
(2004) 01 BOM CK 0102
In the Bombay High Court
Case No : Criminal Appeal No. 399 of 1999

Suresh Sahebrao Kamble

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-01-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 376

Citation : (2004) CriLJ 1574

Hon'ble Judges : V.G. Palshikar, J;P.V. Kakade, J

Bench : Division Bench

Advocate : T.E. Mane, for the Appellant; V.R. Bhosale, APP, for the Respondent

Judgement

V.G. Palshikar, J.—Being aggrieved by the judgment and order of conviction passed on by the II Additional Sessions Judge, Pandharpur in Sessions case No. 69 of 1989 convicting the accused u/s 362 and 376 of IPC and sentencing him to suffer R.I. for life for the offence of murder and to suffer R.I. for 7 years for the offence of rape and again was directed that the sentences to run concurrently, the appellant has filed this appeal on the ground mentioned in the memo of appeal as also verbally canvassed by the learned counsel appearing on behalf of the accused/appellant.

2. With the assistance of the learned counsel for the defence and the learned Prosecutor we have scrutinised the evidence and have reappreciated the evidence on record. The prosecution story as revealed by the reappreciation of the evidence stated briefly is that on 1st May 1989 the complainant Sulbha came home in the afternoon around 6.30 p.m. and found that her daughter is missing. She therefore invited the neighbours and started searching for the missing daughter. The accused joined the searching party. After sometime the dead body of victim Pushpa was located by the accused who stumbled on the body and fell over it. Police therefore started investigation, suspected the accused and therefore arrested him and after completion of investigation prosecuted him u/s 302 IPC for murder and u/s 376 of IPC for the rape.

3. The learned trial Judge on appreciation of the evidence on record came to the conclusion of guilt and convicted the accused as aforesaid. The prosecution had examined in support of its case, as many as 9 witnesses and accepting their evidence the learned trial Judge convicted the accused.

4. The learned counsel appearing on behalf of the accused submitted that the order of conviction is unsustainable both u/s 302 and 376 of IPC. There is no eye witness to either of the crime. There is no evidence circumstantial or otherwise to connect the accused to the crime and therefore the learned trial Judge erred in convicting the accused. Contesting this claim the learned A.P.P. contended that there is no error in the order and there is no violation, the evidence is clear, the victim was throttled by the accused is proved and no interference is therefore necessary. We have to examine all these contentions on the background of evidence as reappreciated by us.

5. P.w.1 is Sulbha, the mother of the victim Pushpa. She narrates the entire happenings and she has stated that on 1st May 1989 she had gone to marketing and returned at about 6.30 p.m. and found that her daughter Pushpa was not in home. She therefore enquired from her niece Savita as to where Pushpa had gone and received the answer that she had gone to bring grass. She therefore waited for her daughter to come for sometime and around 7.30 p.m. sent a message to her mother-in-law, requesting to search for her daughter. The mother-in-law came there along with several persons who included the accused. At about 9.00 p.m. the dead body of Pushpa was found in the sugarcane field. When this witness saw the body of the deceased, she noticed that it was Pushpa in the agricultural field. She was naked. Buttons of the T-shirt were open. Parkar was lifted towards upside, Knicker was removed. There was marking on the neck. Marking was of rope. The blood was oozing from the mouth. There was bleeding from vazina. She therefore telephoned her husband immediately, who came and lodged the FIR at 9 in the morning. Except this discovery of the dead body, there is no other witness to anything else. It is obvious from her evidence that Pushpa met violent death and probably was also raped.

5. P.w.2 is Savita who was present and has deposed that around 4 p.m. on that day Pushpa had gone to bring grass and she saw her leaving for that purpose. She then also saw after about 15 minutes the accused going towards the same direction. She has stated in the witness box that she narrated the incident i.e. Pushpa going to fetch grass and 15 minutes thereafter the accused was seen by her going to the same direction and she is therefore the only witness, who states that Pushpa went around 4 p.m. into the field and accused also went in the same direction, 15 minutes later on. She is therefore the only witness who has seen both the victim and the accused leaving for the same direction with the gap of about 15 minutes.

