
(2013) 07 BOM CK 0209
In the Bombay High Court
Case No : Criminal Appeal No. 883 of 2009

Sachin Raghunath Fulsundar	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 342, 376, 506

Citation : (2013) ALLMR(Cri) 4002

Hon'ble Judges : V.K. Tahilramani, J; Mridula Bhatkar, J

Bench : Division Bench

Advocate : Abhaykumar Apte, for the Appellant; M.M. Deshmukh, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—The appellant-original accused has preferred this appeal against the judgment and order dated 21.5.2009 passed by the learned Sessions Judge, 4, Pune in Sessions Case No. 408 of 2006. By the said judgment and order, the learned Sessions Judge convicted the appellant under sections 307, 376, 342 and 506 of the Indian Penal Code. For the offence u/s. 307 of the Indian Penal Code, the appellant was sentenced to R.I. for life and fine of Rs. 2000/-, in default R.I. for six months; for the offence u/s. 376 of the Indian Penal Code, the appellant was sentenced to R.I. for life and fine of Rs. 2000, in default R.I. for six months; for the offence u/s. 342 of the Indian Penal Code, the appellant was sentenced to R.I. for three months and for the offence u/s. 506 of the Indian Penal Code, the appellant was sentenced to R.I. for one year. The learned Sessions Judge directed that all the substantive sentences of imprisonment shall run concurrently.

The prosecution case briefly stated is as under:

The prosecutrix (PW 1) was residing alongwith her husband, mother-in-law, father-in-law and brother-in-law at Mokas bag, Kandali, Tal. Junnar, Dist. Pune.

The appellant was distant father-in-law of the prosecutrix. He was residing near the house of the prosecutrix, hence, she knew the appellant. Every day, in the morning at 7 am, the husband and brother-in-law of the prosecutrix left the house to go to the press where they were working and the parents-in-law of the prosecutrix used to go to work in the field.

The incident occurred on 28.4.2006. The parents-in-law, brother-in-law and the husband of the prosecutrix had left for their work early in the morning. At about 10.30 am, the appellant came to the house of the prosecutrix. He told the prosecutrix that his mother had called the prosecutrix to his house for some work. Hence, she went to the house of the appellant. She asked the appellant where his mother was. The appellant told her that his mother was in the room at the backside of the house. Hence, the prosecutrix went to the room on the backside of the house. The appellant then latched the front door. The prosecutrix questioned him as to why he closed the door. She then pushed him to try to open the door. However, the appellant pulled her away and hit her on the backside of the head with a pickaxe. He then put a cotton ball in the mouth of the prosecutrix. He then removed the clothes of the prosecutrix and his own clothes. The appellant then raped the prosecutrix. He then removed the cotton ball from the mouth of the prosecutrix and asked whether she would speak about the incident to anyone. Being scared of being assaulted by the appellant, the prosecutrix stated that she would not tell anyone. Still the appellant throttled the prosecutrix with her own saree. Due to this, the prosecutrix fell giddy. Then the appellant caught hold of the prosecutrix by her armpits and dragged her out of the house and took her to a nearby sugarcane field and dropped her there. After some time, the prosecutrix regained consciousness. She came crawling out of the field. Then she noticed PW 2 Kavita, who was her relation, passing by. She called out to Kavita and told her to go to the house of the prosecutrix and send her family members. The prosecutrix had no clothes on her person except the saree which was tied around her neck and hands. Kavita untied the saree which was tied to the hands and neck of the prosecutrix. The prosecutrix told Kavita that the appellant had raped her. Rupali, the sister-in-law of the prosecutrix, then came to the spot. She brought clothes for the prosecutrix. The prosecutrix was then taken to the Rural hospital at Narayangaon. She was given basic treatment and then sent to the Sassoon hospital, Pune. There she was examined and treated by Doctors. The prosecutrix then lodged FIR. Thereafter, investigation commenced. The appellant was arrested the next day. During the course of investigation, the pickaxe (article 9) and the clothes of the appellant (articles 1, 2 & 3) were recovered at his instance. After completion of investigation, chargesheet came to be filed.

2. Charge came to be framed against the appellant under sections 376, 307, 342 and 506 of the Indian Penal Code. He pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this

appeal.

3. We have heard the learned advocate for the appellant and the learned APP for the State. We have considered the rival submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the same, we are of opinion that the appellant latched the door of his house, assaulted the prosecutrix with pickaxe, raped her, strangled her with her saree and then dragged her and left her in the field.

