

(1997) 07 BOM CK 0015
In the Bombay High Court
Case No : Criminal Appeal No. 658 of 1990

Ravindra Ramchandra Kamble

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235
Evidence Act, 1872 — Section 3, 59
Penal Code, 1860 (IPC) — Section 323, 376, 506

Citation : (1998) BomCR(Cri) 688 : (1998) 1 BOMLR 481

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : S.K. Shinde, for S.P. Thorat, for the Appellant; R.S. Deshpande, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Though this appeal, the appellant has challenged the judgment and order dated 11-9-1990, passed by the Second Additional Sessions Judge, Satara, in Sessions Case No. 108 of 1989, convicting and sentencing him to a consolidated sentence of 5 years R.I. and a fine of Rs. 5,000/- in default to undergo R.I. for 6 months, for offences u/s 323, 376 and 506 I.P.C.

At the very outset, I would like to remark that the learned trial Judge should have given a separate sentence on each of the three counts and a consolidated sentence is contrary to law.

2. In short, the prosecution case is that the prosecutrix Marima Shaikh, RW. 4 on 24-12-1988. at about 1.30 p.m. along with her sister-in-law Khatun Hasan, RW. 5, had gone to the field of one Shatru Naik Beldar situated in village Sarade, Taluka Phaltan, District Satara, to cut grass. After she had cut some grass, the appellant came and stood there. At that time, one person came and when the appellant tried to catch the prosecutrix, she ran towards the said person. The appellant however, told him that he would leave her and therefore, the said person went away. Thereafter, the appellant gave two slaps to Khatun who

became frightened and went away. He took out a knife and asked the prosecutrix to put the grass on the ground. Thereafter, he took her towards the sugarcane crop standing in the field. She started crying. At that, he slapped her and told her that if she cried, he would kill her. He thereafter, gave slaps on her face, pushed her on the ground, lifted her petticoat, took off his clothes and raped her. At the time of committing rape on her, he had inserted a piece of cloth in her mouth. While the appellant was committing rape on her, some of the glass bangles which she was putting on were broken. After raping her, the appellant told her that in case she told anyone he would kill her.

After the appellant had run away, the prosecutrix came to her house. At that time, her husband was not at home. She informed her father-in-law Imamsab, P.W. 6 and her mother-in-law, about the incident. Her father-in-law took her to the Police Patil and told him about the incident. The Police Patil told them to go to Phaitan Police Station and lodge an F.I.R. Thereafter, they came back home. At about 7 p.m. the husband of the prosecutrix came. He was also informed about the incident. A jeep was arranged for and on the same, the prosecutrix, Imamsab and her husband proceeded for police station, Phaltan. They stopped the jeep at Rajala village. The prosecutrix, saw the accused there and showed him to Imamsab and her husband. He was caught, put on the jeep and taken to the police station.

3. The F.I.R. of the incident was lodged by the prosecutrix Marima Shaikh same day at 9.20 p.m. at police station, Phaitan. On its basis, C.R. No. 87/88, u/s 376, 504 and 506 I.P.C. was registered against the appellant by P.S.I. Vithal Kulkarni, P.W. 7. The evidence of P.S.I. Kulkarni is that the complainant and others had brought the appellant with them.

4. The prosecutrix Marima was medically examined by Dr. A.D. Ashtekar, P.W. 2 on 25-12-1988 at 4 p.m. The doctor did not find any external injuries on her private parts, back and waist. The vagina admitted two fingers easily. Her vaginal swab was taken. In the statement in the Court, Dr, Ashtekar stated that if during M.C. period, the vaginal swab is taken for confirming whether intercourse is committed or not, it will not be possible to get spermatozoa .

5. The investigation of the case was conducted in the usual manner by R.S.I. Kulkarni, P.W. 7. On 25-12-1988, he prepared a panchanama of the scene of the offence and recovered therefrom broken pieces of glass bangles. On the said date, under separate panchanamas, he also took into possession the clothes of the prosecutrix and the appellant. After completing the investigation the appellant was charge sheeted.

6. The case was committed to the Court of Sessions in the usual manner. In the trial Court, the appellant was charged on four counts, namely 376, 323, 504 and 506 I.P.C. During trial, in all the prosecution examined seven witnesses. Two of them namely the prosecutrix Marima P.W. 4 and her sister-in-law Khatun, P.W. 5, gave ocular account. In defence, no witness was examined.

The trial Court believed the evidence adduced by the prosecution and convicted and sentenced the appellant in the manner stated above.

Hence, this appeal.

7. I have heard Mr. S.K. Shinde holding for Mr. S.R Thorat, for the appellant and Mr. R.S. Deshpande, Additional Public Prosecutor for the respondent No. 1. Service on the respondent No. 2 was dispensed with vide orders of this Court dated 3-8-1996. I have also perused the evidence on record and the impugned judgment. In my view, there is no merit in this appeal, and it deserves to be dismissed.

