
(1985) 08 BOM CK 0036
In the Bombay High Court
Case No : Criminal Appeal No. 106 of 1980

Bhagat alias Rikhman Mahabal Maurya	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 29-08-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (1986) 2 BomCR 175

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : S.R. Mishra, for the Appellant; P.P., for the Respondent

Final Decision : Allowed

Judgement

S.M. Daud, J.—This is an appeal arising out of a conviction and sentence passed for an offence punishable u/s 376 of the Indian Penal Code.

2. The case of the prosecution was that complainant-Sushila Sampat Shinde lives with her mother, sisters, brother and a daughter aged 7 years named Ranjana in a hutment settlement on Khambadevi Road, at Dharavi, Kala Killa, Bombay. The hut in which the large family resides bears No. 1540. Appellant lives in the vicinity of the said hut and he is a married man with children. On 20-5-1978, Sushila and her mother had gone out in the morning for sale of bananas at the Sion Railway Station. This was usual for the mother and daughter, who used to return late in the night at about 9-30 to 10-00 p.m. Left behind were children, in charge of a 13 year old, Chhabootai-P.W. 3. Ranjana was playing outside with the children when she was called out by the appellant. The appellant took her to his own hut. The girl was placed on a cot and thereafter raped. Ranjana screamed in pain and the appellant allowed her to go. This was after giving her a 10-paisa coin with an admonition not to repeat a word outside of what he had done to her. Ranjana informed her aunt Chhabootai of what had happened. Chhabootai washed private parts and gave the girl a different pair of clothes for wear. At 4. 30 p.m. Sushila came home to get a fresh supply of Bananas. Chhabootai and

Ranjana narrated the incident to her, but the lady was pressed for time and, therefore, went back to the place where she had set up her stall for sale of Bananas. Sushila returned late in the night and an hour or so past midnight lodged a report at the police station. An offence was registered and the victim was sent for a medical examination. The medical examination was conducted by Dr. Miss Sarla Jaisinghani-P.W. 5. The case papers in the hand-writing and bearing signature of Dr. Jaisinghani are at Exh. 12. After completion of the investigation the appellant was charge-sheeted.

3. The appellant pleaded not guilty. It was denied that he had raped Ranjana. His submission was that Sushila's father had damaged his hut. Thereupon, he had demanded compensation from the wrong-door. This demand had led to a heated exchange between him on the one hand and Sushila and her parents etc., on the other. They had threatened to even with him. It was Sushil and the other elders in the family who had tutored Ranjana to level and support a false accusation against him.

4. In support of his case, the prosecution examined certain witnesses. Appellant examined an expert, Dr. Sharadkumar Pancholi. The learned Addl. Sessions Judge before whom the trial was held, found the appellant guilty for an offence punishable u/s 376 I.P.C. and sentenced him to suffer R.I. for three years. Having regard to the submissions made before me, the points for decision are :---

- 1) Did the prosecution prove that the appellant had committed rape on Ranjana?
- 2) What order?

My findings, for reasons given below are:---

- 1) No
- 2) Appeal allowed

REASONS

5. Before going to the evidence of Ranjana, her mother and aunt, I will deal with the medical evidence of Dr. Jaisinghani. Her deposition is at Exh. 11. She says that on a general examination, she did not find any external injury. There was no evidence of a local injury on the Vulva. The Hymen was intact, though there was minimal bleeding from the vagina. A swab was taken from the vagina, but with negative results inasmuch as no sperm was found. In cross-examination, Dr. Jaisinghani admits that vaginal bleeding does not necessarily indicate that the patient has been subjected to sexual intercourse. The bleeding may be due to several other causes. There was no sign of tenderness on the labia majora and labia minora. The private parts were free of any sign of redness, inflammation or bruises. Thus there was no sign of any injury on the genitals of the girl. The bleeding noticed was so insignificant that it was not deemed necessary to give the patient and medication to stop it. At the end of a somewhat difficult cross-examination, Dr. Jaisinghani stated that bleeding of the nature noticed on the

person of Ranjana was consistent, with a fingering of the private parts by a long-nailed person. In answer to the questions put by the Judge, Dr. Jaisinghani stated that bleeding from vagina is consistent with her having been subjected to sexual intercourse. To summarise, it amounts to this: Every sign on the person of the child indicated that she had not been raped, there was minimal bleeding from the vagina; that did not indicate rape, having regard to the insignificant quantity. However, vaginal bleeding as such could be consistent with sexual intercourse. The learned Addl. Sessions Judge was aware that Dr. Jaisinghani's evidence was not exactly helpful to the prosecution. Therefore, he came down heavily upon her by remarking that she had been "Callous". That is not the charge of even the victim or her mother. I really see no evidence of callousness or negligence on the part of Dr. Jaisinghani. Inadequate as her testimony was, the appellant desired to put the matter beyond cavil. It is here that Dr. Pancholi's testimony assumes significance. This witness has glitter credentials. He has given the date for opining that in the case of Ranjana there had been no rape. It is not necessary to burden the judgment with details from his testimony. Suffice it to say that the reasons given by him are weighty and fully support the conclusions reached by him viz., that had not been raped.

6. In the light of the medical evidence indicated above that no rape had taken place, it is not really necessary to go to the oral evidence. Nonetheless, let me scan the testimony which seems to have impressed the trial Court. Ranjana may be a child but she is from a hutment settlement in Bombay. She certainly is not as innocent as one would expect in the case of a girl from the village of Maharashtra. She says that the appellant had raped her. In fact, she shows the vernacular equivalent of sexual intercourse. The second admission given by her is that her mother had been tutoring her as to what she had to say in Court. If Ranjana was subjected to the influence of Sushila, there was no reason to believe that the last sister of Sushila, Chhabootai was kept immune therefrom. Sushila in her deposition after a bit of evasion was forced to concede the following :

Her father was a habitual drunkard who used to have quarrels with accused over a tin sheet wall of the hut of the accused; that accused had demanded compensation for the loss allegedly caused to the said wall but the father of the witness, that the father refused to pay compensation; that the appellant assaulted the father; that Sushila had taken up cudgels on behalf of her father; and that this quarrel had taken place some 8 to 9 months prior to the occurrence. In the background of this incident, it is quite possible that a false accusation was levelled against the appellant. It is certainly not for the appellant to explain why Sushila and others have gone to the extent of involving a minor child in their desire to get even with him. Let us forget this aspect of the matter. Sushila had returned home at about 4-30 p.m. when she knew that incident had taken place earlier. It is rather improbable that she would defer the making of a report at that time. Ranjana had spoken of what accused had done to her aunt. Yet, other persons living in the adjoining huts, seems to have been informed of

what the appellant had done. Ranjana had screamed in pain, but there is no evidence to show that others had come upon hearing her alarm. The learned Public Prosecutor submits that even if the story of rape is disbelieved, it is possible that the appellant had outraged the modesty of the girl. That does not appear to be substantiated by the evidence that has come on record.

7. In the result, the appellant was wrongly convicted and sentenced. Hence the order :---

ORDER

Appeal allowed. Appellant is acquitted of the charge of having committed an offence punishable u/s 376 I. P. C. Bail bonds, furnished by and on behalf of the accused, stand vacated.