4. The conviction is mainly based on the evidence of PW 1, who is the prosecutrix in the present case. The prosecutrix was aged about 19 years at the time of the incident. The prosecutrix was residing at Mokas bag alongwith her husband and in-laws. She knew the appellant as he was her distant father-in-law and he was residing near the house of the prosecutrix. The prosecutrix has stated that at about 10.30 am, the appellant came to the house of the prosecutrix and told her that his mother had called the prosecutrix to his house for some work. Hence, she went to the house of the appellant. She asked the appellant where is his mother. The appellant told her that his mother is in the room on the backside of the house. Hence, the prosecutrix went to the room on the backside of the house. The appellant then latched the front door. The prosecutrix questioned him as to why he closed the door. She then pushed him to try to open the door. However, the appellant pulled her away and hit her on the backside of the head with a pickaxe. He then put a cotton ball in the mouth of the prosecutrix. He then removed the clothes of the prosecutrix and his own clothes. The appellant then raped the prosecutrix. He then removed the cotton ball from the mouth of the prosecutrix and asked whether she would speak about the incident to anyone. Being scared of being assaulted by the appellant, the prosecutrix stated that she would not tell anyone. Still the appellant throttled the prosecutrix with her own saree. Due to this, the prosecutrix fell giddy. Then the appellant caught hold of the prosecutrix by her arm pits and dragged her out of the house and took her to a nearby sugarcane field and threw her there. After some time, the prosecutrix regained consciousness. She came crawling out of the field. Then she noticed PW 2 Kavita, who was her relation, passing by. She called out to Kavita and told her to go to the house of the prosecutrix and send her family members. Prosecutrix had no clothes on her person except the saree which was tied around her neck and hands. Kavita untied the saree which was tied to the hands and neck of the prosecutrix. The prosecutrix told Kavita that the appellant had raped her. Rupali, her sister-in-law, then came to the spot. They brought clothes for the prosecutrix. The prosecutrix was then taken to the Rural hospital at Narayangaon. She was given basic treatment and then sent to the Sassoon hospital, Pune. There she was examined and treated by Doctors. The prosecutrix then lodged FIR. The evidence of PW 2 Kavita lends support to the evidence of the prosecutrix.

5. The prosecution is also relying on the circumstance of recovery of pickaxe (article 9) and clothes of the appellant i.e., articles 1, 2 & 3 at the instance of the

appellant. PW 6 Kundlik is the panch witness, who has deposed on this aspect. The memorandum and panchanama are at exhibit 55 and 56. The prosecutrix has identified the pickaxe as being the same pickaxe with which the appellant assaulted the prosecutrix on the back of her head. The prosecutrix has also identified the clothes (articles 1, 2 and 3), which were worn by the appellant at the time of the incident. These clothes were sent to the Chemical Analyser. As per the C.A. report, on the shirt and pant of the appellant, human blood of "B" group was found. The clothes of the prosecutrix i.e., saree, petticoat and blouse also had blood of "B" group. This shows that the blood of the group of the prosecutrix was found on the clothes of the appellant, which is a strong incriminating circumstance. As per the C.A. report, the underwear of the appellant was found to have semen on it. Thus, the C.A. report also corroborates the evidence of the prosecutrix.

6. The evidence of the prosecutrix shows that the appellant gave threats to her. He then confined her in a room and raped her. As the prosecutrix put up resistance, the appellant assaulted her on the back of the head with a pickaxe. After the act of rape, the appellant tried to strangle the prosecutrix with her saree. Then thinking her to be dead, the appellant dragged the body of the prosecutrix by holding her under the armpits and threw her in a sugarcane field which was situated about 30" away from his house. The evidence of PW 5 Dr. Deshpande and PW 9 Dr. Phadke corroborates the evidence of the prosecutrix. PW 5 Dr. Deshpande was the Doctor in the Rural hospital at Narayangaon. She examined the prosecutrix. At that time, the prosecutrix gave history of strangulation with saree and rape one hour ago. On medical examination of the prosecutrix, Dr. Deshpande found blackish mark on the neck of the prosecutrix, which was 5 1/2 X 1/2 inches and reddish discolouration of face and the conjunctiva of the eyes was found red and oedematous. Dr. Deshpande gave primary treatment and sutured C.L.W. on the head of the prosecutrix. As the prosecutrix was asphyxiated and respiration was slow, for life saving treatment, she was referred to Sassoon hospital at Pune. She was also referred to Sassoon hospital, Pune as the prosecutrix had given history of rape. Dr. Deshpande had stated that injury No. 1 i.e., the blackish mark on the neck is possible due to strangulation by saree and injury No. 2 i.e., reddish discolouration on the face and reddish conjunctiva in the eyes and oedematous condition of the eyes, was on account of asphyxia. Dr. Deshpande had categorically stated that conjunctiva of the eye being red is possible due to asphyxia. Dr. Deshpande has also stated that injury No. 4, which was on the backside of the head of the prosecutrix, is possible by assault by handle of axe.

