

(2017) 09 BOM CK 0036
In the Bombay High Court
Case No : 436 of 2003

Sudhakar Domaji Hazare, & Anr.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-09-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 506](#),
[Section 452](#), [Section 376\(2\)\(g\)](#) -
Punishment for criminal ,intimidation - House -trespass after preparation for hurt,
assault or wrong

Citation : (2017) 09 BOM CK 0036

Hon'ble Judges : Swapna Joshi

Bench : SINGLE BENCH

Advocate : N.H. Joshi

Final Decision : Dismissed

Judgement

1. This appeal has been directed against the judgment and order passed by the learned Additional Sessions Judge, Chandrapur in Sessions Trial No.61 of 1996 delivered on 04072003, thereby the learned trial Judge had convicted the appellants under Section 376(2)(g) of the Indian Penal Code and each of them sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1500/each, in default to suffer imprisonment for three months.

2. I have heard Mr. N.H. Joshi, the learned Additional Public Prosecutor for the State. The appellants and the learned Counsel for the appellants remained absent. With the assistance of the learned APP, I have gone through the entire record.

3. The facts leading to prefer this appeal can be summarised as under : The prosecutrix was residing with her husband and two children at village Antargaon, Taluka Sawali, District Chandrapur. The appellants (hereafter referred as the accused) are also residents of the same village. The incident took place on 17011996. At the time of incident, Vandana was in her house along with her

children. Her husband (PW6) had gone out of the house. The prosecutrix had dinner with her husband and thereafter her husband went out to the Pan Stall and the prosecutrix went to sleep along with her small daughter on the bed. At about 8.00 pm or 8.30 pm, when the prosecutrix was resting in her house, she had simply shut the door without bolting it from inside as her husband was expected to return shortly. At that time she suddenly felt some weight on her body. Therefore, she opened her eyes and saw the appellant no.1 lying on her person. The appellant caught hold of her both hands and asked the prosecutrix for sexual favour. He also threatened that if she refused to do so, he would kill her. On this, the prosecutrix got frightened. The prosecutrix, therefore, could not raise any alarm. At that time the prosecutrix noticed accused no.2. She tried to shout. However, accused no.2 immediately gagged her mouth. It is the case of the prosecution that at that time both the appellants threatened her that if she did not allow them to have sexual intercourse with her they would kill her as well as her husband. Thereafter, the appellant no.1 removed her clothes. The appellant also removed his clothes and committed sexual intercourse with her. Thereafter, the appellant no.2 committed forcible intercourse with the prosecutrix. At that time the appellant no.1 gagged the mouth of the prosecutrix. After satisfying their lust, both the appellants released the prosecutrix. They again threatened her by saying that, she should keep her mouth shut or otherwise they would kill her & her husband. Thereafter, the appellants fled away from the place of incident. It is the case of the prosecution that, while leaving the house of the prosecutrix the appellants stated that they had sexual intercourse with wife of Patru on that day and next time it would be the turn of wife of Patru's brother. The appellant then left that place. On hearing the cries of the prosecutrix, her brothers in law namely Kavindra (PW7) came to the house of the prosecutrix. They asked her as to what had happened. At that time the prosecutrix disclosed the incident to them. By that time the husband of the prosecutrix also returned home. The prosecutrix narrated the incident to him. Since it was night time, the prosecutrix did not go to the Police Station and so also the distance between the village Antargaon to Pathari Police Station was 10 to 12 Kms., therefore, on the next day morning the prosecutrix along with her husband proceeded to the Police Station to lodge the complaint. At the relevant time, PSINandkishor Shelke (PW10) the Investigating Officer was attached to the Police Station Pathari. He recorded the complaint of the prosecutrix (Exhibit9). On the basis of the said complaint, the offence was registered under Sections 376(2)(g), 452 and 506 of the IPC vide Crime No.7 of 1996. He referred the prosecutrix for medical examination. He arrested both the accused and referred to them for their medical examination. He visited the place of incident and recorded the spot panchanama (Exhibit11). From the place of incident, he took charge of pieces of broken bangles and mattress. From the complainant he took charge of her clothes under seizure panchanama (Exhibit12). PW10 recorded the statements of the witnesses. He took charge of the clothes of the accused and the appellants. All the seized articles were sent to C.A. by the investigating agency. On completion of investigation, chargesheet was filed. The learned trial

Judge framed the charge. After conducting the trial, on analysis and appreciation of the evidence & hearing both the sides, the learned trial Judge convicted the appellants/accused as aforesaid.

4. The Mr. N.H. Joshi, the learned APP contended that the learned trial Judge has rightly convicted the appellants on relying upon the evidence of the prosecutrix and other supporting witnesses.

5. As far as the case of the prosecution is concerned, in order to substantiate its case the prosecution has heavily relied upon the evidence of prosecutrix (PW1), Patru (PW6) her husband, Sudhakar (PW8) her brother in law, Dr. Jayashree (PW9) the Medical Officer and Nandkishor (PW10) Investigating Officer.

