
(2009) 10 BOM CK 0042
In the Bombay High Court
Case No : Criminal Appeal No. 788 of 2008

Rajendra @ Raja Bhat Shankarpale	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 376, 452, 506

Citation : (2009) 10 BOM CK 0042

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

Bench : Single Bench

Advocate : N.A. Badar, for the Appellant; Rachana Wasnik, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—By means of this Criminal Appeal, the appellant has challenged the judgment and order dated 2nd June, 2008 in Sessions Trial No. 200/2005 passed by learned III Adhoc Additional Sessions Judge, Amravati, whereby the appellant was found guilty and convicted for offence punishable u/s 452 of the Indian Penal Code ("IPC" in short) and sentenced to suffer R.I. for five years and to pay a fine in the sum of Rs. 1000/ in default of payment of fine, to suffer further R.I. for three months. The appellant was also found guilty and convicted for offence punishable u/s 376 of the IPC and sentenced to suffer RI for seven years and fine in the sum of Rs. 1000/ in default, to suffer R I for three months; and, for offence punishable u/s 506 (II) IPC, to suffer RI for five years and to pay fine in the sum of Rs. 1000/, in default to suffer RI for three months. All the sentences were directed to run concurrently, with benefit of set off for the period of imprisonment undergone in jail.

2. Relevant facts in nutshell, according to the prosecution, are these:

First Information Report was lodged by Tarabai (PW 1) on 22.6.2005, which gave rise to Crime No. 104/2005 reported at Warud Police Station. Dist. Amravati. The

substance of the complaint as against the appellant was that he along with one Hamid Musalman, between 12.00 and 12.30 a.m. had entered the hut, threatened Fulchand (PW 3) at the point of knife; while he was sleeping outside the hut. Hamid had lifted the first informant at the point of knife and took her under a neem tree and pressed her breasts and raped her. Appellant Rajendra had raped Anita, sister of the first informant (PW 2).

The prosecution has examined in all five witnesses. It is submitted by the learned APP that the prosecutrix Anita deposed as to how she was threatened at the point of knife for not to raise shouts and was raped by appellant. The appellant had threatened to cause death of prosecutrix Anita and her child. Accused/ (appellant) was known to prosecutrix since prior to the incident as the appellant used to visit the house of prosecutrix along with his brother. Fulchand (PW 3) who was sleeping outside the hut with children of Tarabai, also corroborated the evidence of prosecutrix Tarabai. Fulchand was called as male member of the family had gone out for work on field. At 1.30 a.m., appellant Rajendra came with one more person. Rajendra (appellant) had threatened Fulchand before Rajendra committed rape on prosecutrix Anita. R.R. Mishra (PW 5), the Investigating Officer gave evidence that oral report (Exh. 39) was lodged by Tara, who came along with Anita, which was reduced into writing. It is contended by learned Advocate for the appellant that although according to Investigating Officer had referred the prosecutrix for medical examination, samples of pubic hairs and vaginal swab were taken by the Doctor; but the Doctor was not examined by the prosecution. It is further submitted that the evidence of the prosecutrix without corroboration by the medical evidence about alleged rape was not sufficient and beyond all reasonable doubts to prove the offence of rape. Learned Advocate submitted that there were omissions and contradictions in the police statement made by the prosecutrix Anita regarding buttons of her blouse cut off as a result of scuffle between her and the appellant. She also did not state to the police that Rajendra threatened her that if she raise her voice he would cause her death, so also death of her child. Regarding finding of two human semen stains of blood group "O" on panty of the accused (vide Exh.78), in report dated 3.8.2006 from Forensic Science Laboratory, Dhantoli, Nagpur, it is submitted that such evidence in respect of panty of young person would be of no consequence. It is urged that in the report Exh.78, no semen was detected on rest of the clothes. It must be noted that samples of semen and blood of the appellant Rajendra was found on the blood Group "O". Learned Advocate for the appellant submitted that no semen nor spermatozoa were detected on the vaginal swab or hairs referred to Regional Forensic Science Laboratory, Nagpur.

4. Learned Advocate for the appellant made a reference to ruling in Suresh Ratan Nadage v. State of Maharashtra 2006 All MR (Cri) 1591, more particularly, paragraph 11 thereof, in order to submit that when the Doctor conducting postmortem had collected two swabs of fluid from vagina of victim and sent to Chemical Analyzer for analysis, the report received from C.A. do not show presence of semen. Thus it was held that offence of rape was not proved beyond

reasonable doubt. However, in my opinion, the ruling cited in the said rape and murder case, is not at all applicable here in the facts and circumstances of the case present case, for the simple reason that prosecutrix herself had deposed as regards the incident of rape.

5. Learned Advocate for the appellant then referred to the ruling in *State of Maharashtra v. Dadarao Bapurao Jivtode* 2006 All MR (Cri.) 735 to submit that absence of semen stains on undergarment of accused can not connect him to intercourse with the victim. The absence of body fluid of victim on the undergarment of the accused was also considered as glaring deficiency in evidence. To my mind, the observations cannot come to the rescue the appellant herein, as semen stain on panty of the accused was found in the report (Exh.78). The victim also knew the appellant as she used to visit her house along with her brother; hence there was no problem for the prosecution to fix identity of the appellant as offender in this case, unlike in *Dadarao's* case (*supra*).

6. Learned Advocate for appellant also referred to ruling in *Rahim Beg and Another Vs. State of U.P.*, , to argue that merely because semen stain was found on the "langot" (undergarment) of the accused who was an ebullient youth, it was held that it can exist due to variety of reasons and would not necessarily connect him with the offence of rape. The submission is not in dispute and cannot be disputed.

