



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1078 OF 2023

Aditya S/o. Anup Dhanve,
Age : 35 years, Occu. : Service,
R/o. Kagdives, Near Balbhim College,
Beed.

... Appellant.

Versus

The State of Maharashtra

... Respondent.

...
Mr. Rahul P. Mote, Advocate for Appellant
Mr. N. D. Batule, APP for Respondent – State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10 APRIL, 2024

PRONOUNCED ON : 16 APRIL, 2024

JUDGMENT :

1. Original accused, who stood convicted by learned Additional Sessions Judge-2, Beed for offence punishable under sections 376 and 506 of Indian Penal Code (IPC) in Sessions Case No. 74 of 2019 by judgment and order dated 03.10.2023, is taking exception to the same by filing instant appeal.

FACTS LEADING TO TRIAL ARE AS UNDER

2. On report of prosecutrix dated 26.02.2019, City Police Station Beed registered Crime No.32 of 2019, wherein it was reported that, after spending one year with husband, she had come

to stay with her parents. On 26.02.2019, when she went out to urinate, accused came from behind and forcibly dragged her and had forcible sexual intercourse, and thereafter, issued threats to kill, if she reports the incident to anyone. On reaching home, she reported her parents and they all approached police.

PW7 Babasaheb Dahiphale, who was entrusted with investigation, after gathering evidence, charge-sheeted accused.

On trial, learned Additional Sessions Judge, Beed accepted the case of prosecution as proved and handed down the judgment of conviction. Resultantly, instant appeal.

SUBMISSIONS

On behalf of Appellant :

3. Criticizing the prosecution case as false and fabricated, it is submitted that, version of prosecutrix is patently unbelievable. That, there was no forceful act or without consent. Rather act was consensual one. In support of such contention, learned counsel took this court through the cross of PW2 victim. He pointed out that, contents of FIR and statement given before learned Magistrate are not consistent, thereby creating doubt on the credibility of her testimony.

4. He next submitted that, alleged occurrence has taken

place just near the house of prosecutrix, which is located in the residential area. That, there was no alarm, resistance or shouts for help, even when parents are also in house. Resultantly, it is his submission that, it is impossible to commit rape on full-grown married lady. He further pointed out that though there are allegations of dragging, medical experts has not noticed any injury or abrasion or dragging marks. Resultantly, he submits that, such circumstances belies the story of prosecution about forceful rape.

5. It is his next submission that, apparently neither medical evidence nor forensic evidence supports the prosecution. That, as such there is no corroboration to the testimony of victim and it being doubtful, it is his submission that, case of prosecution ought not to have accepted. Thus, he prays to interfere by allowing the appeal and by setting aside the impugned judgment.

On behalf of Respondent - State :

6. Supporting the conviction, learned APP pointed out that, there is prompt reporting. That, alleged incident has taken place in the night. Victim had immediately reported to her parents and approached police in the morning and lodged report. That, there is no reason to disbelieve version of victim, who is married lady. That, there is no reason for false implication. Learned APP

pointed out that there is medical evidence suggesting three injuries being caused on the person of victim within 12 hours, which are thus fresh. Therefore, version of prosecutrix having remained unshaken in cross, learned trial court rightly convicted the accused and thus he submits to dismiss the appeal for want of merits.

GIST OF THE PROSECUTION EVIDENCE IN TRIAL COURT

PW1 Subhash, pancha to spot panchanama deposited about spot being shown by victim and panchanama (Exh.16) is drawn in his presence.

PW2 victim deposed about her marriage to be of 2016. That, since one year she had shifted with her parents. According to her, on 26.02.2019, around 1:00 a.m., she went outside the house to urinate. While she was returning back, accused came from the *galli*, pressed her mouth, dragged her in another *galli*, stripped her and against her wish had sexual intercourse. According to her, thereafter he issued threats to kill. She came back and reported her parents and solely approached police and lodged report, which she identified to be at Exh.20.

PW3 Deepak, pancha to seizure of clothes did not support prosecution.

