



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 769 OF 2004

Hanmant S/o. Mashna Ibitwar,
Age : 30 years, Occu. Police Patil & Agriculture,
R/o. Jirga, Taluka Mukhed,
District Nanded

... Appellant

Versus

The State of Maharashtra

... Respondent

WITH

CRIMINAL REVISION APPLICATION NO. 84 OF 2005

X.Y.Z. (Victim)
Age : 17 years, Occu. : Minor,
under guardianship of
Bapurao S/o. Piraji Dopare,
Age : 46 years, Occu. : Agril.,
R/o. Village Jirga, Post Barali,
Tq. Mukhed, District Nanded.

... Applicant
(Orig. Complainant)

Versus

1. Hanmant S/o. Masna Ibitwar,
Age : 30 years, Occu. : Agril.,
Police Patil, R/o. Jirga,
Post Barali, Tq. Mukhed,
District Nanded.

2. The State of Maharashtra

... Respondents.

...

Ms. Rakhi Sundale, Advocate for Appellant in Cri.Appeal/769/2004

Mr. D. R. Korade, APP for Respondent - State

Mr. U. L. Momale, Advocate for Applicant in Cri.Revision/84/2005

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 27th SEPTEMBER, 2024

PRONOUNCED ON : 4th OCTOBER, 2024

JUDGMENT :

1. Appellant herein is challenging judgment and order of conviction recorded by learned Additional Sessions Judge, Kandhar dated 05.11.2004 rendering conviction for offence punishable under sections 376 and 323 of Indian Penal Code (IPC).

2. In nutshell, prosecution version in trial court is that, on 25.08.2003 victim PW5 was returning home from her field around 5:30 p.m. after she had accompanied her parents since morning. When she reached near field of one Gurling, accused who was coming from opposite direction caught her hand, pulled her near a hillock and after making her fall, committed intercourse with her. He also hit her on the face. When her brother came, accused assaulted her brother. After coming home, she reported the occurrence to her father and on next day, they approached Mukramabad police station, where her statement was recorded and crime was registered.

After being charge-sheeted, appellant was tried by learned Additional Sessions Judge, Kandhar vide Sessions Case No. 156 of 2003 and held guilty for both offences under sections 376 and 323 of IPC.

Feeling aggrieved by the above, instant appeal has been preferred.

3. Original complainant has also preferred criminal revision for enhancement of sentence awarded by learned trial Judge.

SUBMISSIONS

On behalf of Appellant :

4. Questioning the legality and maintainability of the impugned judgment, learned counsel pointed out that, there is no cogent, convincing and reliable evidence in support of any of the charges. She pointed out that, in fact, there is no iota of evidence that victim was forcibly raped. She took this court through the medical evidence i.e. medical certificate and submitted that, even after examination, there were no injuries on the person and even clear opinion has been given that there was no evidence suggesting forceful intercourse which is at Exh.17. At this point, she submitted that, the doctor, who allegedly physically examined victim, is not examined by prosecution for the best reasons known to him. She also pointed to the cross of victim and submitted that she too has candidly admitted that there were no injuries on person. She further submitted that, even CA report does not help prosecution. Consequently, learned counsel submits that, there is

no convincing or reliable evidence in support of charge of either under section 376 or 323 IPC.

5. She pointed out that, prosecution has adduced evidence of brother, who was admittedly elder to victim, but he allegedly ran away and according to learned counsel, his testimony shows that, he has not seen alleged incident as is put-forth by prosecution.

6. She pointed out that, there is no prompt complaint. Moreover, there are suggestions that due to previous political rivalry, there is false implication. According to learned counsel, there is weak evidence. That, there is no corroboration to the testimony of victim and therefore according to her, learned trial court erred in accepting prosecution version and hence she prays to allow the appeal. She seeks reliance on the following rulings :-

- (i) *Rai Sandeep v. State of NCT of Delhi*,
MANU/SC/0623/2012
- (ii) *Narender Kumar v. State (NCT of Delhi)*,
MANU/SC/0481/2012
- (iii) *Nirmal Premkumar and Ors. v. State Rep. by Inspector of Police*, *MANU/SC/0188/2024*
- (iv) *Manak Chand v. The State of Haryana*,
MANU/SC/1191/2023

(v) *Sadashiv Ramrao Hadbe v. State of Maharashtra & Ors.*
MANU/SC/0607/2006

(vi) *Bhagbat Gorain v. State of West Bengal,*
(C.R.A. No.587/2007- High Court of Calcutta)

On behalf of Respondent :-

7. Per contra, learned APP pointed out that, victim was barely 15 years of age. That, she was ravished by accused while she was alone returning from the field. That, her brother saw his sister crying and even accused putting on his own clothes. That, therefore, he went for her rescue, but was beaten. That, he ran and reported incident to his parents and aunt. That, they all are examined. He submitted that, sole testimony of victim is sufficient to record guilt and according to him, here, as the testimony of victim is inspiring confidence and her evidence having remained unshaken regarding the occurrence, it is his submission that, there is no infirmity or error on the part of learned trial Judge in returning the guilt.

