Vimal Suresh Kamble vs Chaluverapinake Apal S.P. And Another on 8 January, 2003

Equivalent citations: AIR 2003 SUPREME COURT 818, 2003 AIR SCW 253, 2003 (1) UJ (SC) 571, 2004 (3) KCCR 2169, 2003 (1) SLT 356, (2003) 3 ALLINDCAS 541 (SC), (2003) 1 JT 122 (SC), (2003) 3 KCCR 2169, 2003 ALL MR(CRI) 612, 2003 SCC(CRI) 596, 2003 (3) ALLINDCAS 541, 2003 (1) LRI 654, 2003 (1) SCALE 69, 2003 CRIAPPR(SC) 169, 2003 (1) ACE 130, 2003 (3) SCC 175, 2003 (1) JT 122, 2003 UJ(SC) 1 571, 2003 CHANDLR(CIV&CRI) 207, (2003) 1 RECCRIR 92, (2003) 1 ALLCRILR 391, (2003) 1 CURCRIR 140, (2003) 1 SUPREME 256, (2003) 1 SCALE 69, (2003) 2 INDLD 1206, (2003) 1 CHANDCRIC 212, (2003) 2 ALLCRILR 55, (2003) 1 CRIMES 378, (2003) 1 EASTCRIC 328, (2003) 24 OCR 697, (2003) 3 PAT LJR 99, (2003) 1 RECCRIR 390, (2003) 3 JLJR 97, (2003) 2 GCD 1236 (SC), (2004) SC CR R 741, (2003) 1 ALLCRIR 537, 2003 (1) ALD(CRL) 314, 2003 (3) BOM LR 556, 2003 BOM LR 3 556

Author: B.P. Singh

Bench: N. Santosh Hegde, B.P. Singh

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           CASE NO.:
Appeal (crl.)  1449 of 1995

PETITIONER:
Vimal Suresh Kamble

RESPONDENT:
Chaluverapinake Apal S.P. and another

DATE OF JUDGMENT: 08/01/2003

BENCH:
N. SANTOSH HEGDE & B.P.  SINGH.

JUDGMENT:
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J U D G M E N T B.P. SINGH, J.

This appeal by special leave has been preferred by the complainant/informant against the judgment and order of the High Court of Judicature at Bombay in Criminal Appeal No.720 of 1992 whereby the High Court allowed the appeal preferred by respondent No.1 herein and acquitted him of the charges under sections 342 and 376 of the Indian Penal Code. The State has not preferred an appeal

against the impugned judgment.

The case of the prosecution is that the appellant was working as a domestic help in five flats in Vasant Vihar Society Building, Thane, Mumbai including the flat of respondent No.1 herein which was located on the second floor. She used to clean utensils and clothes in his flat for which she was paid Rs.80/- per month. Respondent No.1 resided in that flat with his wife and two children. On 17h April, 1992 his wife and children had left for the village. While going to the village his wife had given to the appellant duplicate keys of the flat and had requested her to clean utensils as also to cook food for her husband for which she promised her additional payment on her return. Usually respondent No.1 was away to his office on working days when the appellant went to work at about 11.30 a.m., but on Saturdays and Sundays respondent No. 1 used to remain in his flat during those hours. She used to open the flat with the keys given to her and did her work. On Sunday, 26th April, 1992, as usual, she went to the flat of respondent No.1 and started working. When she went into the bed-room to sweep the room, respondent No.1 switched off the light of the bed room and caught hold of her. She started shouting but no one came to her rescue. Thereafter respondent No.1 raped her despite her protests. The time then was about 12.30 p.m. because she could hear the siren which used to be blown at 12.30 p.m. After he raped her, he took the lungi and his under-wear to the bath room for washing. While he was doing so, the appellant also wore her underwear and went to the main door. The respondent No.1 came behind her and called her inside the flat, but she started crying loudly. Respondent No.1 requested her not to shout and create a scene and also begged her forgiveness. However, she came out telling him that she would be going to the police station. Thereafter she went to the ground floor and was sitting there for sometime. Thereafter she again went upstairs to the flat of respondent No.1. When she reached the second floor, she noticed that a neighbour residing in the adjacent flat had come out and their 1 year old daughter was playing with the chain of the door of the flat of respondent No.1. They asked her if respondent No.1 was at home and she replied that she would see whether he was at home or not. She thereafter opened the door with the keys which she had with her. She was asked by that neighbour as to what had happened and she replied by saying that she will tell everything after his (respondent No.1) wife returned. She entered the flat to find out whether respondent No.1 was there and found that he was not there. She then locked the door and went home. The time then was about 1.30 p.m. as stated in the first information report. She thereafter took her bath, washed her clothes and took two sleeping pills and went to sleep. She got up at 5.30 p.m. but did not report the incident to her husband when he returned home from duty, for fear that he would drive her out. That was also the reason why she did not go to the police station to lodge a complaint.

