

(2012) 03 BOM CK 0224

In the Bombay High Court

Case No : Criminal Appeal No's. 128 and 150 of 1998

Dinesh Tukaram Telang

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 376(2)(g), 448, 506(II)

Citation : (2012) BomCR(Cri) 723

Hon'ble Judges : Bhangale A.P., J

Bench : Single Bench

Advocate : A.S. Mardikar, in Cri. A. No. 128/1998 and A.S. Mardikar, Amicus Curiae appointed, in Cri. A. No. 150/1998, for the Appellant; A.M. Joshi, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Bhangale A.P., J.—The appeal is challenging the judgment and order of conviction dated 4/4/1998 passed by the learned Additional Sessions Judge, Nagpur in Sessions trial No. 490 of 1992, whereby the respondent/accused were convicted for the offences punishable under sections 376(2)(g), 448, 506(II) read with section 34 of the Indian Penal code and each were sentenced to suffer R/I. for ten years and to pay a fine in the sum of Rs. 3000/-, in default to undergo further R/I. for six months for the offence of gang rape punishable u/s 376(2)(g) of the Indian Penal Code; R/I. for one year and to pay a fine in the sum of Rs. 500/- each, in default to undergo R/I. for one month for the offence of Criminal trespass punishable u/s 448 of the Indian Penal Code and R/I. for two years each and to pay a fine in the sum of Rs. 500/- each in default to undergo R/I. for one month for the offence of Criminal intimidation punishable u/s 506(II) of the Indian Penal Code. Facts, briefly stated, are thus:-

Prosecutrix was resident of Savitribai Fule Nagar Zopadpatti (hutments) at Nagpur. Her husband had deserted her as he had left home and did not return. Her mother-in-law was residing with her. During the intervening night of

27/8/1991 and 28/8/1991, at about 1.00 a.m., the appellants had entered in the house of the prosecutrix and wielding knife, they had threatened to kill the prosecutrix and one after the other, committed rape upon her and left the house. The prosecutrix lodged complaint (Ex. 40) at Police Station, Ajni in the morning. F.I.R. No. 356 of 1991 was recorded against both the accused. Statements of witnesses including children of the prosecutrix were recorded. The spot panchnama was drawn. The prosecutrix was referred for medical examination. The accused were arrested and their clothes as well as knife-weapon of offence were also recovered. After completion of the investigation, charge sheet was laid before the Chief Judicial Magistrate, Nagpur, who committed the case to the Court of Sessions, Nagpur. Charge was framed under sections 376(2)(g), 448, 506(II) read with section 34 of the Indian Penal Code, to which the accused pleaded not guilty and claimed trial. Seven witnesses were examined by the prosecution. No defence evidence was led.

2. Prosecutrix Manorama (PW-1) deposed about the incident of rape. Her evidence indicates that, after her husband left them, she, along with her mother-in-law and her two daughters and a son, were residing together. The prosecutrix knew the accused as they were residing in the same locality. On the night of the incident, while Manorama was sleeping with her children and her mother-in-law in the house, the accused entered in the house. Accused Dinesh came first and threatened the prosecutrix by putting knife at her neck and started outraging her modesty. He, after removing his clothes, raped the prosecutrix. Accused Rajkumar had also come and at the touch of a knife, he outraged the modesty of the victim. When the prosecutrix shouted, he ran away.

3. Learned Advocate for the appellants submitted that the Investigating Officer did not record statement of neighbourers of the prosecutrix for to get corroboration to the evidence of the prosecutrix and, therefore, adverse inference ought to have been drawn by the trial Court against the prosecution. It is further submitted that the incident occurred in a hut which was latched from inside and therefore, the prosecution story that the accused entered inside the hut is not probable. It is submitted that the manner of incident, as narrated, is unbelievable. Her son and daughter though examined, did not support as far as the manner of incident stated by the prosecutrix is concerned. It is further submitted that the prosecutrix has deposed about the incident after a period of six years from the date of incident and therefore, the story narrated by her ought not to have been accepted by the trial Court. Presence of abrasion on the arm of the prosecutrix could not have been considered as an incriminating evidence for proving the offence of commission of rape.

4. Learned Advocate for the appellants relied upon the ruling in the case of (Baburao Ramdas Padgil Vs. State of Maharashtra) to argue that highly unnatural and improbable conduct of the prosecutrix ought to be taken in to consideration as also delay in lodging the report when it is alleged that the prosecutrix was raped. Natural conduct would be disclosing the fact promptly without delay to her

mother or near relative or family member.

