
(2012) 08 BOM CK 0099
In the Bombay High Court
Case No : Criminal Appeal No. 267 of 2004

Namdeo Dnyanaba Agarkar	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 341, 354, 451

Citation : (2012) BomCR(Cri) 594 : (2012) CriLJ 3946

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

Bench : Single Bench

Advocate : Trupti Udeshi, for the Appellant; K.L. Dharmadhikari, Assistant Public Prosecutor for the State, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—The appellant has preferred this appeal against the judgment dated 22/03/2004 passed by the Special Judge under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act in Special Case No. 26/2002 on the file of the learned 16th Ad hoc Assistant Sessions Judge at Nagpur whereby the appellant was convicted for the offence punishable under Sections 451 and 354 of the Indian Penal Code and Section 3(1) (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Special Act"). For the offence punishable under the Special Act, the appellant was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 500/, in default to suffer simple imprisonment for fifteen days. He was also convicted for the offence punishable u/s 354 of the Indian Penal Code and sentenced to undergo three months" rigorous imprisonment. He was further convicted for the offence punishable u/s. 451 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one month. All the sentences were directed to run concurrently. The appellant was facing trial on the ground that he, not being a member of the Scheduled Caste or Scheduled Tribe, on or about 03/02/2002, at about 10 a.m., at the village Madavghorad within the

local limits of Hingna Police Station, committed house trespass in the house of the Complainant and sexually exploited Sau Parvatabai Shankarrao Kove belonging to "Gond" Scheduled Tribe and outraged her modesty.

2. The prosecution's story in short is that the Complainant Parvatabai had attended the agricultural work during the morning from 7.30 a.m. to 10 a.m. and returned to her house at about 10.30 a.m. She took bath at about 11 a.m. at the bathroom situated outside her house and after bath returned inside. While she was wearing petticoat by tying the knot and putting Sari on her body. The accused came from her backside and caught hold of her and laid her down on the cot and sat on her chest. She saw the accused Namdeo Agarkar, resident of the same village. She shouted and after that the accused left her house. After hearing her shouts, her cousin mother -in-law Sau Pushpabai came there. She also saw the accused and asked him to stop, but he did not stop. Brother-in-law of the Complainant also came there. The prosecutrix narrated what had happened at the relevant time. At the time of the incident, her husband had gone out for grazing the goats. The investigation followed after the complaint was lodged. The investigating agency found that the accused belonged to "Sutar" caste (not being a Scheduled Caste or tribe), while the Complainant belonged to "Gond" Scheduled tribe. The Spot panchanama was drawn and Statement of witnesses were recorded. The accused was arrested and upon completion of the investigation, was charge sheeted in the Court of the Judicial Magistrate, First Class, 10th Court, Nagpur. The case was committed to the Court of Sessions. On 22/08/2003, Charge was framed. The accused pleaded not guilty and claimed trial. Prosecution had examined 8 witnesses.

3. Evidence of prosecutrix - Parvatabai Shankarrao Kove (PW1) is criticized on the ground that she made improvement to her version before the police (Ex.5) stating in the Court that she had gone to the agricultural field to work in the morning from 7.30 a.m. till 10 a.m. However, there appears no much difference between the substance of the version in FIR and in the Court. On 03/02/2002 (Sunday), when she was alone in her house, she had taken bath at about 11 a.m. and came back from the bathroom, when the accused came from behind her. While the prosecutrix was tying the knot of her petticoat, he held her by her waist and laid her on the cot and sat upon her. When she raised shouts, accused Namdeo Agarkar ran away. Her cousin Mother-in-law Pushpa came after hearing her shouts, as also brother-in-law of the prosecutrix to whom she had narrated the incident. Then report was lodged with the police.

4. Ms Trupti Udeshi, learned advocate for the Appellant argued that the learned trial Judge failed to appreciate that no any offence was committed, as alleged. According to learned Advocate for the accused, the alleged incident was not proved beyond reasonable doubt. Investigating Officer Shri Kumbhare was not examined. The evidence of Parvatabai the complainant was full of omissions and not worthy of credence. The evidence of Pushpa, Cousin Mother-in-law of the complainant - since she is an interested witness, cannot be believed as her

evidence was suffering from improvement and omissions. It is submitted that the accused had no knowledge or intention that modesty of woman would be outraged.