7. Learned APP, on the other hand, submitted with reference to the ruling in *Narayanamma v. State of Karnataka* 1994 SCC (Cri) 1573 that absence of injuries on the person of prosecutrix under the circumstances as also absence of spermatozoa or sperm can not be viewed as against the version of prosecutrix as it was not elicited from the prosecutrix as to whether the rapist had reached orgasm emitting semen in her private part. No presumption can be made that the penetration of penis in the private parts of rape victim must necessarily lead to discovery of spermatozoa. It is a question of detail and has to be put to test by cross-examination. Otherwise also, there may be various other factors which may negative the presence of spermatozoa such as, faulty taking of the smear, its preservation, quality of semen etc. The absence of spermatozoa *prima facie* could not be allowed to tell against the version of prosecutrix. According to learned APP, clear and natural testimony of the prosecutrix inspires confidence that she is a reliable witness and, therefore, appellant herein should not escape the liability for want of injuries on her person.

8. Learned APP also further submitted that offence of rape is not only crime against woman but against the entire society. It destroys the entire psychology of woman and push her into deep emotional crisis. The offence of rape is also against basic human rights and violative of victim's most cherished fundamental right, namely, the right to life under Article 21 of the Constitution. She made a reference to the ruling in *Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty*, .

9. Learned APP, then, submitted that the appellant/accused had used weapon while threatening the prosecutrix prior to raping her and the weapon described by PW 5Mishra, Investigating Officer, as Katta was discovered pursuant to memorandum in writing of the statement by the appellant under Panchnama Exh. 66 and thereafter appellant and led police and panchas to his house and produced weapon (Katta) from his house which was seized under Panchnama (Exh.67).

10. Learned Advocate for appellant submitted with reference to the ruling in Jackaran Singh Vs. State of Punjab, that absence of signature of thumb impression of accused renders it unreliable particularly when panchas are not examined in the trial. Reference is also made to ruling in Haribhau G. Bhalerao v. State of Maharashtra 2002 All M R (Cri) 305, in which ruling in Jackransingh was followed.

11. I have carefully perused the rulings cited supra. It must be mentioned that the legal position is well settled by now that the prosecutrix as a victim in the crime of rape, stands on high pedestal than an injured witness. The injured had physically injury to his body; whereas the victim of rape suffers physically, psychologically and emotionally too. In a given case, defence may allege that prosecutrix was not a virgin or that she was accustomed to sexual intercourse. Such allegation can not save the accused from penal liability because even such woman can not be treated like any vulnerable object to be raped or ravished by anyone/everyone. Anita is a mother of a grown up child and, therefore, absence of injuries on the private part of the prosecutrix would not rule out the rape, as observed in Harpalsingh v. State AIR 1980 Sc 361.

12. The Court normally have no difficulty to rely upon evidence of prosecutrix when her evidence is cogent, convincing and true. It can be acted upon without corroboration. Normal or minor discrepancies do not affect the version of prosecutrix. Proof does not mean rigid mathematical calculation or demonstration; that is impossible. Test is that of reasonable man, who can separate grain from the chaff and arrive at truth.

13. Considering the background of facts, the trial Court rightly observed that in India the women are reluctant to come forward by making complaint particularly when the matter relates to their chastity. The woman who is ravished or raped or subjected to forcible sexual intercourse, may be in a very difficult situation in which she has to reach a decision whether to lodge a complaint or not because she has to live in the society in which she may face defamation as she may be targeted by vagabonds in the society. The delay to lodge complaint for short period is therefore excusable. In the present case, FIR was lodged immediately on next day. The incident occurred at night time. There was no any blameworthy delay considering that both the prosecutrix were rustic village ladies.

14. It is argued that there was no corroboration of medical evidence. It is true that the Doctor to whom prosecutrix Anita was referred to, is not examined by

the prosecution, presumably because medical certificates Exhs. 52 and 53 were admitted by the defence. No examination of Doctor cannot be considered fatal to the prosecution case when the evidence led otherwise is sufficient, reliable and cogent and there is no good reason to disbelieve prosecutrix, whether rape has occurred or not is legal conclusion and not medical conclusion.

15. It was also argued on behalf of the appellant there was possibility of false implication due to prior enmity between appellant and brother of the prosecutrix. The trial Court in paragraph 21 of its judgment, has dealt with this aspect. The defence plea on this count is absolutely groundless, as Hari Dhurve, brother of the prosecutrix, was not residing with prosecutrix and there was no reason for the prosecutrix to falsely implicate the appellant. Evidence of Fulchand (PW 3) who had no axe to grind against the appellant has provided necessary corroboration to the version of prosecutrix as it was Fulchand who was sleeping outside the hut and was threatened at the point of knife, to keep quiet and sleep, while prosecutrix Tara was raped by co-accused Abdul Hamid (undergoing sentence) and Anita was raped by appellant Raja @ Rajendra at the point of knife, threatening to cause her death and death of her child. Thus, the appellant also committed offence of criminal intimidation by entering the house of prosecutrix after having made preparation to carry weapon with him. The prosecutrix was subjected to forcible sexual intercourse without her consent and against her will. Thus, on the background of facts revealed in the evidence and in the light of principles enunciated therein, it must be concluded that the trial Court was right in its conclusion. The punishment imposed was also appropriate and befitting the crime. Thus, pithily put, the conviction is well founded and does not warrant interference. In the result, the Appeal is dismissed.