Ramdas And Others vs State Of Maharashtra on 7 November, 2006

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Author: B.P. Singh

Bench: B.P. Singh, Tarun Chatterjee

CASE NO.:
Appeal (crl.) 1156-1158 of 2005

PETITIONER:
Ramdas and others

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 07/11/2006

BENCH:
B.P. SINGH & TARUN CHATTERJEE

JUDGMENT:

J U D G M E N T B.P. Singh, J In these appeals by special leave the appellants Ramdas, Ashok and Madhukar have challenged their conviction under Section 376 read with Section 34 IPC and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. They were tried by the VIth Additional Sessions Judge, Beed in Special Case No. 69 of 1996 charged of having committed the aforesaid offences. The trial court by its judgment and order of July 30, 1998 found them guilty of the aforesaid offences and sentenced them to undergo imprisonment for life under Section 376/34 IPC but passed no separate sentence under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On appeal, the High Court by its impugned judgment and order of July 1, 2005 in Criminal Appeal Nos. 225, 229 and 251 of 1998 dismissed the appeals preferred by the appellants.

The occurrence giving rise to the present appeals is said to have occurred on January 10, 1996 at about 10.00 p.m. The case of the prosecutrix, as deposed to by her, is that she belongs to Pardhi caste. She was married 3 years earlier and was residing at her matrimonial home at village Ekurka. Her parents and other family members resided at village Kewad. She had come to village Kewad on January 9, 1996, a day previous to the date of occurrence. Her parents and brothers had gone to work in Jagdamba Sugar Factory in the Ahemadnagar district. She had come to her village Kewad to help them in harvesting of the pulse crop grown by her parents. She came to the village Kewad on Saturday and the incident took place on Sunday, the very next day. In village Kewad, she was residing in the house of her father alongwith her niece Sharda, aged about 10 years, who was the daughter of her sister Sindhubai, PW-3. On the date of the occurrence, after working in the fields, she had returned to her home and taken her dinner. At about 10.00 p.m. appellant Ramdas came to her house and asked her as to what she was doing. She replied that she had just taken her dinner whereupon appellant Ramdas asked her to come out with him. When she refused to do so, he dragged her outside the house and whistled twice. The remaining two appellants came on signal being given by him and they all dragged her to a distance of about 500 feet from her house. When she was being dragged out of her house, she raised alarm but no one came to her rescue. She was thereafter rapped by all the three appellants who threatened her not to report the matter to anyone otherwise she will be killed. After the occurrence she returned home at about midnight and then went to sleep. She admitted that her uncles were living in the adjacent houses but one of them was not in the village on the night of occurrence, while the other uncle Fakkad (PW-5) living in the adjacent house did not come to her rescue as he had been threatened by appellant Ramdas before she was dragged outside the house. Since it was midnight, she did not report the matter to anyone. Her uncle and aunt already knew about the incident.

Next morning she went to her sister, PW-3 at village Kelgaon who advised her to lodge a report. She along with PW-3 and two others, namely Yamunabai and Subbabai went to police station Kaij and reported the matter. However, the information given by her was neither recorded nor any action taken. She thereafter returned to village Kelgaon and on the next day she went to Jagdamba Sugar Factory and narrated the incident to her parents. On the day following, she came to Beed and narrated the incident to the Superintendent of Police. Thereafter she went to police station Beed in the night at about 10.00 p.m. along with her parents and lodged the report about the incident. She was then sent to the Civil Hospital, Beed for examination. The report lodged by her was shown to the witness who was examined as PW-2 and she admitted that the same bore her thumb mark. The contents of the report was read over to her and she certified them to be correct. The report was marked as Ext. 22. It is worth noticing at this stage that the report was lodged on January 18, 1996 i.e. 8 days after the occurrence.

A few facts stated in the first information report which were deviated from in her deposition may be noticed. In the first information report she had stated that she had come to village Kewad on January 6, 1996 i.e. 4 days before the occurrence whereas in the course of her deposition, she stated that she had come to the village only a day before the incident namely, on Saturday and the occurrence took place on Sunday. Another significant fact stated by her in her report was that when on the first occasion she went to the police station, the police did not record her statement and asked them to come on the following morning. They, therefore, went to village Salegaon, the village

of her mother's sister, namely Begambai. The incident of rape was narrated to Begambai. On the following day i.e. on January 12, 1996 her sister Sindhubai, PW-3, reported the incident to her father-in-law and on coming to know that such an occurrence had taken place, her father-in-law came to Salegaon. At about 11.00 a.m. she along with her father-in-law and sister Sindhubai came to the police station and narrated the incident to the Police Sub Inspector. She did not know what had been written but her thumb impression was taken. Since she was not referred to the hospital for medical examination and no attempt was made to arrest the accused, she on 17th January, 1996 went to her father, who was working in Jagdamba Sugar Factory and narrated the incident to him. In the course of her deposition, the prosecutrix (PW-2) has not stated these facts. Nor has the prosecution examined her father-in-law, Smt. Yanuna Bai, Subbabai and Begambai, who were said to have accompanied her to the police station or to whom the matter was reported. What is worth noticing is that, according to the first information report, she along with her father-in-law and others had gone to the police station and had lodged a report. The exact date is not mentioned, but from the narration of facts it appears that such a report may have been lodged either on January 13, 1996 or January 14, 1996. According to the FIR the earlier report was recorded and she had put her thumb mark on it. The said report has not been produced though PSI Laxman, who was examined as PW-6, has admitted in the course of his deposition that earlier a report had been lodged by the prosecutrix but the same related to a non-cognizable offence. That report was neither produced nor exhibited at the trial. The factual statements which find place in the first information report but not deposed to by the informant or any other witness cannot be treated as evidence in the case.