5. Reference is made to the ruling in *Peedikandi Abdulla Vs. State of Kerala*, wherein the Kerala High Court had cautioned that when such serious accusations are made as in the present case, the object of the Act is to weed out the atrocities being caused upon the persons belonging to Scheduled castes and tribes. At the same time, it is also to be borne in mind that there is scope for false implication in this Act due to previous enmity already prevalent on some other ground. Therefore, the Courts must cautiously, carefully, and thoroughly examine before fixing the criminal liability as minimum sentence provided under the Act and likelihood of the false implication.

6. Ms Udeshi, Adv. then placed reliance upon the ruling in *Manoj Kumar Giri Vs. State of Jharkhand and Another*. In that case, there was legal lacuna in doing the investigation and filing the charge sheet under the Atrocities Act. Hence, the charge under the Act was quashed, while the Jharkhand High Court ordered the prosecution for other charges namely u/s 354, 341 and 323 of the Indian Penal Code to continue.

7. Mr. K.L. Dharmadhikari, Learned A.P.P. relied upon the ruling in *Vidyadharan Vs. State of Kerala*, to invite my attention to the following observations by the Apex Court :

9. In order to constitute the offence u/s 354 IPC mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. (See *State of Punjab Vs. Major Singh*). A careful approach has to be adopted by the court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence u/s 354 IPC are as under:

- (i) that the person assaulted must be a woman;
- (ii) that the accused must have used criminal force on her; and
- (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

10. Intention is not the sole criterion of the offence punishable u/s 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight....

8. The evidence of victim Parvatabai in the present case is quite natural and inspires confidence in the judicial mind. The evidence of victim does not really require any corroboration as regards the offence of outraging modesty of the victim as the incident has been disclosed at the earliest point of time. But, in the present case, the evidence of Pushpa, cousin mother-in-law, who had heard shouts of the victim had come to inquire as to what had happened and saw the appellant going away and there was immediate narration of the incident by the victim to Pushpa. It is a fact that there was no proof of any enmity between the victim and any family members of the victim with the present appellant/ accused and, therefore, the question of falsely implicating the accused in such kind of offence does not arise. Nothing is forthcoming from the evidence on record to show that due to enmity or happening of some untoward incident with the victim by the family members of the accused, she lodged false complaint. The evidence of the victim is found quite natural and there is no reason to discard her evidence. In the opinion of this Court, looking to the culture of the Villages in India, no married lady having family of her husband and children would like to lodge false complaint for outraging of her modesty at the cost of her reputation. The accused was, therefore, rightly held guilty for the offence punishable u/s 354 of the Indian Penal Code and sentenced accordingly.

9. Appellant Namdeo who had inquired about presence of her husband and children knew that victim Parvatabai a married woman aged about 35 years, belonging to Scheduled tribe "Gond" was alone in the house, tried to take disadvantage of absence of her husband and children in the house and ventured to enter her house at the time when she had just returned after taking bath from the bathroom and while she was about to tie the knot of her petticoat, the appellant held her by her waist and laid her on the nearby cot and mounted on her. The victim cried and raised shouts, hearing which her cousin mother-in-law arrived on the scene inquiring as to what had happened. The accused ran away.

10. Parvatabai (PW1) deposed in the Court regarding the incident that when her husband had gone out for grazing goats and her son was in the school at about 10 a.m., she was cleaning her house. At that time, the accused came there and asked her as to whereabouts of her husband and son and when he came to know about the same, the accused went out of the house. Parvatabai took bath and after taking bath, when she was wearing petticoat and covering her body with saree and tying the knot of petticoat, the accused came from back side and caught hold of her and laid her down on the cot. The prosecutrix cried loudly and hearing her cry, her cousin mother-in-law Pushpa came there and asked the reason for shouting. Paravatabai then narrated the incident to her. She also saw the accused going towards his house and asked him to stop, but he did not stop. The report regarding the incident was lodged as per Exh.5 with police. About this incident when she was cross-examined, she was questioned about the earlier visit of the accused when he asked as to whereabouts of her husband and son. She frankly admitted that the fact regarding earlier visit of the accused, his asking about her husband and son and narration of incident by Paravatai to her

mother-in-law Pushpabai was not mentioned by her in the report. Although witness Parvatabai is unable to give reason for the above omission in her report, in my opinion, the prosecution case is not affected by the omissions which were not major.