7. Evidence of PW 9 Dr. Phadke, who was the Doctor at the Sassoon hospital, Pune, corroborates the evidence of the prosecutrix. Dr. Phadke examined the prosecutrix. Dr. Phadke asked the prosecutrix for the history. The prosecutrix gave history that she was tied with her saree by the accused and he hit her on the back of her head with pickaxe and then he raped her. The appellant then tried to strangle her with her saree. Thereafter he dragged her to the

sugarcane field and fled from there. On examination, Dr. Phadke found the following injuries on the body of the prosecutrix:

2 cm scalp laceration on left side with stitch sutured. Abrasions over forehead and both the cheeks imprint abrasion of strangulation over neck. Abrasion over the right breast and left chest. Multiple abrasions over lower back and both buttocks bi-lateral sub conjunctival hemorrhages were present. On further examination, Dr. Phadke found that her hymen was torn.

8. Dr. Phadke found evidence of assault and resistance and struggle. According to Dr. Phadke, the injuries found on the body of the prosecutrix are possible due to rape and also due to resistance during rape. The case of the prosecutrix that after the appellant committed rape on her, he dragged her from his house to a nearby sugarcane field and left her is borne out by finding of multiple abrasions over her lower back and both buttocks of prosecutrix by Dr. Phadke. It is well settled that the evidence of prosecutrix does not need corroboration. However, in this case, we find that the evidence of prosecutrix is sufficient and it is further corroborated by the medical evidence and the evidence of PW 2 Kavita.

9. At this stage, Mr. Apte has submitted that the sentence imposed on the appellant u/s. 376 of the Indian Penal Code and section 307 of the Indian Penal Code be reduced. We have given our thoughtful consideration to these submissions. However, it is seen that it is not a single offence of rape or a case of just an attempt to commit murder, but both these offences are committed together. Moreover, while attempting to commit murder, the accused has caused hurt to prosecutrix on her head with a deadly weapon like pickaxe and also strangled her with her sari. The appellant strangled the prosecutrix with the sari even after she told the appellant that she would not disclose about the incident to anyone. Not only that, the appellant threw her unconscious body in a field and left her to die and the appellant ran away from there. Therefore, this entire conduct of the accused displays perversity and depravity of character which invites the maximum punishment for these offences as provided under the statute.

10. It has to be observed that the offences which the accused had committed are definitely of a serious and grave nature. They expose the decay of human values, the betrayal of trust and throws to the wind the sanctity of human relations. The accused has raped his own daughter-in-law and then attempted to cause her death. The prosecutrix had come to the house of the appellant keeping faith in him that she was called by his mother, but by luring her to his house under false pretext and then subjecting her to forcible sexual intercourse, the appellant has betrayed that faith. His moral depravity did not end there. To save himself, he then attempted to kill her by strangulating her with her own sari. Her death was as good as definite, considering the effects of strangulation which both Doctors PW 5 and PW 9 have noticed at the time of her examination even after 2-3 hours. Only due to intervention of providence she was saved and hence accused could be brought to account for his acts. Not only the appellant raped the

prosecutrix but he left her in a naked condition in the field with her neck and hands tied with her sari. There are absolutely no mitigating factors and circumstances in the present case which can impel this Court to take a lenient view. As observed by Apex Court various times:

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed. The social impact of the crime i.e., where it relates to offences against women, involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by sting of deterrence inbuilt in the sentencing system.

11. In the present case, considering the gravity of both the offences u/s. 307 and 376 of the Indian Penal Code, committed by the accused in the occurrence of same transaction, in our opinion, the sentence does not call for interference.

12. On going through the evidence on record, we find no merit in the appeal. Appeal is dismissed. At this stage, we must record our appreciation for the able assistance rendered by the learned advocate Mr. Apte, who has very ably conducted the matter. We quantify total legal fees to be paid to him in this appeal by the High Court Legal Services Committee at Rs. 2,500/-.