

Sadashiv Ramrao Hadbe vs State Of Maharashtra And Anr. on 17 January, 2006

Equivalent citations: (2006)108BOMLR315, (2006)10SCC92

Bench: K.G. Balakrishnan, R.V. Raveendran

ORDER

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1. This is an appeal preferred against the judgment of the Division Bench of the High Court of Bombay at Aurangabad. The appellant is a medical Page 609 practitioner and he was charged by the prosecution alleging that he raped a patient who had visited his clinic for treatment. The appellant was found guilty by the Additional Sessions Court, Ambajogai, and he was sentenced to undergo imprisonment for a period of ten years and a fine of rupees five thousand and a sentence of six months for non-payment of fine. Aggrieved by the same, the appellant filed an appeal before the High Court and the Division Bench of the High Court confirmed the conviction and sentence.

2. The facts in short are as follows:

The appellant is running a clinic at Parali. On 17.12.1990, the prosecutrix, along with her husband and their small child, came to the clinic at about 9 a.m. Several patients were waiting for consultation with the appellant-doctor. The prosecutrix and her husband waited there and at first the prosecutrix took her child to the appellant-doctor and the appellant examined the child and prescribed some medicines. Thereafter prosecutrix herself wanted to consult the doctor as she had some ailments. She entered the room of the appellant, then a boy (attendant) directed the prosecutrix to go to another room for being examined by the doctor. According to the prosecutrix she entered the room and the appellant bolted the door of the room from inside and asked the prosecutrix to lie on a table and it is alleged that the appellant meddled with the private parts of the prosecutrix and then she felt that appellant was making attempts to sexually assault her and it is alleged that before she could raise any alarm the appellant pressed her mouth and had sexual intercourse with her. The prosecutrix came out of the room weeping and told the entire incident to her husband, who was waiting outside. The husband of the prosecutrix thereafter went to PW-7 - Prakash Kadam, who was working as a compounder in another hospital run by one Dr. Wangikar. The prosecutrix herself went to the Parali Police Station and gave an FI Statement and a case was registered against the appellant.

3. PW-11 took over the investigation; he recorded further statement of the complainant. The prosecutrix then was taken to the clinic of the appellant and there he prepared the spot panchnama.

He seized the petticoat and the sari worn by the prosecutrix at the time of the incident. The complainant was sent to Ambajogai Hospital for medical examination. The appellant was arrested on the same day and he was also taken for medical examination. During the course of investigation PW-11 has also collected the samples of Semen and blood of the appellant. The blood sample was sent to Hyderabad Laboratory for examination. PW-11 recorded the statement of witnesses and thereafter filed the final report.

4. PW-1 to PW-13 were examined on the side of the prosecution. The Sessions Court as well as the High Court mainly relied on the oral evidence given by the complainant and it was held that the evidence of the prosecutrix's alone is sufficient to convict the appellant as it had a ring of truth. This finding was upheld by the High Court.

5. The finding of the Sessions Court as well as the High Court is seriously challenged before us. Mr. Shanti Bhusan, learned senior counsel appearing for the appellant contended that the High Court had erred in considering the overall circumstances of the case and the improbable versions given by the prosecutrix. It is also contended before us that the Page 610 evidence of the prosecutrix is not supported by the medical evidence or scientific evidence produced in this case. The counsel contended that the entire incident could not have happened in the clinic as alleged by the prosecution. On the other hand, the counsel for the State supported the judgment and contended that the prosecutrix had no grudge against the appellant and she had given truthful version and the appellant had rightly been convicted by the Sessions Court as well as the High Court.

6. We have carefully considered the evidence in this case. On a careful scrutiny of the entire evidence in this case, we are of the view that the prosecution evidence has so many contradictions and the whole incident seems to be highly improbable. The prosecutrix and her husband had been staying at a village about 30 kms. away from the clinic of the appellant. They came to the appellant's clinic and prosecutrix after meeting the doctor with her child, she again wanted to meet the doctor. She was allegedly taken to a room adjacent to the main room occupied by the doctor. This room was small in dimension and in the room there was a table which was having a height of 34 inches and breadth of 20 inches. The prosecutrix was asked to lie down on the table and, according to the prosecutrix, first the doctor meddled with her private parts and thereafter committed sexual intercourse. When the accused touched her private parts and inserted his fingers, she did not raise any objection, nor did she got up from the table. The prosecutrix has no case that she raised any objection by shouting or tried to get up from the table so as to prevent the assault on her. It may be noticed that so many patients were waiting outside and they could not have been far off from the room wherein the prosecutrix was allegedly sexually assaulted by the appellant. She told that her mouth was closed by the appellant.

7. The doctor, who examined the prosecutrix at about 3 a.m., did not find any injury on her body. There was only swelling on the upper lip but the prosecutrix had no case that this swelling on the upper lip was caused during the course of the incident. There were no injuries on her private parts and the doctor who had examined her was unable to give any opinion about the sexual intercourse allegedly taken place. It is important to note that vaginal swab was collected by the doctor and it was sent for chemical examination. Exhibit 43 is the pathological report and it shows that on

Microscopic examination of the Vagina swab showed desquamated cervical cells and few Co-oxalate crystals and fluid but no spermatozoa was found. The Swab of Vagina was taken on the same day and if any sexual intercourse had taken place in all probabilities, the vaginal swab would have found some spermatozoa. The absence of these sperms cast a serious doubt on the prosecution version. It may also be noticed that the appellant also was medically examined on the same day by PW-10. In his evidence, he stated that smegma was present around the coronoglandia. He further deposed that his examination negated sexual intercourse and for collection of smegma around coronoglandia period of 24 hours is required. This scientific evidence also did not support the prosecution. Had there been a vigorous sexual act as alleged by the Page 611 prosecutrix there could not have been the presence of smegma on his private part.

8. 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.

9. In the present case there were so many persons in the clinic and it is highly improbable the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbably the prosecution version.

10. The counsel who appeared for the State submitted that the presence of semen stains on the undergarments of the appellant and also semen stains found on her petticoat and her sari would probabably the prosecution version and could have been a sexual intercourse of the prosecutrix.

11. It is true that the petticoat and the underwear allegedly worn by the appellant had some semen but that by itself is not sufficient to treat that the appellant had sexual intercourse with the prosecutrix. That would only cause some suspicion on the conduct of the appellant but not sufficient to prove that the case, as alleged by the prosecution. The Sessions Court as well as the High Court had not taken into consideration the absence of spermatozoa in the vaginal swab of the prosecutrix. It may also be noticed in the FI Statement. In this case the prosecutrix had not given the full description of the incident allegedly taken place but when she was examined in court she had improved her version.

12. On a consideration of the entire evidence in this case, we are of the view that there is a serious doubt regarding the sexual intercourse allegedly committed by the appellant on the prosecutrix. The appellant is entitled to the benefit of those doubts and we are of the view that the High Court and the Sessions Court erred in finding the appellant guilty.

13. We set aside the conviction and sentence of the appellant. The appellant, who is in jail, is directed to be released forthwith, if not required in any other case.

The appeal is accordingly allowed.