6. The prosecutrix (PW1) is a married lady having two children. She was working as a labourer. According to her, on 17/01/1996, at about 7.30 pm, she along with her husband had dinner. Thereafter, her husband went to Pan Stall for having a Pan. She arranged for the bed and she went to bed with her one and half year old daughter. As her husband had gone out she simply shut the door without bolting it. While she was sleeping she felt something heavy. Therefore, she opened her eyes and saw appellant no.1 Sudhakar on her body. The accused no.1 caught hold of her hands. The prosecutrix got frightened. She noticed accused no.2 Praful in the room & he gagged her mouth. The prosecutrix tried to free her hands from the clutches of the appellant no.1. During the said scuffle, her bangles were broken. The appellant no.1 threatened by saying, she should not allow him to have sexual intercourse with him or else he would kill her as well as her husband. On saying so he committed rape on her. Thereafter, he gagged her mouth and appellant no.2 Praful committed rape on her. Again both the accused threatened her that she should not raise any alarm and should also not disclose this incident to any one, otherwise they would kill her as well as her husband. Thereafter, they went away. The prosecutrix sat there weeping and crying. On hearing her cries, her brothers in law namely Kavindra (PW7) and Vijay came there. The prosecutrix narrated the entire incident to them. In the meantime her husband arrived home and she disclosed the incident to him. The prosecutrix went to the house of Police Patil. However, he was not available in his house. According to the prosecutrix, as it was night time and no means were available for going to the Police Station, on next day morning at 7.30 am she proceeded to Pathari Police Station for lodging her complaint. The prosecution specially stated that at the Police Station Pathari some police were present. However, they refused to take down her report by saying that Head Constable was not present at the Police Station. The Head Countable arrived at 3.00 pm or 4.00 pm, then the prosecutrix narrated the incident to him which was reduced into writing. She narrated the incident to the Head Countable. He asked to submit written report, which she accordingly submitted (Exhibit9). The prosecutrix was then referred to Sindewahi hospital at about 7.00 pm or 8.00 pm for her medical examination. She was medically examined by the doctor. He issued medical certificate (Exhibit23). The police took charge of her clothes. The police also took charge of

mattress as well as broken pieces of bangles and buttons of the blouse under panchanama.

7. On careful scrutiny of the evidence of PW1 it is noticed that a suggestion was given, to her which she denied that on the date of incident at about 7.30 pm on the road her husband along with 2/3 persons assaulted accused no.1Sudhakar due to which there were commotions and at that time those persons also assaulted accused no.2Praful and therefore at about 7.30 pm accused no.1Sudhakar went to the Police Station and lodged the report against her husband (PW1). She also denied that, on the next day morning two police personnel came to her house and enquired about her husband and a report was lodged against her husband and therefore false report was filed against the appellants. Few discrepancies were pointed out in her statement that after the incident she was crying and on hearing her cries her brothers in law Kavindra and Vijay came to that place. I do not find any material discrepancies in the testimony of PW1. PW1 has deposed in most natural manner. Her testimony is not at all shattered in cross examination and she is found to be a reliable and trustworthy witness. PW1 has immediately disclosed the incident to her brothers in law as well as her husband. The broken pieces of bangles and buttons of blouse lying at the place of the incident clearly indicate that the prosecutrix had struggled with the appellants and she tried her level best to resist the act of the appellants. At this stage it is significant to note that, the medical report of the prosecutrix reveals liner abrasions over the right wrist of the length of 34 cm and three in number side by side and reddish brown in colour. The Medical Officer has opined that these abrasions were possible by broken bangles and those abrasions are 12 to 24 hours old. It is significant to note that, from the place of incident broken pieces of bangles and buttons of the blouse of the prosecutrix were taken charge by the Police under seizure panchanama (Exhibit12). It is well settled that in a rape case, sole testimony of the prosecution can be relied upon & no corroboration to her version is necessary, if she is found to be a reliable & trustworthy witness.

8. In case of State of H.P. v. Sanjay Kumar alias Sunny reported in 2017(3) Mh.L.J. (Cri.)(S.C.) 68, the Hon"ble apex Court has held in paragraph 31 as under :

" 31. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the Courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If

the Court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborate in material particulars, as in the case of an accomplice to crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance."

9. In (1996) 2 SCC 384 in case of State of Punjab v. Gurmit Singh and others, in paragraph 8 the Hon"ble apex Court has held as under :

" 8.The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged."

10. In case of Aman Kumar and another v. State of Haryana, reported in (2204) 4 SCC 379, the Hon"ble apex Court has held as under :

" It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional."

11. In case of Jugendra Singh v. State of Uttar Pradesh, reported in (2012) 6 SCC 297, the Hon"ble apex Court in paragraphs 41, 42, 43 and 49 has held as under :

"41. In State of U.P. v. M.K. Anthony (1985) 1 SCC 505 this Court has observed (SCC p. 331, para 15) that in case of

"[m]inor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole".

