

(1981) 04 BOM CK 0021
In the Bombay High Court
Case No : Criminal Appeal No. 753 of 1978

Bapatla Vyankateshwar Rao	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 01-04-1981

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 366

Citation : (1982) 1 BomCR 301

Hon'ble Judges : N.K. Parekh, J

Bench : Single Bench

Advocate : A.R. Adik and Kum. V.R. Adik, for the Appellant; M.D. Gangakhedkar, for the Respondent

Judgement

N.K. Parekh, J.—The appellant before this Court is the original accused in Sessions Case No. 38 of 1977 on the file of the Court of the Additional Sessions Judge, Nasik.

2. Being aggrieved by an order and judgment dated 17th July, 1978, convicting him and sentencing him for a period of four years rigorous imprisonment, the accused has preferred the present appeal.

3. The case of the prosecution is that one Shantaram Jagtap resides at in Station-Wadi at Deolali Camp with his wife and daughters. The name of one of the daughter is Suman and at or about the time of offence, she was about 18 years of age. That his son Jaydeo serves at Satpur.

4. That the accused was a Naik and was posted at the military supply depot near the railway lines of Deolali Camp.

5. It is the case of the prosecution that the said Suman and other girls from station-Wadi used to go to the railway tracks to collect pieces of coal. That coal was also being stored in this military depot. That these girls also used to collect coal dust from this military depot, and at times, the accused used to give them

the coal dust and/or allowed them to collect it. That during the course of all this, intimacy developed between the accused and the said Suman. That by reason of this intimacy, the accused had sexual intercourse with the said Suman on several occasions. That Suman became pregnant as a result of this.

6. That in or about May 1975, Suman was in a family way. As a matter of fact, the third month of her pregnancy was going on. That she thereupon approached the accused and apprised him of this condition. That the accused thereupon told her that he would take her to his village and marry her.

7. That on 15th May, 1975, the said Suman went to the house of her brother Jaydeo at Satpur. That she returned to Deolali on 18th May, 1975. That she thereafter met the accused at Nasik Road when the accused told her that both of them should proceed to her village. That Suman again left her father's house on the pretext of going to Satpur. However, instead of going to Satpur, she went to the house of one Maya at Deolali. That she thereafter met the accused again, and both of them left Nasik Road. That they proceeded to Secunderabad via Manmad. That en-route, they got down at some station. That from there, they travelled by bus to Bomanpada, where the accused lived.

8. It is the prosecution case that after reaching the house of the accused at Bomanpada, Suman found that the accused had a wife and four children. That a quarrel ensued between the accused wife and the accused. That in view of this, the accused took Suman to his sister's house at Mirchimilli and kept her there. That Suman stayed there for seven to eight months. That during this period, the accused used to approach her and ask her to have sexual relations. That Suman refused to do so. That the accused used to beat and ill-treat her. That whilst at Mirchimilli, Suman delivered a child. This was in or about November 1975. That thereafter, the sister of the accused took Suman to the house of one Chhabrullu Kantamma at Ellemama. That this Kantamma was the father's sister of the accused. That the accused used to go there at times. That on these occasions, the accused used to go to ask Suman to have sex relations with him. That Suman declined to do so. Hence the accused used to beat her.

9. It is the prosecution case that in or about January 1976, Suman wrote a letter to her father. That she handed over the letter to someone to post it. In this letter, what was written was Suman had sustained burns and was in a bad condition and that her father should contact the Medical Officer at Bomanpada. That she handed over the letter to someone to post it. That this letter reached Suman's father. That Suman's father took this letter and handed it over to the P.S.I. That the Police went to Bomanpada and made enquiries. That in pursuance of this enquiries, they proceeded to Ellemama and reached there on or about 24th July, 1976. That on making enquiries on the said place, they learnt that a girl not speaking Telgu was residing there. That the police then approached this girl, who turned out to be Suman. That her statement was recorded. That during the course of investigation, the accused came to be arrested and was brought to Nasik. That on investigation being completed, a charge-sheet was filed. That the

accused was committed to sessions.

10. The accused pleaded "not guilty." His defence was one of denial. He contended that the child was not his. He denied having abducted Suman. He contended that Suman came with a story that she was rendered pregnant by someone and he should assist her. That it is in these circumstances that he took her to his village, affording her shelter. He has contended that the case against him is false.

11. To prove the prosecution case, the prosecution in all examined ten witnesses. By an order and judgment dated 17th July, 1978, the accused was convicted u/s 366 of the Indian Penal Code and sentenced him to suffer four year's rigorous imprisonment.

