
(2015) 09 BOM CK 0184
In the Bombay High Court
Case No : Criminal Appeal No. 591 of 2014

Shankarlal Bhau Dhande

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 506(2)

Citation : (2015) ALLMR(Cri) 4050

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

Bench : Single Bench

Advocate : R.M. Daruvala, Advocate, for the Appellant; A.K. Bangadkar, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—The present appeal is directed against the judgment and order of conviction passed by the learned Additional Sessions Judge, Achalpur, in Sessions Trial No. 49 of 2011 on 27.06.2013, thereby convicting the present appellant for the offence punishable under Sections 376 of Indian Penal Code and sentencing him to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 1,000/-, in default to suffer further rigorous imprisonment for one year. By the said judgment and order, the appellant is also convicted of the offence punishable under Section 506(2) of Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 500/- in default to suffer further rigorous imprisonment for six months. Both the sentences were to run concurrently.

2. The facts which are necessary for the decision of this appeal are enumerated as under :

"P.W.4 is Ramratan Shriram Chavan. On 18.1.2011 he was attached to police station Dharni as police head constable. He was diary in-charge on the said day. The first informant, the prosecutrix, came to the police station and lodged a

report against the appellant. Same was reduced into writing. Police head constable Ramratan Chavan obtained thumb impression of the prosecutrix on the said first information report, which is at Ex. 10. Since the said complaint was disclosing commission of a cognizable offence, a crime was registered vide Crime No. 10/11 for the offence punishable under Section 376 of Indian Penal Code against the appellant. The printed proforma of F.I.R. is at Ex. 11."

3. The first information report discloses that the first informant Bharati (P.W.1) is natural daughter of P.W.2 Bukibai. Father of prosecutrix died much earlier to the date of the report. After the death of her father Chunnilal Kasdekar, her mother Bukibai (P.W.2) married with the appellant. Thereafter the prosecutrix along with her mother used to reside with the appellant at village Kasmar.

The first information report further discloses that about 8-9 months prior to lodging of the report, when Bukibai (P.W.2) was at Dharni in connection with some work and since she failed to return to the house in the night, the appellant took disadvantage of the situation and committed rape on her. That time he was under the influence of liquor. The act of forcible sexual intercourse was tried to be resisted by the prosecutrix, however she was over-powered by the appellant. The appellant extended threats to the prosecutrix that she should not disclose the incident to anybody, else she will have to face dire consequences. The F.I.R. further proceeds that subsequent to the said incident, the appellant continued to fulfill his lust by subjecting the prosecutrix to his physical atrocity upon her, due to which she remained pregnant. When this fact was noticed by the mother (P.W.2), she made enquiry with the prosecutrix and that time the prosecutrix disclosed the happening to her at the hands of the appellant.

4. Samadhan Dhande (P.W.5) was Police Sub Inspector attached to police station Dharni in between 23.6.2009 to 15.7.2012. The investigation of Crime No. 10/11 was entrusted to him. He referred the prosecutrix to Government Hospital, Dharni, for medical examination along with lady police constable. Since Lady Medical Officer was not present there, the Medical Officer referred the prosecutrix to Women Government Hospital at Amravati. On 19.1.2011 the Lady Medical Officer examined the prosecutrix and gave her report vide Ex.48.

5. During the course of investigation, spot panchanama (Ex.19) was drawn. Blood sample and vaginal swab of the prosecutrix were also seized under seizure memo (Ex.20). Semen sample of appellant was also seized under seizure memo (Ex.22). Pubic hair and blood sample of the appellant were also seized under seizure memo (Ex.21). Clothes of the appellant as well as that of the prosecutrix were also seized.

6. The prosecutrix delivered a female child. Blood sample of the said child were also collected and were sent along with blood samples of prosecutrix and appellant to the Regional Forensic Science Laboratory. Ex.57 is the DNA report. Upon completion of usual investigation, since the Investigating Officer was of the view that sufficient material is collected for sending the accused for trial, he filed

charge-sheet before the Court of law.

7. After passing the necessary committal order, the case reached to the Court of Sessions at Achalpur and was numbered as S.T. No. 49/11. Below Ex.5, the learned Additional Sessions Judge framed charge against the appellant for the offences punishable under Sections 376 and 506(2) of Indian Penal Code. The appellant pleaded not guilty to the charge framed against him and claimed for trial.

8. In order to bring home the guilt of the accused, prosecution has examined in all six witnesses and also relied upon the documents proved during the course of the trial and also the DNA report.

