
(2015) 01 BOM CK 0330
In the Bombay High Court
Case No : Criminal Appeal No. 351 of 1993

Sopan Dhondiba Chavan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 506(1)

Citation : (2015) 01 BOM CK 0330

Hon'ble Judges : Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : Shyam Kalyankar, for the Appellant; Arfan Sait, APP, for the Respondent

Final Decision : Disposed Off

Judgement

Sadhana S. Jadhav, J.—The appellant herein stands convicted for the offence punishable under Section 376 of IPC and is sentenced to suffer R.I. for three years and to pay fine of Rs. 2,000/- in default S.I. for six months, he is also convicted for the offence punishable under Section 506(1) of IPC and is sentenced to suffer R.I. for one year and to pay fine of Rs. 1,000/- in default S.I. for three months in Sessions Case No. 38 of 1990 by Addl. Sessions Judge, Baramati vide judgment and order dated 26th May, 1993. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as follows :-

The complainant and her husband are working as agricultural labours. On 19.10.1989, the complainant had been to collect firewood in the fields along with Pushpabai Gavare and Vimalabai Sawant. They had left the house at about 11 a.m. They collected the firewood, tied them into a bundle. They then precoded towards their house with the bundle of fire woods over their head. The complainant could not walk fast as the bundle on her head was very heavy. Hence, she was lagging behind. When they were passing from the field of the Sarpanch Kate, at about 2.30 p.m., the accused had come on a bicycle from

Malegaon Colony side and had spoken to the complainant. That he had grievance because the complainant was not talking with him. It is alleged that he had pulled down the firewood bundle from her head. The accused had taken charge of the complainant and had forcibly taken her in the sugarcane crop. It is alleged that he then ravished her against her wish. He threatened her of dire consequences. The accused had then placed the firewood bundle on her head and asked her to go home and he had gone on his bicycle. The complainant had then left the firewood bundle by the side of the road. She disclosed the incident to her companions. When she returned home, she found her husband was present at home. She disclosed the incident to her husband and then they approached the police station and lodged a report. On the basis of the said report, Crime No. 73 of 1989 was registered at Baramati Taluka Police Station. After completion of investigation, charge sheet was filed on 27.11.1989. The prosecution examined 16 witnesses to bring home the guilt of the accused.

3. PW-1 Maruti Kashinath Kumbhar is the panch for clothes seizure panchnama. He is declared hostile. Similarly, PW-2 Shabbir Magan Shaikh another panch for clothes seizure panchnama is also declared hostile. PW-3 Vyankatrao Tavare who acted as a panch for arrest and clothes seizure panchnama and he is also hostile. PW-4 Arjun Jadhav is also hostile. PW-6 Uday Chaware a panch witness of seizure of bicycle and he is hostile. PW-7 Bhagwan Shedge, panch witness for seizure of bicycle is also hostile. PW-13 Vasant Gaware is also declared hostile. Similarly, PW-14 and 15 are also declared hostile. Hence, the evidence of the prosecutrix PW-8, her husband PW-9, PW-10 Dr. Santosh Sonawane and the evidence of PW-16 Investigating Officer will have to be taken into consideration.

4. PW-8 is the prosecutrix. She has deposed before the Court that on the day of incident, her husband had been to Malegaon to repair the agricultural implements. He had left the house at 8 p.m. Thereafter, she had left the house at about 11.00 a.m. along with her friends and had been to the field for collecting firewood. She had carried with her an axe to cut the firewood and also a rope to tie the same into a bundle. According to her, the accused-appellant is residing in close proximity of her house at Malegaon Colony. She has deposed before the Court that when she was returning after collecting the firewood, the accused-appellant had come from opposite side on his bicycle. He stopped bicycle near her and told her that they had eaten many things when the wife of the brother of her husband had died in the canal water. He then became aggressive. He pushed the firewood from her head. He had then taken charge of her, dragged her in the sugarcane crop by the side of the road and had ravished her after denuding her of her clothes. She had dropped the bundle of firewood by the side of the road near the field of the Trust and returned home. At about 3 p.m., she found her husband at home and disclosed to him about the incident and then they lodged the report.

