by learned Ad-hoc Additional Sessions Judge, Parbhani dated 22.05.2003 in S. T. No.192 of 2001.

FACTUAL BACKGROUND OF TRIAL

2. New Mondha police station, Parbhani charge-sheeted present appellant, his brother and mother for commission of offence punishable under sections 366A, 366, 341, 354, 504, 506

read with section 34 of IPC on the accusation that, informant a 17 years old girl studying in 12th standard was regularly followed and chased by appellant. Whenever she went to attend college and tuition, intercepting her way, he expressed his love towards her and also expressed his desire to marrying her. She did not respond to the proposal and refused to reciprocate. Appellant therefore started issuing threats to burn down shop of her father, kill her brothers, if she refuses to marry him. Once on knife point, he forcibly made her accompany him to his house. He cut his own thumb and applied the oozing blood on her forehead and declared that, they both are now married and threatened her dire consequences if she informs it to anyone. Out of fear, she did not report the incidence to anyone. On 06.03.2000 i.e. when informant victim finished her exams and was waiting for her father to pick up her, at that time, accused approached her and caught her hands. This was seen by her brother. Therefore, finally after reaching home, she disclosed the conduct and behaviour of accused to her family members and finally approached police and lodged report (Exh.23), on the strength of which, police registered Crime bearing No.42 of 2000 for commission of offence under sections 366A, 366, 341, 354, 504, 506 read with section 34 of IPC.

On conclusion of investigation, accused was charge-

sheeted and tried before learned Ad-hoc Additional Sessions Judge, Parbhani. At trial prosecution adduced evidence of in all six witnesses and also relied on documentary evidence.

Defence denied to lead any evidence and plea taken was of false implication by the victim under pressure of parents.

On appreciation and analysis of evidence, learned trial Court acquitted brother and mother of appellant from all charges, but appellant alone came to be convicted that too only for offence punishable under sections 341, 354, 366 and 506(2) of IPC.

Feeling aggrieved by the above judgment and order of conviction, instant appeal has been preferred on various grounds spelt out in the appeal memo.

SUBMISSIONS

On behalf of appellant :-

3. Learned counsel for the appellant pointed out that there is apparently false implication. According to him, none of the offences for which appellant was charge-sheeted and tried, were proved by prosecution beyond reasonable doubt. According to him, there is not only improper appreciation of evidence, but also settled law has not been taken into account by the learned trial Judge.

4. Taking this court through the evidence, he pointed out that, informant was 17 years of age, whereas accused was 21 years of age at the time of incident. That, case of appellant in the trial court was that he had love affair with victim. That, only because once brother of girl saw appellant holding her hand, under pressure of being scolded by parents, she narrated false story to save herself and report has been lodged at the instance of parents.

5. He further submitted that, there is no independent and reliable evidence regarding victim being forcibly taken on knife point to the house by accused on the pretext or with the purpose of performing marriage. He pointed out that, the material witness like brother of the girl has also not been examined by the prosecution for the best reasons known to it and there is admission to that extent by Investigating Officer.

6. Learned counsel pointed out that, required ingredients for attracting none of the offences for which accused is held guilty including section 366 of IPC are available in the prosecution evidence. That, prosecution could not discharge its burden of proving the case beyond reasonable doubt. For all above reasons, he submits that, findings and conclusion reached at by learned trial Judge are in absence of cogent and reliable evidence and hence, he

seeks indulgence at the hands of this court for setting aside the impugned judgment by allowing the appeal.

On behalf of Respondent :-

7. Per contra, learned APP strongly supported the judgment and findings of learned trial Court. She took this court through the testimony of victim informant and would submit that a girl is barely 17 years of age. That, she staunchly reiterated about repeated incidences of accused following her, chasing her, intercepting her, expressing love even when she was disinterested and he even forced her to perform marriage. That, her entire testimony has remained undisputed and unshaken. Her sole testimony being inspiring confidence is rightly relied by trial Judge and according to learned APP, therefore there is no reason to seek further corroboration of evidence to her testimony.

