



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.564 OF 2003

Premising S/o. Sriramsing Yadav,
Age : 40 years, Occu. : Service,
R/o. Nagalabhara, Tq. Bharthana,
Dist. Etava (U.P.)

... Appellant.
(Orig. Accused)

Versus

The State of Maharashtra,
Through the P.S.I.
Railway Police Station,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.

... Respondent
(Orig. complainant)

...
Mr. Navin S. Shah h/f. Mr. Swapnil S. Patil, Advocate for Appellant
Mrs. Uma S. Bhosale, APP for Respondent - State

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04 JULY 2024

PRONOUNCED ON : 12 JULY 2024

JUDGMENT :

1. In this appeal, convict is taking exception to the judgment and order of his conviction dated 08.08.2003 passed by First Ad-hoc Additional Sessions Judge, Jalgaon in Sessions Case No.51 of 2003 i.e. for offence punishable under section 307 of Indian Penal Code (IPC).

PROSECUTION CASE IN NUTSHELL IS AS UNDER

2. Prosecution story runs thus, complainant was married

to one Pramodkumar Shrivastav. He was addicted to liquor. Present accused, who was acquainted with Pramodkumar, assured to maintain complainant properly as his wife and therefore she along with her two children spent time in Raipur for four years. Subsequently, accused sold her to one Pandit with intention to involve her in immoral business. She managed to escape from the clutches of said Pandit and came back to reside with accused. But, when she reached his house, he had left his village to join the armed forces. After five months, he returned and took complainant and her children to Pune to his nephew's place. While traveling from Pune by the train, he pushed complainant from the train. She fell down, became unconscious and found herself admitted in the hospital at Jalgaon. There she gave report at Exh.14, on the basis of which, crime was registered, it was investigated by PW4 PSI Chaudhari and accused was charge-sheeted for commission of offence under section 307 of IPC before first Ad-hoc Additional Sessions Judge, Jalgaon, where trial was conducted vide Sessions Case No. 51 of 2003, which ended up his conviction.

Hence the appeal.

SUBMISSIONS

On behalf of Appellant :-

3. Taking exception to the above judgment and order,

learned counsel for appellant submitted that, prosecution had failed to prove the charges beyond reasonable doubt. That, apart from delayed FIR, there is no corroboration to the sole testimony of complainant. According to learned counsel, at the first count, there is no evidence suggesting accused taking victim informant for traveling and further he pushing or throwing her out of running train with intention to commit her murder. He submitted that, there is no evidence about any journey also being taken by informant with the company of appellant. He pointed out that, children are not examined. Moreover, there is dispute between complainant and accused for the custody of children. Therefore, there is every possibility of false implication. According to learned counsel, essential ingredients for attracting section 307 of IPC are not available in the prosecution evidence, and therefore, conviction recorded by the learned trial court to be in absence of convincing evidence and resultantly he prays to allow the appeal.

4. Opposing the above submissions, learned APP submitted that, testimony of victim is inspiring confidence. She had narrated all events since she came in contact with appellant and resided with him. That, there was no reason for false implication. She pointed out that, in the journey accused gave her pill, as a result of which, she was feeling giddiness and taking disadvantage

of such situation, he had thrown out of her train. She luckily survived. In hospital, she gave report against appellant. That, it was clear attempt to commit murder and therefore, learned trial court accepted her version and committed no error in returning the guilt and so she prays to dismiss the appeal for want of merits.

BRIEF ACCOUNT OF THE EVIDENCE IN TRIAL COURT

5. **PW1** Meeradevi, informant stated that, she was residing with appellant after acquaintance of her husband. That, as her husband was drunken, accused offered her to maintain and therefore, she accompanied him. That, accused was already married. He even sold her to one Pandit. Subsequently, to eliminate her while she was taken in a train from Pune and on the way he gave her pill. Thereafter, he pushed her from the train and while in hospital, she lodged report at Exh.14.

PW2 Bhaurao, pancha to spot panchanama at Exh.16.

PW3 Guddusingh, nephew of accused stated that, accused brought victim to Pune. After six months staying in his house, accused took her back with him. After four days, police approached him and he had accompanied with to civil hospital, Jalgoan, where **PW1** Meeradevi told him that when the train passed Bhusawal station, accused threw her out of the train.