5. PW-8 has admitted in her cross-examination that accused-appellant resides near her house since 7 years. That she has feigned ignorance about the fact that

the appellant has 3 sons, out of whom the last son is 30 years old and is working in the Military. That the accused has a married daughter who is aged about 20 years. She has admitted that the accused is also working as an agricultural labour in the same area. The prosecutrix has admitted that her eldest son was about 15 years of age at the time of incident. That some of the huts were removed from her locality. However, her hut and the hut of the accused are still at the same place. At the time of incident, the accused was residing at Karati. She has admitted that she could not raise any hue and cry at the time of incident. She had not made any attempts to run away from that place by throwing the firewood. It is suggested to the prosecutrix in the cross-examination that the initiation for the said criminal prosecution was an outcome of a political dispute. However, she has denied the said suggestion.

6. PW-9 Mohan Sadashiv Adagale, happens to be the husband of the prosecutrix. He has deposed before the Court that on the day of incident i.e. on 19.10.1989, he left at about 8.00 a.m. and returned home at 11 a.m. At that time the wife was not present in the house and it was informed to him that she had been to collect the firewood in the field. The said information was given by Latabai. On that day after returning home, his wife had informed him about the incident. It was suggested to the witness that the huts standing in the said place were removed for raising the buildings of Sharada Nagar. That the leaders in the said locality had called for a meeting and had assured the hutment-dwellers that they would give an alternative accommodation to them. He has feigned ignorance that the accused and his brother Dhanansing Chavan had refused to give vacant possession of the said land.

7. PW-10 Dr. Suresh Sonawane was attached to the Rural Hospital as a Medical officer. On 19.10.1989, at 2.30 p.m., he had examined the prosecutrix. At the time of examination, he had seen tiny abrasions on her both elbows and two scratch marks on the right side of neck. He had also examined the accused on 20.10.1989. he had tiny superficial abrasions over his knees and elbows.

8. PW-11 is Sanjay Gaikwad from whom the accused had hired the bicycle. He has posed before the Court that at about 3 p.m., the accused had returned the bicycle and had paid charges of Rs. 4.50.

9. PW-16 is Mahadeo kale. He is the Investigating Officer. In the present case, he has deposed as regards the steps taken by him in the course of investigation. He has proved the omissions and contradictions in the evidence of the hostile witnesses as well as PW-8 and he has categorically admitted in the cross-examination that it had transpired in the course of investigation that the complainant had illicit relations with the accused-appellant for about 4 -5 years. The accused had stopped responding to the complainant since one year prior to the incident.

10. The learned counsel for the appellant submits that the evidence of the complainant is uncorroborated by the witnessed who had accompanied her on

that day. That evidence of the prosecutrix does not inspire confidence inasmuch as she has stated before the Court that she was accompanied by Pushpa Gaware and Vimal Sawant. They have not supported the complainant. It cannot be believed that the complainant was lagging behind only because she could not walk with the bundle of firewood on her head. She had to go through the ghastly incident and yet she had not disclosed about it to the women accompanying her. The version of the prosecutrix that she could not raise hue and cry as she was scared about dire consequences also does not inspire confidence of the Court. Moreover, the Investigating Officer has stated that it had transpired in the investigation that the complainant and the appellant were in a relationship for about 4-5 years and that he had stopped responding to her cannot be overlooked by this Court. The learned Sessions Judge has therefore awarded substantive sentence of less than the sentence for the offence under Sec. 376 of IPC. The learned Sessions Judge had awarded the sentence of 3 years to the accused. The evidence of the prosecutrix does not inspire confidence.

11. The learned counsel for the applicant submits that in all probabilities, the complainant had initiated prosecution only to seek her personal vendetta or to save herself from defamation on account of being seen in the company of the accused.

12. The learned counsel for the appellant, relying upon the Judgment of the Hon"ble Apex Court in the case of Sadashiv Ramrao Hadbe Vs. State of Maharashtra and Another, , observed as follows :-

"It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen."

In view of the above observations of the Hon"ble Apex Court and in the facts of this case, the learned counsel for the appellant submits it can be safely inferred that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and hence the appellant deserves to be acquitted of the offence punishable under Section 376 of Indian Penal Code.

(i) Appeal is allowed.

(ii) The Judgment and Order dated 26/05/1993, passed by Additional Sessions Judge, Baramati in Sessions Case No. 38 of 1990 is hereby quashed and set aside.

(iii) Appellant is acquitted of the offence punishable under Sections 376 and 506(1) of Indian Penal Code.

(iv) Amount of fine, if paid, be refunded to the appellant.

(v) Bail bonds of the appellant stand cancelled.

Appeal stands disposed of.