8. In the instant case, I find that there is sufficient trustworthy evidence to justify the conviction of the appellant. The ocular account is in the form of evidence of the prosecutrix Marima, P.W. 4 and her sister-in-law Khatun, P.W. 5.

It is on the basis of the recitals contained in Marima's statement that I have set out the prosecution story in para 2. No useful purpose would be served by repeating it verbatim. A perusal of her statement shows that on the point of knife, after stuffing cloth in her mouth, the appellant raped her.

I find that the account given by her is natural and in tune with probabilities. Although, she was subjected to an extensive cross-examination but, nothing could be extracted therefrom which would erode her credibility.

I am not prepared to believe that unless the appellant would have really raped her, she would have falsely implicated him because, no plausible reason for the same is forthcoming in the instant case.

In my view, Marima is a wholly independent witness who had no axe to grind against the appellant, and her sole statement is sufficient for sustaining the conviction of the appellant.

9. Assurance is lent to Marima's testimony by that of Khatun, who is also a wholly independent witness. She stated that at the time of the incident, the appellant came, asked Marima not to cut grass and started abusing her. He gave her two slaps and took her towards the side of the sugarcane crop. At that point of time, she became frightened and ran away. I have gone through her statement and it inspires confidence. It is also in tune with the probabilities. I have reached this conclusion after subjecting her evidence to close scrutiny because she is a child witness.

10. The circumstance that the F.I.R. of the incident, was promptly lodged by Marima also ensures the truthfulness of the prosecution case. The incident took place at 1.30 p.m. 2 p.m. and F.I.R. was lodged the same day at 9.20 p.m. at Phaltan Police Station. It is significant to point out that on the way to the police station in Rajala village, the complainant found the appellant standing and showed him to her father-in-law Imamsab and her husband and thereafter the appellant was caught, put on a jeep and taken to the police station. The evidence

of P.S.I. Kulkarni, P.W. 7 who registered the case on the basis of the F.I.R. is that at the time of lodging of the F.I.R. the complainant and others had brought the appellant with them.

11. Another circumstance which establishes the correctness of the prosecution case is that a perusal of the panchanama of the scene of offence, which was prepared on the next day, of the incident, shows that broken pieces of glass bangles were found on the place of the incident. This circumstance corroborates the statement of the prosecutrix that while she was being raped, by the appellant, her glass bangles broke.

12. In my view, there was sufficient evidence to the involvement of the appellant in the crime.

13. Mr. S.K. Shinde, Counsel for the appellant strenuously urged that the medical evidence was not corroborating the prosecution case of the prosecutrix, having been raped, by the appellant. In this connection, he urged that no external injuries were found on the vagina, back and waist of the prosecutrix and neither any spermatozoa were found in the vaginal swab which was taken by the doctor.

I regret that I do not find any merit in this contention. The evidence is that on the point of knife, after inserting a piece of cloth in the mouth of the prosecutrix, the appellant raped her. In such a situation, the prosecutrix could not have offered any resistance, and therefore, absence of external injuries on her person was perfectly natural.

Absence of any spermatozoa in the vaginal swab is also understandable. The evidence of prosecutrix is that immediately after the incident, when she went home, her monthly course (M.C.) commenced. The evidence of P.W. 2 Dr. Ashtekar, shows that if monthly course commences, then spermatozoa would not be found in the vaginal swab.

The learned Counsel for the appellant also invited my attention to some contradictions in the testimony of the witnesses. All of them in my view, are innocuous in nature and when rustic witnesses like Marima and Khatun depose in the Court, more than one and a half year after the incident, some contradictions are bound to creep in their evidence.

Counsel for the appellant next urged that it would not be proper to sustain the conviction of the appellant on uncorroborated testimony of the prosecutrix. This submission is misconceived because in part, the testimony of the prosecutrix is corroborated by that of her sister-in-law Khatun. At any rate, the Supreme Court in the case reported in State of Punjab Vs. Gurmit Singh and Others, , has held that if the testimony of the prosecutrix inspires confidence, there is no need to look for any corroboration. In the instant case, in my view, her evidence inspires confidence. Consequently, I reject the submission of the learned counsel for the appellant.

Finally, learned Counsel for the appellant urged that the sentence awarded to the

appellant is too severe and calls for reduction. I regret that I do not find any merit in this contention either. The minimum sentence for an offence u/s 376 I.P.C. is 7 years. It is true that if there are special circumstances, the Court can award a lessor sentence. In this case, there are no special circumstances on record to show that the appellant deserves a lessor sentence. As a matter of fact, he should thank his stars that he has only been sentenced to five years R.I. and the State of Maharashtra has not preferred any appeal for enhancement of his sentence.

14. In the result, this appeal stands dismissed. The conviction and sentence of the appellant for the offences u/s 376, 323 and 506 I.P.C. stands confirmed. He is on bail. He shall be taken into custody forthwith to serve out his sentence.

15. In case an application for a certified copy of this judgment is made, the same shall be issued on an expedited basis.

16. Appeal dismissed.