PW4 Father, stated that, after marriage his daughter stayed with her husband for a year and thereafter came to reside with him. He knew accused, who resides in third lane. According to him, incident took place in last week of February 2019. He does not remember exact date. He was sleeping in the house, around 1:30 a.m., his daughter approached him, woke him up and informed about the occurrence regarding forcibly raped when she went for urination and solely approached police.

PW5 Dr. Prakash Shivanikar, Medical Officer, who examined victim and issued opinion.

PW6 Dr. Abhishek Jadhav, another doctor, who examined accused and issued certificate at Exh.48.

PW7 ASI Dahiphale is the Investigating Officer.

PW8 Mother, stated that, when her daughter after leaving her husband had come to stay with them, that night, she had been for urination, and after returning, she told about accused forcibly raping her.

PW9 PSI Jadhav, second Investigating Officer, who charge-sheeted accused.

7. Fundamental defence of appellant is of sexual act to be

not forceful, rather to be consensual one. Having taken such defence, evidence on record, more particularly, of victim and medical evidence assumes significance.

ANALYSIS

8. On carefully studying the testimony of victim (PW2), it seems that, after leaving her husband she had come back to her parent's home. On the night of 26.02.2019, she claims that, when she went to urinate and while she was returning back home, accused caught her, dragged her and raped, and thereafter, issued threats. She is categorical about informing her parents and thereafter approaching police. Report by her seems to be at around 6:00 a.m.. Therefore, considering the time of occurrence, FIR is promptly lodged.

9. Case put-forth by learned counsel for appellant is that, contents of FIR and statement under section 164 of Cr.P.C. are at variance. It is pointed out that, there is reference of "gumja" (lengthy handkerchief) for gagging, whereas in her substantive evidence she has not described about the said cloth. Secondly, in FIR it is not reported that accused was drunk. Therefore, for such reason, her testimony is unworthy of credence. It is also tried to be submitted that, in statement under section 164 of Cr.P.C., she admits about marriage proposal by accused. That, there are clear

suggestions about affair, though denied. But, it is submitted that, such defence shows that, act was consensual and not forceful and moreover, victim was twice married earlier.

10. On comparing FIR, statement under section 164 of Cr.P.C. and substantive evidence, it does seem that aspect of use of handkerchief is not stated in FIR or in substantive evidence. She has merely deposed about her mouth being pressed. However, it is to be borne in mind that, she is a victim of sexual assault and therefore, she might not have deposed about use of such article. Anyway not mentioning about such article is not crucial as what is crucial is act of rape. That part has not been dislodged and she has stood steadfast on that point. In fact, there is no serious cross on the aspect of catching hold and dragging. Similarly, failure to depose about two earlier marriages and merely stating one marriage itself would not be sufficient to disbelieve her entire version. She has flatly denied all suggestions about previous acquaintance, previous relations, previous meetings and insistence at her end to marry and therefore false implication. In fact, there is nothing in the cross to doubt her version about she going for urination shortly after midnight and she being taken forcibly and raped by issuing threats.

11. Second attack about no dragging marks in medical examination or no marks of forceful sexual intercourse, also has no force. Doctor has narrated the nature and size of injuries noted during prompt examination done on 26.02.2019 itself. Injuries are reported to be within 12 hours. Therefore, there are injuries suggesting occurrence. Obviously, she being previously married, there may not be injuries to the private parts. Law is fairly settled that absence of injuries is no good ground to rule out frame. Further, law is also fairly settled that, evidence of prosecutrix if inspires confidence, even in absence of corroboration or injuries, her case can be accepted. The moment victim of rape alleges forceful rape, the element of consent gets eclipsed. Here, as stated above, there is prompt lodgment of complaint followed by registration of crime. Parents to whom there was immediate disclosure have also testified about hearing from their daughter on the same night regarding act of accused and they took her to the police. Consequently, here, there is both prompt lodgment of FIR and medical evidence is apparently lending support to the victim's version.

12. Perused the judgment under challenge. Learned trial court has tested and appreciated the evidence in the light of legal requirements. The view taken is apparently just and proper. No

perversity or infirmity is brought to the notice in such appreciation so as to interfere or overturn the findings. No case being made out and there being no merit in the appeal, I proceed to pass the following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)