
(2018) 12 BOM CK 0103
In the Bombay High Court
Case No : Criminal Appeal No. 262 Of 2005

Prabhu @ Prabhakar Abaji Khedekar	APPELLANT
Vs	
State Of MaharashtraThr.Pso Gadchiroli	RESPONDENT

Date of Decision : 21-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 376, 376(1)

Citation : (2018) 12 BOM CK 0103

Hon'ble Judges : V. M. Deshpande, J

Bench : Single Bench

Advocate : V. N. Morande, S. V. Kolhe

Final Decision : Dismissed

Judgement

V. M. Deshpande, J

1. Challenge in the present appeal is set up to the judgment and order of conviction passed by the learned 1st Ad-hoc Additional Sessions Judge, Gadchiroli, dated 29.3.2005 in Sessions Case No.70 of 1996, by which the appellant stands convicted for the offence punishable under Section 376(1) of the Indian Penal Code and is directed to suffer rigorous imprisonment for Seven years and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer further rigorous imprisonment for six months.

2. The prosecution case is in narrow compass and that can be narrated herein under :

[A] The criminal law was set into operation by the victim (PW1) by lodging her oral report with Police Station, Chamorshi on 05.2.1996. As per the oral report, the day of the incident was Monday and at about 6.00 O'clock in the evening, she was present in her agricultural field and was collecting vegetables. After collecting the same, when she was proceeding towards her house, at that time the accused came inside her field and without uttering anything caught hold her, removed her clothes, pressed her neck and mouth, thereafter removed his own

clothes and put his private part inside the private part of the victim. Though, the victim was trying to raise voice, she was obstructed. After some time, her husband came in the field, gave water to her and on his enquiry, she disclosed what happened to her. Thereafter, her husband brought the bullock-cart and came to the police station for lodging the report. The oral report of the victim is at Exh.14. On the basis of the oral report, an offence was registered vide Crime No. 8/1996 for the offence punishable under Section 376 of the Indian Penal Code. The printed first information report is at Exh.15.

[B] When PSI Nanaji Bhoyar (PW7) was handed over with the investigation of Crime No. 8/1996, the victim was already sent for her medical examination. The Investigating Officer visited the spot of incident and in presence of panhas, panchanama of the spot was drawn. Exh.21 is the panchanama of spot of occurrence. He also seized the clothes of the victim under seizure memo (Exh.16). Statement of the victim was recorded on the next date i.e. 06.2.1996. Clothes of the accused were seized from his house under seizure memo (Exh.22). On 07.2.1996, the accused produced the order of anticipatory bail. On 08.2.1996, the accused was sent for his medical examination. His samples of semen, pubic hair and blood were seized under seizure panchanama (Exh.19). On 09.2.1996, the appellant produced his nicker and the said was seized under seizure memo (Exh.23). After completion of the investigation, PSI Nanaji Bhoyar (PW7) filed charge-sheet in the Court of law.

[C] The learned Magistrate, in whose Court the charge-sheet was presented, found that the offence is exclusively triable by the Court of Sessions, Therefore, the case was committed to the Court of Sessions. The learned 1st Ad-hoc Additional Sessions Judge, Gadchiroli framed the Charge (Exh.6) in Sessions Case No. 70/1996 against the accused for the offence punishable under Section 376 of the Indian Penal Code. The appellant/accused abjured his guilt and claimed for his trial.

[D] In order to bring home the guilt of the appellant/ accused, the prosecution has examined in all Seven witnesses and also relied upon various documents. After appreciation of the prosecution case and after considering the defence which was of total denial, the learned Judge of the Court below passed the impugned judgment of conviction. Hence, this appeal.

3. Heard Mr. V. N. Morande, the learned counsel for the appellant and Mrs. S.V. Kolhe, the learned Additional Public Prosecutor for the respondent/State. With the assistance of both the learned counsel, I have gone through the record and proceedings.

4. The primary submission of Mr. Morande, the learned counsel for the appellant is that the appellant is falsely implicated in the case. It is his submission that possibility of husband of the victim noticing their presence in the agricultural field is there and therefore, in order to save her own skin, the victim is falsely implicating the appellant in the crime. It is also his submission that the Chemical

Analysers's report is negative. It is also his submission that at the time of medical examination, the doctor could not notice any injury on the private part of the victim or on her back. He submitted that not noticing injuries on the back of the victim, especially when there were stumps of paddy, is suggestive of the defence that the appellant has not committed any sexual intercourse with the victim. He, therefore, submitted that the appeal be allowed by upsetting the judgment of conviction.