8. Learned APP submitted that, though there was charge of section 366A of IPC and even when brother and mother of appellant were tried, learned trial court has acquitted them including present appellant from the said charge and as such it is her submission that, this itself is indicative of the fact that, there is minute and scrupulous scrutiny of the evidence. Consequently, it is her submission that, no fault can be found in the manner of

appreciation of evidence at the hands of trial court and according to her, law being correctly applied and there is no merit and substance in the appeal and resultantly she prays to dismiss the same.

SUM AND SUBSTANCE OF THE EVIDENCE ON RECORD

9. PW1 Sunita informant, who is examined at Exh.22, deposed that, at the time of incident, she was 17 years of age and studying in 12th standard. According to her, in the year 1999, appellant used to chase her and express his love towards her. He also expressed his intention to marry her. She deposed that she used to keep mum and proceed to the college. According to her, one day, he intercepted her way, took out knife and threatened that, if she would not marry, he will burn the shop of her father and will kill her brothers. One month prior to the lodging of complaint, brother of appellant approached her and informed that appellant inflicted self injury. Thereafter, again appellant approached her, blocked her way, asked her to accompany to his house and when she refused, he showed knife threatening that, if she did not obey, he would assault her and kill her. Out of fear, she accompanied him and in the house of appellant, he cut his thumb and applied the blood on her forehead and even pulled her hand, saying that, now they are married. He also forcibly made her write letter that she supporting her marriage. Out of fear, she did not inform this

incident to anyone. On 06.03.2000, on the last paper of her examination, while she was waiting for her father, accused came, caught hold her hand and dragged her with ill intention asking her to accompany him forthwith. This incident was seen by her brother. On coming home, she narrated the detail about the previous incidences, and thereafter, they approached police.

PW2 Ramrao father of victim, who testified at Exh.25, deposed that, on 06.03.2000, his daughter disclosed the occurrence while weeping that accused tease her, showed her knife saying that she should marry him as he loves her. He also threatened that if she fails, he will kill her brothers and destroy shop of her father. He also deposed about brother of appellant approaching her to inform about self inflicted injury by appellant and that appellant forcibly by brandishing knife took her to his house, cut his own finger, applied blood to her forehead and declared that he married her, made her forcibly write letter. He deposed that, on hearing this he accompanied her to the police station where his daughter lodged report.

PW3 Ratnamala neighbour deposed about mother of accused visiting house of PW2 Ramrao and threatening that if anything happens to her son she will destroy the house PW2 Ramrao.

PW4 Yakubkhan, panch to panchanama (Exh.28) i.e. seizure of letters.

PW5 API Sk. Abdul Rauf, PSO registered a crime and carried out investigation.

PW6 Ramchandra is the Headmaster, who placed on record school register extract (Exh.44) as well as T.C. (Exh.45).

ANALYSIS

10. Learned trial Judge has held appellant guilty for offence punishable under sections 341, 354, 366 and 506(2) of IPC.

11. In appeal, fundamental defence put-forth by appellant is that, there was love affair between appellant and victim. Specific defence is taken that, only once because brother of victim spotted appellant holding hand of victim, out of fear, victim passed false information to father and at parents instance and under their pressure false report has been lodged. It is also pointed out that, prosecution in the trial court has failed to even prove that the victim was below 18 years of age.

12. In the light of above stand, evidence of victim is put to minute scrutiny. Sum and substance of her examination-in-chief is

already reproduced in paragraph no.9. It would be therefore desirable to even discuss the cross examination of victim, which has emerged while she was cross examined by defence counsel.

Only relevant cross is dealt. She answered that, she does not know the area and house where accused lived. She denied that she and her parents are on visiting terms to the house of accused or that since previously they knowing name of the accused. She answered that, in the month of September in first week for the first time accused approached her. She answered that, she might have left the house of accused after one and half hour. She admitted that, she did not disclose the said facts to her parents due to threats given by accused.