On the next day, she felt guilty and she narrated the incident to her sister-in-law Smt. Tarabai (not examined) and her brothers Baban (PW.3) and Subhash (not examined) and one Sh. Manohar Sawant (PW.4), a Shivsena leader. She narrated the incident to them at about 2.45 p.m. and then they came to the police station to lodge the complaint. It appears that the first information report was lodged at 3.00 p.m. on 27th April, 1992.

After investigation respondent No.1 was charged of offences under sections 342 and 376 IPC and section 3(1)(2) of the SC/ST (Prevention of Atrocities) Act, 1989. The prosecution examined the prosecutrix as PW.1. The neighbour of respondent No.1 whom she had met when she went to the flat

of respondent No.1 soon after the occurrence, was examined as PW.2 but he did not support the case of the prosecution and was declared hostile. Her brother Baban was examined as PW.3. Manohar Sawant was examined as PW.4. The prosecution also examined Constable Ganga Ram as PW.5 to support the case of the prosecution that respondent No.1 had come to the police chowky at 7.00 a.m. on 27th April, 1992 to enquire whether any occurrence had been reported. The trial court relying upon the testimony of the prosecutrix found the respondent No.1 guilty of the offence under section 342 IPC and sentenced him to suffer rigorous imprisonment for one month and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for fifteen days. He was also found guilty of the offence under Section 376 and sentenced to suffer rigorous imprisonment for two years and a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for three months. He was, however, acquitted of the charge under the provisions of the SC/ST (Prevention of Atrocities) Act, 1989.

The respondent No.1 preferred an appeal to the High Court which was allowed by the impugned judgment. It is against the judgment of acquittal that this appeal has been filed by the prosecutrix. The High Court did not find the evidence of the prosecutrix to be reliable. It held that the medical evidence on record did not support the case of the prosecution, since no semen or blood stains were found on the medical examination of the prosecutrix nor were any injuries found on her person which she may have suffered while resisting the respondent No.1. The chemical analyst report also did not find any blood or semen on the clothes of the accused and the clothes of the prosecutrix or even on the bed sheet. There was, therefore, no corroborative evidence to support the case of the prosecution, and finding the evidence of the prosecutrix to be unreliable, the High Court did not consider it safe to base a conviction on the un-corroborated testimony of the complainant/prosecutrix.

Learned counsel for the appellant has taken us through the evidence on record. We have carefully perused the evidence of the prosecutrix/appellant and we find ourselves in agreement with the view of the High Court that the testimony of the prosecutrix is not reliable. Having carefully scrutinized her evidence, we find that her testimony does not inspire confidence and her conduct appears to be highly unnatural.

The prosecutrix PW.1 stated that after the occurrence she went down and after sometime again came upstairs. She did so to handover the keys of the flat to someone. When she came to the door of the flat of respondent No.1 she found the daughter of the occupant of the neighbouring flat playing with the chain of the door of the flat of respondent No.1. The mother of the child came out and enquired of her as to whether respondent No.1 was in the flat. She replied by saying that she did not know whether he was in the flat. Then she gave her the keys of the flat and that woman opened the door. By that time the husband of that lady had also come. She told them that respondent No.1 was a rascal. They questioned her as to what had happened, but she told them that what had happened was not worth telling them, and that she will narrate the incident after the wife of respondent No.1 returned. They thereafter entered the flat but respondent No.1 was not there. She stated that she had decided to handover the keys of the flat to the accused and that is why she had gone to his flat again. When she did not find the accused there, she came back after locking the flat and went home at about 2.30 p.m. carrying the keys with her.