12. Now, the prosecution has examined one Dr. Suresh Daulatrao Varade to ascertain the age of the said Suman. The learned Sessions Judge has discussed this evidence and come to the conclusion that Suman was about 19/20 years old. This finding is not in dispute, and this point need not detain me.

13. The real question is whether Suman was abducted as alleged by the prosecution. The only evidence on this point, relied upon by the prosecution, is that of Suman. Suman, in her evidence, has stated that she used to go to collect coal near the railway tracks. That during the course of this, intimacy developed between Suman and the accused. That the accused told her that he would marry her. That he had no wife and/or children. That she succumbed to his overtures and allowed him to have sex relations with her on several occasions. That she became pregnant. That while she was in the 3rd month, she approached the accused and informed him about the same. That thereupon the accused told her that he would take her to his village and marry her and they would live happily. That relying on these representations, she left her house, met the accused at Nasik Road bus stand. That from there, she went to the residence of one Maya, who lives near station-Wadi. That she stayed there for one night. That the next morning, the accused came to the house of the said Maya and told her that he would bring his clothes. That he returned at about 2.00 p.m. That thereafter, Maya, the accused and herself all went to Nasik Road Railway Station. That from there, she and the accused proceeded to Manmad by the Nagpur Express. That they changed trains there. That they reached Secunderabad at 7.00 p.m. the next day. That they again changed trains there and went to some further station, the name of which she does not know. From there, they took a bus and went to the residence of the accused. That on reaching the residence of the accused, she saw the accused's wife and children there. That the accused's wife quarrelled with the accused. That the accused then took her to his sister's house at Mirchimilli. That she stayed there for seven to eight months. That during the course of this stay, the accused used to go there at times and used to ask her to have sexual relations. That she declined. That the accused thereupon used to assault her. That during the course of her stay, she delivered a child. That she stayed there for about eight to nine months. That she finally wrote a letter to her

father and asked someone to post it. That in pursuance of this, the police came there and took her back to Deolali.

14. Suman was cross-examined and the defence was able to bring on record several contradictions. It was brought on record that she had stayed at her brother's place for two days and not nine days. That she had stated that she had come with accused from Satpur to Nasik Road. That earlier, it was her story that on 19th May, 1975, she had been to Igatpuri from Nasik Road and that the said Maya was with her. She had gone to Igatpuri because Maya wanted to go to Igatpuri where her maternal aunt resides. That it was her story earlier that she was waiting for the accused at Igatpuri railway station and that he had come there. That she had again changed the story that she was at Igatpuri for one day and not two days. i.e. 21st May, 1975. It was also brought on record that it was her story that the accused did not meet her at Igatpuri and hence she returned to Deolali. It was also brought on record that she and the accused resided at Igatpuri and they were at Nasik Road.

15. In the course of cross-examination, Suman went on to say that she had told the accused at Bomanpada that he had deceived her since he had a wife and children, and it was strongly urged that this fact does not find place in her police statement. Apart from this, there are other minor contradictions also.

16. In assessing the evidence of Suman, the learned Judge dismissed these contradictions as no consequence. But what seems be lost sight is the fact that the entire case depends upon Suman's evidence. These contradictions in her evidence clearly dent the value of her evidence, and in the circumstances, her testimony must be approached with caution and can be accepted, provided there is corroboration. However, insofar as the case is concerned, it is conceded by the learned Advocate for the State that for Suman's evidence, there is no corroboration in material particulars. If this is so, then in view of the fact that Suman has had several sex relations with this person earlier, her bare word that at one stage that the accused told her that he would marry her, would be hazardous to accept, and relying on this sole testimony, it would be difficult to hold that the prosecution has proved its case.

17. In this context, it may be stated that a similar position arose in the case of Ram Murti Vs. State of Haryana, . In that case, the prosecutrix, was found to be used to sexual intercourse. It was her statement that she was threatened and induced to go with the accused. The Supreme Court in disposing this evidence held that if this be the position, then the evidence should be corroborated in material particulars from independent sources before a conviction can be based on such evidence.

18. The facts of this case are also similar striking to the above referred case, bearing the ration of said case in mind, it must be held that it would not be proper to base a conviction on the sole evidence of Suman without corroboration in material particulars. In view of this discussion, it must be held that the

prosecution has "not proved" its case. The appeal succeeds. The order of conviction and sentence is reversed and set aside. The accused is acquitted of the charge framed against him and directed to be set at liberty, if not otherwise required. The bail bond to stand cancelled.