42. In Rammi v. State of M.P. (199) 8 SCC 649, this Curt has held as follows : (SCC p. 656, para 24)

"24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making

some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally nondiscrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness were so incompatible with the credibility of the version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."

43. In Appabhai v. State of Gujarat (1988 Supp SCC 24) this Court has ruled thus :(SCC pp.24647, para 13).

"13. ... The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witlessness altogether if they were otherwise trustworthy.

49. Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment.

Thus the testimony of prosecutrix is found to be trustworthy.

12. The testimony of the prosecutrix is supported by the testimony of her husband (PW6). Patru (PW6) deposed that at about 7.30 pm he went to the Pan stall after having dinner. He returned back home at about 8.00 to 8.30 pm and found his wife weeping in the house. By that time his brothers Kavindra and Sudhakar had visited his house. The prosecutrix disclosed the incident of commission of rape by accused nos. 1 and 2. Thereafter, Patru (PW6) along with PW1 went to the house of Police Patil. However, he was not present in his house. He stated that as it was night time and there was no means available to go to Pathari as his village is situated in a forest area, they proceeded to the Police Station Pathari by bus on next day at 7.00 to 7.30 am., there the complaint of his wife recorded by the Police. The testimony of Patru (PW6) is not shattered in

his cross examination on material aspect & it corroborates with the testimony of PW1 on material aspect.

13. The testimony of Sudhakar (PW8) disclosed that, on the date of incident in between 8.00 to 8.30 pm, when he was present in his house he heard some noise and therefore he went to the house of the prosecutrix. At that time, prosecutrix was inside her house whereas Kavindra and Vijay and his wife were standing at that door of her house. The prosecutrix was sitting and crying. She was sitting on the bed which was on the floor. On asking the prosecutrix as to what had happened she informed that, Sudhakar and Prafull had committed rape on her and they threatened her to the effect that if she opened the mouth they would kill her. After about 10 to 15 minutes her husband returned home and the prosecutrix narrated the incident to her husband also. PW8 specifically stated that as Pathari Police Station had 9 to 10 Kms away from the house of prosecutrix and it being a dense forest area, the prosecutrix and her husband could not go to the Police Station during that night and on the next day morning both of them went to the Police Station to lodge the complaint. PW8 specifically stated that he had seen the broken bangles and buttons of blouse at the place on incident. He identified those articles in the Court as the articles lying at the place of incident. PW8 stated in the cross examination that when he reached to the house of the prosecutrix, he saw her sitting in naked condition and she narrated the incident to him. The testimony of PW8 is not shaken in cross examination at all & from his testimony it can be gathered that his presence on the spot is natural one & the prosecutrix disclosed the incident of rape immediately. He has stated as to what had transpired to him at the place of incident.

14. Dr. Jayashree (PW9) the Medical Officer has noticed liner abrasions over the right wrist of 34 cm in length side by side and reddish brown in colour. According to her these abrasions can be caused by broken bangles and are 12 to 24 hours old. She issued medical certificate of the victim (Exhibit23).

15. The testimony of PW6 and PW8 corroborates with the testimony of prosecutrix on all material aspect, particularly, there is no reason for the prosecutrix to falsely implicate the accused in such an heinous offence. The alleged rivalry between the prosecutrix, her husband with the accused can not be a reason for the prosecutrix to foist a false complaint against the accused by putting her reputation at stake. The medical evidence makes amply clear that the accused succeeded in committing forcible sexual intercourse with the prosecutrix although she resisted the act. That was the reason she received injuries on her wrist during the scuffle. In view of above, it is clear that, both the accused have committed rape on the prosecutrix.

16. As far as the CA report is concerned, it is manifest from the CA report that on the petticoat of the prosecutrix semen stains and blood stains of the groups of the accused were detected, which confirm their involvement in the crime.

17. In my opinion, the learned trial Judge had properly the evidence on record

and rightly passed the order, consequently, the appeal fails and it is liable to be dismissed. In view of the facts and circumstances, the following order is passed:

O r d e r

(a) Criminal Appeal No. 436 of 2003 is dismissed.

(b) The judgment and order dated 04072003 delivered by learned Additional Sessions Judge, Chandrapur in Sessions Case No.61 of 1996 stands confirmed.

(c) The Judgment and order passed by the learned Additional Sessions Judge, Chandrapur in Sessions Trial No.61 of 1996 delivered on 04-07-2003, convicting the appellants under Section 376(2)(g) of the Indian Penal Code and each of them sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1500/each, in default to suffer imprisonment for three months, is maintained.

(d) The appellants are on bail. Their bail bonds stand cancelled. They are directed to surrender before the learned Additional Sessions Judge, Chandrapur to undergo the remaining period of sentence. If they do not surrender within a period of four weeks from today, the learned trial Court is directed to take appropriate action in accordance with law.

(e) Muddemal property be dealt with as directed by trial Court after the appeal period is over.