PW4 PSI Chaudhari, Police Officer attached to Railway Police Station, conducted investigation on statement received from PW1 Meeradevi informant, collected medical papers, prepared panchanama and charge-sheeted accused.

ANALYSIS

6. Though, here, case of prosecution rested in all four witnesses, testimonies of informant PW1 Meeradevi and Investigating Officer PW4 PSI Chaudhari is only of significance and relevance.

FIR seems to be of 14.09.2001. Testimony of PW4 Investigating Officer shows that, one constable namely, Mirza of G.R.P. Bhusawal admitted victim in Government hospital, Bhusawal. Said Mirza is not examined. Papers and panchanama show that, victim was found lying in unconscious condition on railway track near pole no.428. After Bhusawal hospital, she was admitted in Jalgaon civil hospital. There on report of PW1 victim injured, crime seems to have been registered. Sum and substance of the report by victim is that, present appellant allegedly accompanied her along with children by train from Pune. Her evidence does not show where they were planning to go and what was their destination. According to her, they were traveling in a

military bogie. As she was suffering from headache, it is her version that, accused gave her pill, as a result of which, she felt giddy. Around 2.30 a.m. from the running train, he pushed her and made her fall.

7. Admittedly, though she was found on railway track, there is no any distinct evidence about she taking journey in the company of accused. As pointed out, her children are not examined nor there is any evidence to show that, while in company of appellant, she had boarded military bogie. No other passenger is examined nor Investigating Officer has placed on record documents that accused appellant made her travel in military bogie. It was quite possible for Investigating Officer to gather papers from armed forces to substantiate that he was on leave or he had sought to travel in train by specifically boarding in a military bogie, but there is no evidence to that extent. Therefore, except testimony of PW1 Meeradevi, there is no other supportive evidence about journey undertaken by appellant with informant.

8. Though PW3 Guddusingh, alleged nephew of appellant, has been examined by prosecution, his evidence is only on the point that, accused had brought complainant to Pune and left her at his residence and there she stayed for six months. That, thereafter accused came to Pune to take her back. He has not

specified date and time of appellant coming to his house and taking PW1 Meeradevi. Even he does not state that appellant was in armed forces. His evidence is only about meeting complainant in civil hospital, Jalgaon and he further claims that, he heard from her about she being thrown from the running train.

9. In cross examination, in paragraph no. 3, victim has answered that accused had come to Pune on 09.09.2001 and on 12.09.2001, she along with accused and children left Pune at about 4:00 p.m. In cross examination she further stated that, accused gave pill to her in the second train, which was changed in Bhusawal. According to her, from accused she learnt that, the said station is Bhusawal and there they had boarded second train. Therefore, which was the train they boarded is not getting clear. She also answered that, she did not see any board bearing named Bhusawal. Then she further answered that, at Bhusawal itself medicine was given to her by accused on the platform. Therefore, victim is changing her version. Consequently, there is no distinct evidence that accused threw her or pushed her from traveling train.

10. Another point worth noting is that, investigating machinery has seized Exh.23, which is said to be a suicide note.

According to Investigating Officer, he collected and seized it along with clothes of victim, while she was admitted in civil hospital. But, Exh.23 which is seizure memo is of 15.09.2001, whereas, saree is shown to be seized while seizure memo (Exh.24) is of 23.09.2001 and it is shown to be seized at Jalgaon civil hospital. Her saree and said chit is not apparently confronted to her and got identified, while her substantive evidence i.e. examination-in-chief was recorded. Mere her statement at Exh.14 is recorded. Exh.23 which is said to be suicide note, in translated form is that, "*mera is duniya me koi nahi hai, mai apani jan de rahi hu*". Why said Exh.23 was not confronted to the victim, has remained mystery. Text of the alleged suicide note suggests something else.

11. Therefore, considering the above uncorroborated testimony of victim, coupled with no evidence about accused taking victim along with him in train and pushing her with attempt to commit her murder, and also taking into account Exh.23, prosecution version comes under shadow of doubt.

12. Perused the judgment under challenge. Apparently, trial court's findings in paragraph nos.11 and 12 are on the basis of conjectures and surmises. Consequently, such judgment cannot be allowed to be sustained. Hence, the following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to Premsing S/o. Sriramsing Yadav in Sessions Case No.51 of 2003 by First Ad-hoc Additional Sessions Judge, Jalgaon on 08.08.2003 for the offence punishable under Section 307 of the Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Section 307 of the 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.
- VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)