She is also questioned regarding occurrence dated 06.03.2000, which prompted her to inform her parents and approach police station. She answered that, after examination she talked with her other friends. She admitted that there is road in front of the college and there is traffic. She answered that, at the time of incident dated 06.03.2000, while in front of Nutan Collage she had raised shouts. She denied that she lodged report because of pressure of her father. She is questioned about tuition, subjects of the tuition, strength of the students attending tuition, number of batches and distance of place of tuition. In paragraph no.13 of her

cross examination, she denied knowing whether house of accused is on the west of her house. She admitted that, at the time of incident only she went to the house of accused. She is unable to state distance of the house of accused from the road from where she was taken. She answered that before accused showed her knife, there was no talks between them. She answered that, she even did not raise shouts, when accused took her to his house by showing knife. She also admitted that, she did not attempt to run away. In paragraph no.14, she admitted that, she wrote Exh.24 and 31, but denied authorship of Exh.30. According to her, letters were forcibly executed by her on knife being shown to her. When it is brought to her notice that in report at Exh.23 there is no material regarding accused giving threats to kill in case she not obey to accompany him to his house, she is unable to assign any reason for the same. She is also unable to assign any reason as to why in the report (Exh.23) there is no mention that accused directed her to give some writing in support of the marriage and on refusal accused directed her brother to visit her house with knife and kill her brothers. She answered that, she does not remember whether she told her father the fact of accused forcibly making her write letter. All remaining suggestions are flatly denied.

13. In the light of above objection and defence raised by

appellant that except uncorroborated testimony of victim, there is no convincing evidence in support of the accusations, the above substance evidence of victim is carefully analyzed.

14. On doing so, in the considered opinion of this court, here, it is noticed that, prosecution has not at the outset cogently and firmly established that victim was below 18 years of age. Testimony of PW6 Ramchandra, Headmaster is of no avail because he has carried record of the school where victim studied only from 5th standard onward. He has placed T.C. of school on record. The record of the school where victim first took admission in 1st standard was of relevance. The same is not before the court nor is the birth certificate and therefore there is no conclusive evidence or proof that victim was below 18 years of age. Even learned trial Judge has recorded similar findings and consequently prosecution did not prove age of victim.

15. Admittedly, except testimony of victim there is no other supportive or corroborative evidence. As stated above, specific case of appellant is that, there was love affair. Victim wrote love letters regarding which there is admission by her in cross examination. It is also case of appellant that, report (Exh.23) is a false version and under pressure of parents.

Consequently, in the light of above submission, if testimony of victim is scrutinized in above background, there is force in the submission of learned counsel for appellant for the reason that, it is noticed that since September 1999 victim claims that she was chased, intercepted and teased. However, she has not reported to her parents, school authorities or tuition authorities. She has not reported serious incidence of accused alleged brandishing knife and threatening her with dire consequences like burning shop of her father and killing her brothers. Exactly when such serious incidence took place at the first place is not specified by her. She merely speaks that it happened one month prior to the lodging of the complaint. She has accompanied accused to his house. In cross paragraph no.13, she has denied that when accused took her to his house he was having motorcycle with him. This shows that she was not taken on his motorcycle. Rather she further answered that she was on her own bicycle. From such material, it is difficult to accept her version that she was forcibly taken by him, when he had no means and modes to go to his house. Consequently, her such answer suggest that accused was not in position to take her forcibly, as is claimed by her. She could have returned home on her own bicycle, when according to her, he did not come with his bike.

She also admitted in her cross examination that, she did not raise alarm. She admitted that, there is traffic on the road. She has admitted that, she spent more than one hour in the house of accused. No girl would spend more than 1 hour under fear, more particularly, when it is not her version that, she was kept confined in the house with close doors.

16. It is worth noting that she resides in the same locality where even accused allegedly resided. This is evident from the testimony of PW3 Ratnamala neighbour of victim and PW2 Ramrao, who in her cross examination stated that, house of accused is in the very neighbourhood of house of such witness. This witness has given her residence as Ramnagar, Parbhani. Though at the time of substance evidence in the witness box, residence of victim is noted as mere Parbhani, in the report (Exh.23) lodged by her, her residence is also shown as Ramnagar, Parbhani. Such material clearly shows that, victim and accused are residents of same colony. Specific question to that extent were put to victim in cross examination, but she has denied knowing appellant's house or locality, even when she claims that she had been to his house when he allegedly forced her to accompanying her. Therefore, she is apparently lying that she did not knew the house of accused. When accused and victim are residents of same locality, it is

difficult to accept her version that, out of fear, she did not report her parents. It is surprising that, so called serious episode of brandishing knife and threatening to kill is not reported by her and rather regarding incident of her hand being held by accused seen by her brother, she has mustered courage to report the previous episodes directly in March 2000. For such reasons, the submissions so advanced in appeal that victim was lying under pressure of her parents cannot be lightly brushed aside. There is substance and force in the submission that, her version is not free from doubt.