It would thus appear that for about 2 hours after the incident the prosecutrix was loitering in the same building. She met the neighbours of respondent No.1 who in fact questioned her about what had happened but in spite of that she did not inform them that respondent No.1 had raped her. There is no explanation offered as to why she did not report the matter to them, since they were the persons whom she met first soon after the incident.

PW.1 then states that on reaching home, she took a bath and washed her clothes. She took some medicines and went to sleep. When her husband came at 6.00 p.m. she did not disclose the incident to him for fear that he would drive her out. At night she cooked food for the family and then went to sleep. She got up next morning at about 6.00 a.m. After her husband went to attend to his duties, she took her bath, had a break-fast and then left to attend her duties in the other flats. She worked in all the four flats that morning. It is surprising that though she attended to her duties and worked in as many as four flats in the morning of 27th April, 1992, she did not report the matter to any of the residents of those flats. Later in the afternoon she went to the house of her brother Baban, PW.3 and disclosed the incident to his wife Smt. Tarabai. Tarabai has not been examined as a witness. Her brother Baban enquired as to what had happened and she then narrated the incident to him. Baban sent for his other brother (cousin) Subhash who works in the police force. She told them that she wanted to make a complaint against the accused. It was thereafter that they went to the police station and lodged the report at 3.00 p.m. on 27th April, 1992. So far as Manohar Sawant (PW.4) is concerned, in the first information report, the prosecutrix stated that she narrated the incident for the first time to her sister-in-law Tarabai, her brothers Subhash and Baban and their acquaintance Manohar Sawant. In the course of her deposition, however, she changed her version and stated that while going to the police station they met Manohar Sawant, PW.4, who was a Shivsena leader, and was known to them. But she has not stated that she narrated the incident to Manohar Sawant, PW.4. She was categoric in her assertion that she had told about the incident only to members of her family and to no outsider. She had not narrated the incident to the persons in whose flats she worked as maid-servant. At the same time she asserted that she was determined to lodge the complaint. She was aware that taking bath would cause disappearance of evidence of rape but still she took bath because she was feeling dirty.

So far as the first information report is concerned she stated that she and her brothers Baban and Subhash thought over the incident and thereafter went to lodge the complaint. She first stated that Subhash had written down the report, then she changed her version stating that Subhash had not written but had signed on the complaint. Again she said while in the house nothing was written, and Subhash had signed in the police chowky. Then again she corrected herself by saying, in police chowky no one signed but he had signed on the FIR at Vartaknagar Police Station. She was examined by the doctor at about 9.00 p.m. PW.1 admitted in the course of her deposition that while leaving the flat of respondent No.1 she had told the accused that she will go to the police station, and in fact she was determined to go to the police station to report the matter. However, she wanted to return the keys of the flat. That was the reason why she had again gone to the flat of respondent No.1 on the second floor. She had thought of giving those keys to the neighbours of the accused but actually she did not give those keys to any of the neighbours. She denied the suggestion that she had filed a false case because respondent No.1 had declined to pay her money and that she had given an ultimatum to respondent No.1 on 26th April, 1992 that if he did not pay by 27th April, 1992 she

would file a case against him.

The evidence of PW.2, occupant of the neighbouring flat does not support the case of the prosecution. This witness was declared hostile. According to this witness, the day of occurrence was a Sunday. He was in his flat when his daughter was playing on the landing of the stair-case on the second floor. He came out to pick up his daughter and noticed the prosecutrix entering the flat of respondent No.1. When he was about to lift his daughter he saw the complainant leaving the flat of the accused. Shortly thereafter he noticed that respondent No.1 was preparing to leave but he invited him to have a meal with him. Respondent No.1 came to his flat and enjoyed the meal with him. He did not notice the prosecutrix again on that day. He had not heard her shouts.

The evidence of PW.2 does not support the case of the prosecution. What is significant is the fact that even according to the prosecutrix, she had not told PW.2 about the incident that had taken place in the morning.

PW.3, Baban, brother of the informant has deposed to the effect that his sister/prosecutrix had come to his house on 27th April, 1992 and narrated the incident. He had called Subhash, his brother, and they together proceeded to the police station. On the way, they met Manohar Sawant, PW.4 and on enquiry made by him, he narrated the incident to him. Manohar Sawant, PW.4, also accompanied them to the police station.