5. The learned A.P.P. supported the impugned judgment and order on the ground that none of the submissions can help the appellants as there was no any fatal defect in the case of the prosecution. It was a case of trespass and rape upon helpless victim during the midnight hours. The prosecutrix was the only natural and best witness to depose as to what had happened with her and there was sufficient corroborative evidence to support her version. Regarding submission as to delay in lodging the F.I.R., It may not always be significant for the prosecutrix and her family to lodge the F.I.R. There is another argument as to why the prosecutrix did not raise shouts. In a given situation, when knife was pointed out, such incident, when happens, becomes a matter of shame. They are in unpleasant situation, therefore, the victim is reluctant to approach the Police Station and to report the incident to police. In a given case, it can not be disputed that the testimony of the prosecutrix can be relied upon even without corroboration provided that it inspires confidence in the judicial mind. Prosecutrix was cross-examined at length. She answered all the questions, though put in by the defence with a view to impeach her character. Sudarshan, her son was hardly 11 years at the time of the incident, but it came in his evidence that the accused were sleeping on the person of his Mother. Sudarshan had also visited the Police Station along with his mother. According to him, his mother was about to commit suicide, but after he gave her understanding, they came to the Police Station and lodged the report. Daughter of the prosecutrix was also examined. The prosecutrix was raped at the point of knife. The criticism that the door of the hut was closed from inside when the incident happened is explained from the cross-examination of the prosecutrix that the door of the hut was made of tin and, therefore, opening of such door from outside was not improbable. The prosecutrix and her family members were not allowed to shout as the prosecutrix was put in fear of knife. Medical evidence as deposed by Dr. Mrs. Shirpurkar indicates that the sexual intercourse was possible. The medical evidence has corroborated the case of the prosecutrix. Injury to the hand of the prosecutrix is corroborative of the version of the prosecutrix that she resisted the sexual aggression at the time of the incident. Sudarshan stated that the accused before the Court were the same accused who were sleeping on the person of his mother. According to Sudarshan, his mother was thinking to commit suicide, but, after persuasion by him and his grandmother, his mother desisted and then they went to the Police Station. The evidence of the son and daughter of the prosecutrix supported the evidence of the prosecutrix. Children Sudarshan and Shilpa, aged 11 years and 7 years respectively may not have intellectual capacity to know that their mother was raped, but their evidence do broadly disclose as to what had happened. According to Sudarshan, police had made an inquiry with his mother and whatever his mother told, the police had reduced it into writing. PSI Salunke deposed that he had recorded the F.I.R. (Ex 42). No woman residing with her children and aged mother-in-law would implicate herself in the unpleasant incident of rape to take revenge upon the accused. Moreover, during

medical examination of the victim, fresh abrasion was found on the hand of the prosecutrix, blood stains were observed on medial aspect of both thighs and pubic hairs were seen matted. On internal examination of the prosecutrix, the blood stains discharge was seen out of her opening of uterus, which appeared anteverted of normal size, firm, mobile and non-tender indicative of the possibility of sexual intercourse. Medical evidence, as deposed by Dr. Mrs. Shirpurkar reveals that the said Medical Officer had recorded history of rape at midnight. There was no reason for the Medical Officer to depose falsely. The report from forensic Science laboratory mentioned that the semen stains were observed on jangya (underwear) and saree of the prosecutrix. According to the evidence of PSI Salunke, the weapon of offence - knife and Gupti were recovered after arrest of the accused under the Panchnamas (Exhs. 71 and 72). Learned Advocate for the appellants contended that the prosecutrix was not supported in her evidence as daughter of the prosecutrix Shilpa (PW-3) and panch witnesses Prabhakar (PW-4) and Milind (PW-5) were declared hostile on the ground that they did not support the prosecution story. This submission is not convincing as even evidence of a hostile witness may be looked into and carefully scrutinized to accept dependable portion thereof to the extent it has supported the prosecution case instead of enblock rejection thereof. Both the appellants, who had entered into the hut of the prosecutrix to rape her by putting her under the fear of weapons, were rightly held guilty and punished. Hence, no interference is called for. The instant Criminal appeals are, therefore, dismissed.

At the stage of pronouncement of the judgment, the learned Advocate for the appellants; submits that both the appellants are on bail and they intend to challenge the order. It is further submitted that time of eight weeks be granted to both the appellants to surrender. The learned A.P.P. opposes the prayer, so made. Since the appellants are on bail, they are permitted to surrender within a period of six weeks from the date of this order.