17. It is also emerging from her cross that, she has admitted to have written letters (Exh.24 and 31). No doubt, she claims that, the same were under threat and on knife point, however, this aspect was not promptly reported by her either to her father or even to police at the very first instance when on 07.03.2000 she lodged report at Exh.23. Her examination-in-chief shows that, only when Investigating Officer asked her whether she wants to add anything more, she has by way of supplementary statement narrated about letters. With such material coming from her testimony, there is substance in the argument that there was previous acquaintance between victim and accused. Exh.30 which is also said to be seized by Investigating Officer and which is

purported to be written in blood, does not carry the name of accused rather name appearing is "Ravi", whereas accused is Vinod. Consequently, with such material coming from the prosecution side, story of prosecution cannot be said to be free from doubt.

18. Though, there are accusations of commission of offence under sections 341 and 354 of IPC, in the light of evidence of victim herself suggesting close acquaintance between accused and victim and investigating machinery failing to draw spot of such places and investigate it in detail, the charge cannot be said to be brought home. Above all, there is no prompt reporting. Coupled with this above discussed aspect of material suggesting close acquaintance between accused and appellant and there being weak evidence in support of such charge, the same fails.

19. As regards to the offence of 366 of IPC is concerned, law is fairly settled that, said provision requires prosecution not only to lead evidence to prove kidnapping, but it is incumbent upon prosecution to lead cogent evidence about specific intention of the accused. Prosecution is expected to prove that kidnapping or abduction was with the sole purpose of compelling woman to perform marriage or she is forced to have illicit intercourse. Victim

does not state that he took her to his house with sole purpose of marrying her. Law to this extent is loud and clear in the ruling of Hon'ble Apex in the case of ***Kavita Chandrakant Lakhani v. State of Maharashtra*** reported in 2018 6 SCC 664.

Here, in the case in hand prosecution at the outset could not cogently and firmly established that victim is below 18 years of age. Though victim in her evidence denied love relations with accused, she has admitted writing love letter (Exh.24). Her testimony that the same was under threats is not convincing. She having lied about not knowing accused or his residence, which is appearing contrary to the prosecution evidence, it is unsafe to give full credence to her testimony. She has admitted that, she did not attempt to run away and rather her answer that she stayed in the house of accused for more than one hour, suggest something otherwise. Therefore, her testimony that she was by force, deception and threat taken to the house of appellant to perform marriage cannot be straightaway accepted. Material discussed above cast doubt about her belated reporting. There is no supportive or corroborative evidence and therefore it is unsafe to lean on her sole testimony to record guilt. Her brother is also not examined for best reasons known to prosecution. He was material witness.

20. Perused the judgment under challenge. The above aspects are not carefully appreciated by learned trial Judge. Her sole uncorroborated testimony is accepted to convict the accused. Legal requirements have not been kept aside before returning the guilt. Therefore, it being case of benefit of doubt, appeal deserves to be allowed by setting aside the judgment.

21. Consequently, in the considered opinion of this court, on re-appreciation and re-analysis, when evidence of prosecution is falling short to attract the charges, benefit of doubt is required to be extended by allowing the appeal. Hence following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellant - Vinod s/o Tukaram Rathod in S. T. No.192 of 2001 on 22.05.2003 for offence punishable under sections 341, 354, 366 and 506(2) of Indian Penal Code (IPC), stands quashed and set aside.
- III) The appellant stands acquitted of the punishable under sections 341, 354, 366 and 506(2) of Indian Penal Code (IPC).
- IV) Bail bonds furnished by the 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, J.)