11. The FIR lodged with the Police Station cannot be accepted as an encyclopedia to find everything in it. The object of lodging FIR is to set in motion the criminal justice system by reporting an offence when the FIR mentions essential fact or broad picture about it. It is considered as an information for police to take cognizance of the offence reported. FIR is not expected to be verbatim summary of the entire prosecution case nor it is considered as an encyclopedia so as to contain every minute details of the occurrence. Therefore, non-mentioning of some facts which happened prior to occurrence of the incident or vague reference to them cannot be considered as fatal to the prosecution case. It is enough if FIR mentions the offence so as to set the machinery of law in motion by complaint which enables the police to start investigation regarding the offence reported.

12. In the present case, the incident of outraging modesty of a woman who was belonging to Scheduled Tribe is also corroborated by evidence of Pushpa (PW3) (cousin mother-in-law of complainant Parvatabai). She deposed about the incident narrated by Parvatabai. According to Pushpa, she was informed that when Parvatabai was taking bath in her house, the accused had fallen down her, caught hold of her and laid her on cot. Pushpa (PW3) also deposed about the fact that the prosecutrix belongs to "Gond" caste, while the accused belongs to "Waadi/Sutar" caste. Husband of Parvatabai namely Shankar Kove was examined as PW4 by prosecution. He also corroborated the evidence of Parvatabai stating that when Shankar Kove (PW4) went for gazing his goats, his son came and informed him that the accused had caught hold of his mother Parvatabai and when he came back home, Paravatabai - his wife narrated the incident to him. Prosecution witnesses Watsalabai Shelke (PW5), Lekhram Sakhunde (PW6) and Asha Kove (PW7) turned hostile and did not support the prosecution.

13. Namdeo Parasram Shambharkar (PW8) - an ASI deposed about the fact that he had recorded the complaint made by Parvatabai and the case diary was handed over to Mr. Kumbhare, S.D.P.O. for further investigation. The contention that Mr. Kumbhare was not examined by prosecution would not help the case of defence as it was open for the defence to summon him as a Court witness if at all the defence wanted to cross-examine him. On the basis of the evidence available on record, considering that the main evidence of Parvatabai was corroborated by the earliest version of incident as reported in Exh.5 and extensive complaint recorded at Exh.18 provides ample corroboration to the evidence of Parvatabai (PW1) and looking to the nature of evidence, it is clear that the prosecution has proved beyond reasonable doubts the fact that the accused, who was not a member of the Scheduled Caste or tribe had, on 3rd February, 2002, entered the house of Parvatabai and taking disadvantage of

absence of her husband and son, outraged her modesty by catching hold of her waist and laying down her on the cot and mounting upon her. This act of outraging modesty was serious as the prosecutrix belongs to "Gond" caste, which was a Scheduled caste and her modesty was outraged after house trespass committed by the accused. Thus, considering the entire evidence led by the prosecution, the trial Court rightly arrived at the conclusion that the appellant/accused herein is guilty of the offences charged. At this stage and in the alternative, Ms Udeshi prayed for showing leniency on the ground that there was no criminal antecedent to the discredit of the accused and that he has large family to support and shall take care of his family and therefore, benefit of probation be accorded to him. In my opinion, there are categories of offences wherein the Court has to adopt deterrent approach and cannot be lenient and the offence of outraging modesty of a woman is from that category. The offender needs to be punished when any woman is indecently assaulted or when her dignity is shattered. Sentence in such cases must be proportionate to the crime committed to ensure adequate deterrence for the likeminded prospective criminals. The Court has to consider the nature of crime, manner of its commission, impact on the victim and her family and other attending circumstances. The object of punishment in such cases is to protect the Society by removing the penchant or tendency to commit such crime. Hence, the Court has to impose stern sentence. In the circumstances, there is no merit in the appeal. Consequently, the appeal is dismissed.

The fees of Ms Trupti Udeshi, Adv. (appointed) is quantified at Rs. 2,500/to be paid by the Legal Aid Committee.