5. Per contra, Mrs. Kolhe, the learned Additional Public Prosecutor for the State would submit that the version of the victim is duly supported by the medical report (Exh.29) and the evidence of PW6 Dr. Sujata Gupta. She supported the impugned judgment and prayed for dismissal of the appeal.

6. As per the oral report (Exh.14), the incidence of sexual assault on the victim took place at 6.00 pm on 05.2.1996 in the agricultural field of village Chakalpeth, Tah. Chamorshi, District Gadchiroli. The printed first information report (Exh.15) shows that the first information report was lodged at Police Station, Chamorshi on 05.2.1996 at 23.40 hours. Thus, within a span of five hours, the report was lodged. The printed first information report shows that the distance between the spot of occurrence and the police station is 9 kilometers. As per the recitals of the oral report (Exh.14) of the victim, her evidence, evidence of her husband Patru (PW2), evidence of PW4 Ramdas Pal and evidence of PW5 Diwakar Raut show that they reached to the police station by bullock-cart. Prior to proceeding on the bullock-cart at police station, if the evidence of these prosecution witnesses is seen in correct perspective, some time was consumed for giving water to the victim. The cumulative effect of all these things allows me to record a finding that there was no delay whatsoever in lodging the first information report.

Prompt reporting the matter to the law enforcing authorities and registration of the crime against the accused, who is named in the first information report, completely rules out not only the embellishment, but false implication of the accused.

7. It is a trait law that the victim is not an accomplice. The evidence of a victim of a sexual assault if inspires confidence, conviction can be founded on her testimony alone unless there are compelling reasons for seeking corroboration. It is an established law that the victim's evidence in rape cases is more reliable than that of an injured witness. In a case of sexual assault, corroboration as a condition for judicial reliance is not a requirement of law but a guidance of prudence, is the law laid down by the Hon'ble Apex Court in the case of Kamalanantha and others .vs. State of T.N., reported in (2005) 5 SCC 194.

8. On the touchstone of the aforesaid law laid down by the Hon'ble Apex Court let us examine and scrutinize the prosecution case in the light of the submissions made by the learned counsel for the appellant.

9. According to Mr. Morande, the leaned counsel for the appellant, there were no

injuries noticed on the private part of the victim as well as on her back. PW6 Dr. Gupta examined the victim on 05.2.1996 at 11.00 pm. Thus, the medical examination of the victim was immediate. On the examination of the victim, PW6 Dr. Gupta found that secondary sex characters were well developed. Dr. Gupta noticed external injuries over neck. She also noticed nail marks over neck of size 1 cm x 1 cm. She also noticed contusion over neck on front side having size 2 cm x 1 cm reddish in colour. According to the doctor, there were no external injuries on the private part and her hymen was torn. In the present case, the victim is not only a married woman, but she is a mother of four children. Therefore, not noticing any injuries on the private part of the victim is not an abnormal thing though, sexual intercourse even with force, has taken place.

10. Much stress of of the learned counsel for the appellant is on the submission that no injuries were found on the back of the victim, though, the incident in question has taken place in an agricultural field, having paddy stumps. It is his submission that had really this incident has taken place, then there would have been semblance of injuries on the back of the victim. For that, he heavily relied on a stray statement that is appearing in the cross-examination of the victim which shows that there were roots of paddies in the field. Though, at the first blush this submission of the leaned counsel for the appellant appears to be attractive one and the Court may tempt to accept the same, had there is no thorough scrutiny of the entire prosecution case.

It is not expected from the Court to decide the prosecution case by reading the evidence appearing in the prosecution case in bits and pieces. The entire evidence as brought on record has to be read in whole before reaching to any conclusion.

11. After registration of the crime, in presence of panchas, the Investigating Officer has drawn the spot panchanama (Exh.21). There were two panch witnesses namely Devisingh Bais and Kalidas Pal. Devisingh Bais was examined by the prosecution as PW3. He has proved the spot panchanama (Exh.21). His evidence would show that the spot of occurrence was shown by the victim herself and the panchanama was prepared in his presence. The spot panchanama was drawn on 06.2.1996 at 13.30 hours. Looking to the fact that the crime was registered against the appellant on 05.2.1996 at 11.00 O'clock in the night, in my view, the prosecution has not caused delay in recording the spot panchanama.

12. It would be useful to reproduce herein below the recitals of the spot panchanama (Exh.21), a contemporaneous document, since the counsel for the appellant is heavily relying on a stray statement which appeared in the cross-examination of the victim that there were stamps of paddy.