9. The learned Additional Sessions Judge after appreciating and evaluating the prosecution evidence found that the prosecution is successful in bringing home guilt against the appellant and, therefore, he convicted him and sentenced him, as stated in the opening paragraphs of this judgment. Hence, this appeal.

10. I have heard Shri R.M. Daruwala, learned counsel for the appellant and Shri A.K. Bangadkar, learned A.P.P. for the State. Both the learned counsel detailed their submissions on the basis of available evidence in support of their respective prayers. With their able assistance, I have gone through the record and proceedings of the Court below.

11. Shri Daruwala, learned counsel for the appellant, strenuously urged before me that the prosecution has utterly failed to prove the exact age of the prosecutrix. He further submitted that no details of rape are stated by the prosecutrix. He further tried to canvass before this Court that the prosecutrix was a consenting party and, therefore, according to him, the appellant has not committed any offence and prayed for acquittal.

12. Per contra, learned APP submitted that due to clinching and consistent evidence of P.W.1 Bharati and Bukibai (P.W.2), there is no escape from reaching the conclusion that the prosecution has successfully proved the offence committed by the appellant and, therefore, prayed for dismissal of the appeal.

13. It is not in dispute that after the death of natural father of prosecutrix, her mother Bukibai (P.W.2) re-married with the present appellant. From her evidence, it is clear that the marriage was a Gandharva marriage since the appellant was having his earlier wife Anita and the marriage was still in subsistence.

There is no challenge to the prosecution case that P.W.2 Bukibai, after her marriage with the appellant, used to reside with the appellant along with her daughter- the prosecutrix. The evidence, as available on record, shows that Anita, the first wife of the appellant, was residing separately.

14. The assertion of facts made in the F.I.R. (Ex.10) are substantiated by the evidence of prosecutrix herself. She has narrated the incident of rape committed

on her for the first time by the appellant. The prosecutrix has given explanation in the F.I.R. and also in her evidence that she was under threats from the appellant that if she narrates the incident to anybody, she will have to face dire consequences.

15. The evidence clearly establish that the prosecutrix was at the mercy of the appellant. Though her exact age is not established by the prosecution, fact remains that she is a rustic girl. The area from where the prosecutrix is hailing is highly backward and hilly. Merely because the prosecutrix is a rustic, that does not mean that she cannot report the atrocities committed upon her by the appellant. The prosecutrix, as stated above, was residing along with her mother at the house of the appellant. In that view, the appellant was in a position to exert influence on the prosecutrix. In such a case if there was any threat on the part of the appellant, normally the girl of tender age will not dare to raise a voice of revolt against him. In that view of the matter, merely because the matter was not immediately reported either to her mother or to the police authorities, that by itself does not render testimony of the prosecutrix as worthless. Further, on minute microscopic examination of evidence of prosecutrix, it is clear that her evidence is free from exaggeration, improvement or contradiction. It is well settled law that if the evidence of the prosecutrix inspires confidence and is free from any embellishment and if there is a corroborative piece of evidence, the Court can safely rely on the evidence of the prosecutrix and secure the conviction.

16. In that context, DNA report (Ex.57) plays an important role. The first information report coupled with the evidence of prosecutrix would show that the continued lust of the appellant with the prosecutrix resulted into pregnancy of the prosecutrix. She delivered a female child. It would be useful to refer to the opinion given in the DNA report, which is as under :

"Putative father Shankarlal Bhau Dhande and mother Bharti Chunnilal Kasdekar are concluded to be the biological parents of B/O Bharti Chunnilal Kasdekar."

Thus, the DNA report squarely covers the issue in favour of the prosecution. It clearly shows and suggests that the prosecutrix has not exaggerated nor she has falsely implicated the appellant.

17. The submission of learned counsel for the appellant that the prosecutrix was a consenting party, in my view, cannot be accepted. The said submission is coming forth for the first time before this Court. There is no suggestion even remotely in that behalf to the prosecutrix. Therefore, in my view, for the first time at the appellate stage, without there being any foundation, the appellant cannot be permitted to raise such issue.

18. The appellant through his cross-examination tried to point out that he is falsely implicated in the crime. When the evidence of the prosecutrix inspires confidence and when the same is corroborated by the evidence of her mother Bhukibai (P.W.2), I see no reason to interfere with the finding recorded by the

court below in respect of holding the appellant guilty. That leads me to pass following order.

"(i) Criminal Appeal is dismissed.

(ii) Learned counsel for the appellant, who has been appointed to defend the appellant, be paid fee of Rs. Five thousand."