In support of above submissions, he seeks reliance on the decision of Hon'ble Apex Court in the case of *Phool Singh v. the State of Madhya Pradesh* in Criminal Appeal 1520 of 2021.

EVIDENCE ON RECORD

8. PW1 Narayan, pancha to seizure of clothes of victim did not support prosecution.

PW2 Havgirao, another pancha to seizure of clothes of victim did not support prosecution.

PW3 Pandhari, neighbour did not support prosecution.

PW4 Dr. Rajendra Chavan, Medical expert, who examined accused.

PW5 is the victim. He deposed at Exh.23.

PW6 is father of victim.

PW7 is brother of victim.

PW8 is the aunt of victim.

PW9 Sk. Mehboob is the pancha to spot panchanama.

PW10 API Pathan is the Investigating Officer.

PW11 Maroti, Head Master, who placed on record extract of admission register.

SUM AND SUBSTANCE OF PROSECUTION EVIDENCE

9. **PW5** Victim at Exh.23 in paragraph Nos.1 and 2 deposed as under :-

"1. I know the accused, sitting before the court. Incident occurred on 25.08.2003, at about 5:30 p.m. at that time, I was returning from the fields when I was near the field of one Gurling, at that time, the accused was coming from my opposite direction. He caught my hand, pulled me by the side behind the bushes below a hillock, he fell me down in a stream (nali) and closed my mouth by means of his hand, he fell on my person and committed intercourse on me.

He also assaulted on my face. At that time, my brother came there. Accused assaulted him on his face. My brother ran towards the field to inform my mother. I came home. The accused had ran away form the spot after assaulting my brother is 2 years elder than me. I came home and told about the incident. I was crying.

2. As it was the night time, we did not go to the police station, Mukramabad. On the next day morning we went to Mukramabad police station and filed the complaint. Police reduced into the writing my report as per my narration. I then signed on it. The report dated 26.08.2003."

While under cross, she stated that, she studied up to 8th standard; left school 2 to 3 years back; that she used to go to field work since she was about 5 years old; on the date of incident she had been to the field between 9 to 10 a.m. with parents and brother. She answered all questions put to her regarding location and situation of the way to the field; about lady working in the adjoining field and their names. In paragraph no.8, she answered that, accused was coming from his field. She answered that she did not go to the hospital of Dr. Repanwad one and half month prior to the incident. He answered that, her brother served at Pune. She answered that, her brother came from the house when she shouted. She answered that, she was alone when she left for home

and she met no one on the way. She stated that, she herself narrated the incident to police. She admitted that, she did not suffer any injury on her person. Rest is all denial.

10. **PW6** father at Exh.25 deposed as under :-

"1. I know the accused. Witness victim is my daughter. Incident occurred on 25.08.2003. I was in the field at that time. On that day myself, my wife, my son and my daughter victim had gone to the field in the morning. We were in the fields till about 6:00 p.m. About 4:30 p.m. we sent ahead our daughter victim to our house for preparing meals etc. prior to that in the afternoon we had sent our son home for home work on account of the pola festival which was on next day.

2. At about 6:00 p.m. my son came back to the fields. He came running to the fields. I inquired from him as to what was the matter. He told me that when he was coming towards the field, he saw accused Hanmant was in his underwear and he was trying to wear his trousers at that time, his sister victim was sitting crying there. My son inquired from her as to what had happened. My daughter victim told him that accused Hanmant had forcibly sexually intercourse with her. My son followed the accused, at that time, the accused assaulted him by means of slaps and thereafter the accused ran away towards the village and my son came towards the fields. My daughter victim went towards the house. My son told us about the incident.

Thereafter we returned the home.

3. In the house we saw daughter crying. She told us about the incident and she was crying. She told us that, the accused Hanmant had caught hold of her in the fields, fell her down and forcibly had intercourse with her. As it was night time and there was little rain, so we could not go to the police station.

4. On the next day morning we went to police station and complaint was filed against the accused.”

While under cross, following omissions are brought :-

That, son PW7 had told that he had seen accused in his undergarment and he was wearing his trouser; that his son told that victim was sitting at that place; that his son had chased accused; that his son told that accused had run away from the spot; during that night it was slightly raining.

In further paragraph nos. 6, 7 and 8 there are questions about distance between villages, location of land, neighbours, who was the Sarpanch, his name, tenure, boundaries of village, location of the road, its nature, whether road was *kachcha* road or tar road; nature of crop in the adjoining fields. Again in paragraph no. 9 questions are put about grampanchayat elections and he admitted that he and his mother both lost the same. He answered that he

does know whether accused belonging to political party of ex Sarpanch. He answered that they reached police station at 12:00 noon. Rest is all denial.