"?kVukLFkG gs fQ;kZfnps 'ksrkrhy vlwu fQ;kZnh izR;{k gtj vlwu ?kVukLFkG nk[kfor vkgs- dky jksth fQ;kZnhus vkiys 'ksrkr okaxs] VekVj rksMqu [kG;kdMs ;sr vlrkauk vkjksih gk frps ekxwu vkyk o fryk tcjnLrhus /k:u [kkyh

ikMys o tcjnLrhus frpk dkLVk dk<wu tcjh laHkksx dsyk vls lkaxwu ?kVuk LFkG nk[kfoys- ?kVukLFkG gs fQ;kZfnps 'ksrkrhy /kq&;ktoG vlwu ?kVukLFkGkoj ikgrk tkxk ?kVukLFkG [kwnoG >kysyh vlwu dpjk ncysyk fnlr vkgs- ?kVukLFkGkoj VekVj iMysys vlwu QqVsys fnlr vkgsr- ?kVukLFkGkoj brj la'k;hr oLrq vk<Gwu vkys ukgh-

Thus, the contemporaneous document i.e. spot panchanama does not reflect that there were any stumps of paddy. Not only that, proper reading of aforesaid recitals show that the land was somewhat pressed and the vegetables like Tomatos were found to be in crushed condition. This fact itself is suggestive of something unpleasant has occurred on the spot.

13. PW3 Devisingh Bais, the panch, though was available for cross-examination, even a remote suggestion was not given to him that in spite of the fact that there were stumps of paddy, the Investigating Officer has incorrectly recorded the spot panchanama. The suggestion was given to PW7 Nanaji Bhoyar, the Investigating Officer that in spite of noticing stumps of paddy on the spot, the same was not recorded in the spot panchanama. This suggestion was stoutly denied by the Investigating Officer, Nanaji Bhoyar. When independent witness Devisingh Bais was there, who is the signatory to Exh.21, the spot panchanama and acted as panch, he would have been the best person to point out IF there were the stumps of paddy. Therefore, I have no hesitation in my mind to reject the submission of the learned counsel for the appellant that there were stumps of paddy at the spot of occurrence. Further, it was never the defence of the appellant that the place was having any rough edges. If that be so, not noticing any injury whatsoever nature on the back of the victim, is not abnormal. On the contrary, not noticing injury on the back in the light of the recitals in the spot panchanama, is most natural.

14. The evidence of victim shows that not only it is in consonance with the recitals made in the oral report (Exh.14), but from the witness box she has specifically stated that the accused caught her neck and pressed her throat. Therefore, she was unable to talk. This particular evidence of the victim is found to be corroborated by the medical evidence. Perusal of the testimony of the victim shows that it is free from any omission or contradiction whatsoever in nature. The evidence is very clear and is far from exaggeration. After scrutinizing the evidence of the victim, I have no doubt in my mind that she is the witness to the truth and the truth is she was subjected to sexual assault at the hands of the present appellant.

15. Though, it was tried to be argued before this Court by the learned counsel for the appellant that possibility of consent by the victim is not ruled out, I have no hesitation in my mind to reject the said submission as there is no foundation whatsoever in nature in the entire testimony of the victim.

16. Further, the evidence of PW4 Ramdas Pal and PW5 Diwakar Raut, the independent witnesses, show that after the incident, happenings to the victim

were immediately revealed to them by the victim herself. That is also relevant for deciding this appeal against the appellant. Mr. Morande, the learned counsel for the appellant submitted that the Chemical Analyzer's report is negative. The Chemical Analyser's report is always a piece of evidence which corroborates the prosecution case. It can never be a substantive piece of evidence. The substantive piece of evidence would be the testimony of the victim. In the present case under Exh.16, clothes of the victim were seized in presence of panch Devisingh Bais. His evidence would reveal that at the time of seizure of the clothes of the victim, it was noticed by the said panch that it was having semen stains. On this aspect, there is no cross- examination, though said panch witness was available. Not noticing semen stain by the Chemical Analyzer, in my view, looses its importance because perusal of Exh.16 would show that it was not sealed by the Investigating Officer at the time of its seizure. Therefore, I am not attaching any importance to the C.A. report, specially when I noticed the version of the victim as trustworthy and inspiring confidence.

17. On re-appreciation of the prosecution case and considering the submissions of the counsel for the appellant, I pass the following order.

1. The criminal appeal is dismissed.
2. The judgment and order of conviction passed by the learned 1st Ad-hoc Additional Sessions Judge, Gadchiroli, dated 29.3.2005 in Sessions Case No.70 of 1996, convicting the appellant for the offence punishable under Section 376(1) of the Indian Penal Code, stands confirmed.
3. The appellant, who is on bail, shall surrender to his bail bonds immediately. Else, the Court below is directed to issue appropriate warrant for procuring presence of the appellant to serve the sentence.
4. Fine amount, if any, paid by the appellant stands forfeited.
5. With this, the criminal appeal is dismissed.