6. P.w.3 Prakash is the owner of the field where the body of the deceased was found. He also states the condition in which the body was found. He corroborates every statement made by P.w.1 the mother. He also tells us that the accused told

him that while asking search for Pushpa, he stumbled against the dead body and fell. It is this witness who brought the police to the spot. Inquest panchanama was recorded and proved by this witness as Exh. 19. The dead body was identified by P.w.1. The inquest panchanama discloses that the witness has sustained certain injuries which were scratch marks on her left breast, there were blood stains around her vagina and she was bleeding. The panchanama was proved by this witness P.w.3, and therefore proves that the victim died because of throttling and that before the death she was raped. The crucial question which comes up before us therefore is who did it.

7. P.w. 4 Balu is an employee of P.w.3. This person is another witness of seeing the accused in the field where the dead body was found, around 5 p.m. and he states that the accused left the place, came back and enquired as to whether Pushpa has come to the field after fetching grass. He then states that he came to know about the death of deceased in the late night. He also therefore is a witness who claims that he saw the accused in the field at 5 p.m. He however does not answer the crucial question as to whether his seeing it, can connect the accused to the incident.

8. P.w.5 Gopal is the person who went for the search and discovered the dead body. He is also panch for recovery of clothes from the victims. His evidence is of no consequences in the circumstances. This witness has proved Exh.23 which is the panchanama and also states that they searched the person of the accused after removing his clothes but his body did not disclose any signs of assault.

9. P.w.6 Mahadev is the police, who seized the clothes of the victim. P.w.7 is Dr. Nandkumar who has preserved the blood samples and vaginal secretions samples of the accused and sent it for investigation. He has also proved the report of the Chemical Analyser. The case papers of the hospital in which the accused was examined is Exh.42. It is clearly stated that there were no external injury on the person of the accused and the examination of the genetics shows that no seminal fluid on the person of accused, no injury on his private parts, no semen was noticed. This appears that there was no injury on the person of the accused. There was no blood found on the person of the accused. There were no scratches on the person of the accused.

10. P.w.8 is Mahendrasingh who at the relevant time was working as P.S.I. Akluj police station. He carried out the investigation and has deposed to the same. P.w.9 Ramesh is the police constable who took the samples for examination to C.A. This is the evidence in totality.

11. It will be seen that the conviction is passed only on three circumstances. (i) Savita seeing the accused going in the same direction as victim Pushpa had gone 15 minutes later. (ii) The witness who saw the accused in the field around 5 p.m. where later on the victim's body was noticed and (iii) the accused had blood stains on his clothes and was the only person who was last seen together.

12. Medical evidence does not support the claim of the prosecution that it was

the accused who raped the victim and murdered the victim. The recovery of rope is from the field, which was accessible to anybody. The rope is not tested with finger print which would have proved the handling of the same by the accused. The blood stains on his clothes are explained by the fact that he stumbled on the body of the victim who was bleeding. There is therefore no evidence to connect the accused to the crime either of rape or of murder. The evidence is grossly inadequate. Merely because he was seen going towards the field, in the same direction as victim had, it cannot be said conclusively that he alone is the person who could have done it. P.w.5 has deposed that he was present in the field around 5 p.m. when he saw accused there. He does not see any disagreeable behaviour by the accused. Had he factually committed the crime, it would have shown on his face. If the blood stains had been present on the clothes of the accused at 5 p.m., witness would have deposed about it. The fact that he does not speak anything about it, his clothes would have stained with blood when he stumbled to the body when he discovered it. In such circumstances, the conviction is unsustainable in law. In the result therefore the appeal succeeds and is allowed. The order of conviction and sentence u/s 362 and 376 of IPC is set aside. The accused is liable to be released forthwith if not required in any other case.

13. The office is directed to expedite the issuance of the writ of acquittal.