PW.4 Manohar Sawant has deposed to the effect that he met the prosecutrix and her brothers while they were proceeding to the police station. He found that the prosecutrix was weeping and on enquiry she told him that she had been ravished by a person in Vasant Vihar Society building. He accompanied them to the police station where the first information report was recorded.

PW.5 Constable Ganga Ram was examined to prove that at about 7.00 a.m. on 27th April, 1992 respondent No.1 had come to the Gandhinagar Police Chowky to find out if any occurrence had been reported. He replied in the negative. On the same day at about 8.00 p.m. when he had come to the Vartak Nagar Police Station for roll-call he had noticed that accused had been arrested and that he was the same person who had come in the morning to the Gandhinagar Police Chowky. The evidence of this witness is of no significance and also appears to be untrue. He was confronted with his statement made before the police in the course of investigation, but this fact was not stated by him in his statement made before the police. It, therefore, appears that the only fact which was sought to be proved through this witness was not stated by him in his statement recorded in the course of investigation.

From the facts noticed above it appears to us that the evidence of PW.1 (prosecutrix) cannot be safely relied upon to base a conviction. The medical evidence or the report of the chemical analyzer do not support the case of the prosecution. That obviously is on account of the fact that the clothes had been washed and the appellant had taken bath twice after the occurrence. She was examined on the next day at about 8.00 p.m. In these circumstances if no incriminating evidence was found by the chemical analyst or the doctor, that is not surprising.

However, the evidence of the prosecutrix does not inspire confidence. The occurrence took place at about 12.30 p.m. on a Sunday. The High Court has observed that on a Sunday, if the prosecutrix had raised an alarm it would have been heard by many persons who would have immediately come to her rescue, particularly in such a society where the respondent No.1 resided. On a Sunday most of the residents are at home at about 12.30 p.m. and, therefore, it was surprising that no one heard the cries of the appellant when she was raped by respondent No.1. There after also the conduct of the prosecutrix is rather surprising. She was loitering in the locality till about 2.30 p.m. i.e. for about 2 hours after the incident. She again went to the flat of respondent No.1 on the second floor after having come down immediately after the occurrence. The reason given by her is that she wanted to return the keys to respondent No.1. At one stage she stated she had decided to handover the keys to one of the neighbours, but actually she did not handover the keys to anyone. When she went up to the flat of respondent No.1 she met PW.2 and his wife. But she did not tell them about the incident. She then came back home and went to sleep. In the evening when her husband came she did not report the incident to him. At night, as usual, she cooked food for the family and went to sleep. Next morning she came to the society and attended to her routine work. Admittedly she worked in four flats on that day but she did not report the matter to anyone. Later in the afternoon she went to the house of her brother. It is there for the first time that she reported the matter to her sister-in- law Smt. Tarabai, who has not been examined. Only thereafter they went to the police station and lodged the report at about 3.00 p.m. Respondent No.1 in his examination under Section 313 Cr. P.C. stated that the case had been fabricated only to extort money. He was a resident of the State of Karnataka and that is why PW.4 Manohar Sawant, a Shivsena leader, supported the prosecutrix. A false case had been lodged against him. On 25th April, 1992 the prosecutrix had asked him for some money but he refused to pay her saying that her salary had already been paid by his wife. On 26th April, 1992 she again came to him and again demanded money which he refused. She threatened him saying that if he did not give her money, he will have to face the consequences. In sum and substance, the defence of respondent No.1 appears to be that no such occurrence took place at all and a false case had been filed to extort money from respondent No.1 who was a government employee.

In cross-examination PW.1 (prosecutrix) asserted that she was determined to lodge a complaint. She also knew that taking bath would cause disappearance of the evidence of rape and yet she took a bath as she was feeling dirty. Thereafter she went to sleep.

On an overall appreciation of the evidence of the prosecutrix and her conduct we have come to the conclusion that PW.1 is not a reliable witness. We, therefore, concur with the view of the High Court that a conviction cannot be safely based upon the evidence of the prosecutrix alone. It is no doubt true that in law the conviction of an accused on the basis of the testimony of the prosecutrix alone is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality, and there is no other evidence on record which may even lend some assurance, short of corroboration that she is making a truthful statement. We, therefore, find no reason to disagree with the finding of the High Court in an appeal against acquittal. The view taken by the High Court is a possible, reasonable view of the evidence on record and, therefore, warrants no interference. This appeal is dismissed.