11. PW7 brother at Exh.26 deposed as under :

"I know the accused Hanmant who is present before the court. Complainant victim is my sister. The incident occurred about 9 to 10 month ago at about 4:30 to 5:00 p.m. At that time I was going towards my field from my house. At that time, I saw my sister victim sitting and crying in field of Guruling Targude. I also saw the accused wearing his clothes. On seeing me he started running away. I then went to my sister victim. She told me that the accused caught her hand, fell her down and raped her. I then chased the accused. I obstructed the accused. He then abused me and assaulted me and told me to go away from there. Due to the assault at the hands of accused I got frightened, and went towards my parents in the fields. I told about the incident to my parents. Thereafter we all came home. At that time my sister was crying in the house. After assaulting me, the accused had ran away from the spot. The accused present before the court is the same whom I had seen during the incident."

While under cross, he stated that, he studied upto 10th standard and regarding the occurrence he stated that he chased accused for about 100 meters towards east. He answered that

when he went to the field after the incident, his parents and aunt met him in the field and he returned home at 6:30 p.m. Rest is all denial.

12. PW8 maternal aunt stated that at about 4:00 to 5:30 victim was sent to prepare meals. Thereafter PW7 came and told that, accused caught hand of his sister, assaulted him and raped his sister.

In cross, she is questioned about her family, field and its surroundings. Rest is all denial.

13. PW9 Sk. Mehboob, pancha identified spot panchanama to be at Exh.29 prepared in his presence. But, thereafter he denied that any clothes seized in his presence. He again identified Articles 4 to 7 and seizure panchanama at Exh.30.

In cross he answered that, his signature was obtained at the spot and secondly at Maruti temple.

14. PW11 Maroti, Head Master, who deposed that, victim studied in their school up to 5th standard as per school register, her date of birth was 04.05.1998. He placed photocopy of certificate at Exh.44.

While under cross he admitted that, he did not carry original admission register of victim.

ANALYSIS

15. Evidence of victim is crucial. She in her evidence at Exh.23 has narrated that while she was returning from field, accused appellant, who was coming from opposite direction, initially caught her hand, dragged her behind the bush, after making her fall, he committed sexual intercourse. He also hit her on the fact. When her brother came on hearing her cries, accused hit him also and therefore, he ran to inform parents. She also stated that, her brother had chased the accused and thereafter he ran away.

Her brother who is examined as PW7 also in his evidence stated that, while he was returning towards his house around 5:00 p.m., he saw his sister sitting and crying and also saw accused putting up clothes and so he ran there. She told him that accused raped her. He claims to have chased accused.

On visiting their cross, the above testimonies have virtually remained unshaken.

16. Fundamental objection raised by learned counsel is that, there are no injuries on the person of victim and she has

admitted to their extent in her cross. It is also pointed out that, there are no fresh injuries noticed by doctor or indicating forceful intercourse.

17. Going by the settled legal position that, merely because there are no injuries, that itself is not sufficient to discard her testimony that she was raped. She has narrated the episode since being dragged, made to fall down and thereafter forcibly raped. Settled law is loud and clear that, absence of injury is itself no good ground to rule out rape. Further, law is also fairly settled that, evidence of prosecutrix if inspires confidence, even in absence of corroboration or injuries, her version can be accepted. Even law is reiterated to that extent in the cases of *Krishan v. State of Haryana*, (2014) 13 SCC 574; *Dastagir Sab & Anr. v. State Of Karnataka*, 2004 (3) SCC 106 and *State of Punjab v. Gurmit Singh and Ors.* (1996) 2 SCC 384.

18. Second attack of learned counsel is about age of the victim. It is emerging that, PW11 Maroti, Head Master has been examined, who placed on record extract of school register, quoting her date of birth as 04.05.1988. Mere failure to bring original register in the court will itself not be sufficient to doubt the age. School record has gained primacy in terms of documentary

evidence as regards to age is concerned. Once victim stood steadfast about being raped, her such sole testimony can be relied and made basis of conviction.

19. Considering the testimony of victim, finding support from her brother and prompt lodgment of FIR, case of prosecution deserves to be accepted. No good ground is made out in appeal to interfere.

20. Original complainant has preferred criminal revision praying for enhancement of sentence awarded by learned trial Judge. After considering the above discussed evidence, no fault can be found in the findings recorded by learned trial Judge as regards to quantum of sentence is concerned. Consequently, revision has no substance and is devoid of merits. Hence, following order is passed.

ORDER

- (i) The criminal appeal is dismissed.
- (ii) Criminal revision application filed by complainant is dismissed.

(ABHAY S. WAGHWASE, J.)

21. On pronouncement of this judgment, learned counsel for the appellant prays for six weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

22. Learned APP as well as learned counsel for complainant strongly opposes the same.

23. Considering the above request made by learned counsel for the appellant, six weeks time is granted for the appellant to surrender.

(ABHAY S. WAGHWASE, J.)