

(2018) 03 BOM CK 0122

In the Bombay High Court

Case No : CRIMINAL APPEAL (APEAL) NO. 286 OF 2007

STATE OF MAH. THRU THE P.S.O.

APPELLANT

Vs

AMIT S/O DHANRAJ KADAMDHAD & ANOR.

RESPONDENT

Date of Decision : 13-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 109, 306, 376

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1995 — Section 3(1)(xii)

Citation : (2018) 03 BOM CK 0122

Hon'ble Judges : B.P. DHARMADHIKARI, J, ARUN D. UPADHYE, J

Bench : Division Bench

Advocate : M.K. Pathan, S.M. Nafde

Final Decision : Dismissed

Judgement

M.G. Giratkar, J.

1. By way of present appeal, the appellant/State has challenged the acquittal of accused/respondent by Adhoc Additional Sessions Judge, Nagpur in

Sessions Trial No. 19 of 2006 for the offences punishable under Sections 376, 109, 306 read with Section 34 of the Indian Penal Code and 3(1) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. The facts, which give rise to filing of the present appeal, can be summarized as under :-Deceased Ranjana was the daughter of complainant -

Chandrabhaga Shankarrao Dhurve. She was educated up to 3rd standard. The complainant and deceased were doing labour work. In the month of

May, 2006, on the day of incident, complainant had gone for labour work. She returned at about 12:00 in the afternoon. Ranjana (prosecutrix) also

returned from the work in the afternoon. Accused were storing fodder in the

cattle shed. She was giving call to Ranjana, but Ranjana was not responding. Vicky came to her and told her as to why she was calling Ranjana. Whether she was knowing that what Ranjana was suffering. He told her that Ranjana was in the cattle shed. She went towards cattle shed of accused. She saw accused Amit sitting on the person of Ranjana and committing rape on her. Younger brother of Amit gave signal by blowing whistle. Ranjana ran out of the cattle shed. Then she went to home and made enquiry with Ranjana. She told that she was called by accused by giving inducement. The mother Chandrabhaga gave two slaps to her daughter. When complainant- Chandrabhaga went to the house of Bebibai, in her absence, Ranjana poured kerosene on her person and set herself on fire. She was admitted in the hospital. After 2-3 days, she lodged the report (Exh.46). After 8-10 days, she brought Ranjana to the house and after 2-3 days, Ranjana died.

3. On the report of complainant-Chandrabhaga, crime was registered against the accused. Investigating Officer recorded the statements of witnesses, prepared inquest panchnama and spot panchnama etc. After completing investigation, charge sheet came to be filed. A charge was framed at Exh.4.

The prosecution has examined in all 12 witnesses. At the conclusion of the trial, learned Trial Court acquitted the accused for the offence punishable under Sections 376, 109, 306 read with Section 34 of the Indian Penal Code and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Being aggrieved by the said acquittal, the appellant/State has filed the instant appeal.

4. There is no dispute that the deceased died due to burn injuries. Postmortem report is at Exh.41. As per the evidence of PW-9 Chandrabhaga, accused No.1 committed rape on the prosecutrix and, therefore, she had committed suicide.

5. PW-6 Dr. Suvarna Sapkal examined the prosecutrix and issued certificate (Exh.39). As per her observation, there was no injury mark on private part of the prosecutrix. Dr. was unable to state as to whether girl had undergone forcible sexual intercourse. Therefore, medical evidence is not in favour of the prosecution. The evidence of PW-9 Chandrabhaga shows that she saw accused No.1 committing rape on prosecutrix. But, this evidence is not corroborated by other evidence. The material contradiction is brought on

record in her evidence. As stated in her evidence that one Vicky informed her that the prosecutrix was in the cattle shed and accused No.1 was doing sexual intercourse, Vicky (PW-3) not supported her version.

6.The evidence of Chandrabhaga (PW-9) is not corroborated by medical evidence. PW-6 Dr. Suvarna Sapkal has stated in her evidence that, ""there was no injury marks on private part at the time of examination. I cannot say whether the girl had undergone forcible sexual intercourse."" The Medical Officer collected pubic hair and vaginal swab. The same were sent for examination to Chemical Analyser. The report (Exh.26) of Chemical Analyser is negative. Therefore, the evidence on the point of sexual intercourse not proved by the prosecution.

7.There is also discrepancy in respect of date of birth of prosecutrix. The prosecutrix has stated her date in her dying declaration (Exh.44) as 15 years. Her mother (PW-9) also stated her age as 15 years. But, PW-10 Vishnu Dhote, retired Headmaster proved the school leaving certificate. As per the certificate, her age is 12 years. The said school leaving certificate is doubtful because the school leaving certificate (Exh.53) shows that the date of birth was registered on 03.10.2002; whereas it was issued on 28.08.2002. It appears that the prosecutrix was more than 15 years. Even if there was really sexual intercourse then it was with consent. The prosecutrix herself in Exh.44 stated that she went to cattle shed and had a sexual intercourse. When her mother came to know this, she was beaten by her mother and, therefore, she poured kerosene and set herself on fire. Hence, offence punishable under Section 376 of the Indian Penal Code not proved by the prosecution.

8.In respect of offence punishable under Section 306 of the Indian Penal Code, Exh.44 (Dying Declaration) appears to be given by the prosecutrix at the instance of her mother. Moreover, it does not attribute any act of accused No.1 for her death. From the plain reading of Exh.44, it is clear that she has nowhere stated that accused instigated her to commit suicide. It shows that accused called her, she went to cattle shed, accused did sexual intercourse with her, she came to house, her mother beat her, she poured kerosene and set her on fire. The death was also avoidable because the mother of prosecutrix brought her from the hospital after 3-4 days. She died at the house of PW-9 Chandrabhaga. The dying declaration (Exh.44)

shows that she burnt herself because her mother beat her. Therefore, the dying declaration does not show that because of the sexual intercourse by

accused No.1, she committed suicide. On the other hand, it shows that her mother beat her, therefore, she poured kerosene and set herself on fire. No

evidence to show that accused No.1 instigated or abetted her to commit suicide. Hence, offence punishable under Section 306 of the Indian Penal

Code is also not proved by the prosecution. There is no evidence against accused No.2. Thus, the learned trial Court has rightly appreciated the

evidence on record. The impugned judgment is well reasoned. There is no merit in the instant appeal. Hence, we proceed to pass the following order :-

The appeal is dismissed with no order as to costs.

R and P be sent back to the trial Court.