From the suggestions put to the prosecutrix, the defence of the appellants appeared to be that they had been falsely implicated on account of enmity and bad blood between the father of the prosecutrix and the appellants. In her cross-examination the prosecutrix admitted that adjoining the field of her father is the field of appellants Ramdas and Ashok but it was not correct to suggest that there used to be frequent quarrels between his father and the aforesaid appellants. She did not know whether any litigation was pending in respect of the land between her father and accused No.3. She denied the suggestion that she had got a false report lodged against the appellants in collusion with her father. She also denied the suggestion that she was motivated to make such allegations since the Pardhi community has an Association which gives a sum of Rs.40,000/- to the victims of such offences. She denied the suggestion that to teach the appellants a lesson, who had been obstructing the possession of her father, a false report was made. She also stated that the police at Kaij police station had obtained her thumb impression on paper when she went to report about the incident. She also stated that she had gone to Kaij police station twice before lodging the first information report. According to the first information report, the prosecutrix had gone to her father on January 17, 1996 and had gone to Beed on January 18, 1996 to meet the Superintendent of Police.

Sindhubai, the elder sister of the prosecutrix was examined as PW-3. She stated that prosecutrix had come to her in the morning and narrated the incident to her. They thereafter went to police station Kaij but no case was registered by the police nor was the statement of the prosecutrix recorded by them. She also denied that the appellants have been falsely implicated.

PW-5, Fakkad, uncle of the prosecutrix living in the adjacent house in the village had a somewhat different version to narrate regarding the fact that preceded the incident. He stated that in the

evening his niece (Sharda aged about 10 years) came running to him and complained that someone was concealing himself near their house. He immediately went to verify the fact reported to him but despite search he found no one concealing himself nearby. When he was returning to his house he saw the appellant Ramdas standing behind his house. When he enquired of him as to what he was doing there, he gave no reply but went to house of the prosecutrix and in abusive language asked her to come out. Ramdas dragged her out of the house and took her towards the Pimpri field. He attempted to rescue the prosecutrix but he was threatened by the appellant. He also stated that appellant Ramdas gave two whistles and two persons came towards him but he had not seen them. Next morning the prosecutrix came to him and narrated to him the incident. He did not enquire of the prosecutrix as to how many accused were involved, nor did she tell him how many persons were involved. This witness further stated that on the fourth day, he went with the prosecutrix to Police Station Kaij to lodge the report. He also stated that he had not informed either the police or the sarpanch of the village regarding the occurrence. The explanation given by him for not doing so was that the prosecutrix had herself asked him not to do so.

PSI Laxman Borade was examined as PW-6. He is the police officer who recorded the first information report at Police Station Kaij when the report from Beed was sent to that police station. He further admitted that earlier a report had been lodged by the prosecutrix, PW-2 but that related to a non-cognizable offence. The said report had not been placed on record and was not produced at the trial.

PW-4, the Medical Officer who examined the prosecutrix on the 18th January, 1996 gave her opinion on the basis of clinical findings that there was no evidence of rape.

On the basis of the evidence on record, the trial court, as earlier noticed, found the appellants guilty of the offences under Section 376/34 IPC and also under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. As earlier noticed no separate sentence was passed under the latter Act. The High Court has dismissed the appeals preferred by the appellants.

At the outset we may observe that there is no evidence whatsoever to prove the commission of offence under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The mere fact that the victim happened to be a girl belonging to a scheduled caste does not attract the provisions of the Act. Apart from the fact that the prosecutrix belongs to the Pardhi community, there is no other evidence on record to prove any offence under the said enactment. The High Court has also not noticed any evidence to support the charge under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and was perhaps persuaded to affirm the conviction on the basis that the prsecutrix belongs to a scheduled caste community. The conviction of the appellants under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 must, therefore, be set aside.

It was submitted before us that the case against the appellants is a false case and they were implicated only to take revenge since there were disputes between the father of the prosecutrix on the one hand and the appellants on the other. It was argued that evidence of prosecutrix, PW-2, and her uncle PW-5 are not consistent. In any event the evidence of PW-5 must be discarded as

unworthy of belief. Even the prosecturix has not supported the version given by PW-5. It was also urged before us that there is considerable delay in the lodging of the first information report while the earlier report lodged by the prosecutrix has been withheld from the court. Having regard to the facts and circumstances of the case the appellants deserve acquittal.

On the other hand counsel for the State submitted that though there is a delay in lodging the first information report but that is of no consequence in cases of this nature and, therefore, that fact should be kept out of consideration. He submitted that the evidence of PW-2 is reliable and convincing and the conviction of the appellants can be based solely on her testimony. He candidly submitted that the evidence of PW-5 does not inspire confidence. However, there was no ground to interfere with the judgment and order of the High Court convicting the accused of the offence punishable under Section 376/34 IPC.

The High Court while considering the question of delay observed that there was a delay of about 8 days in lodging the report for which the prosecutrix had herself offered an explanation which was corroborated by the recitals in the first information report Ext.22. The High Court placed reliance on the deposition of the prosecutrix that she had gone to the police station on the very next day but no case was recorded on the basis of the information given to the police. This, according to the High Court, was a sufficient explanation. The High Court noticed that though it appeared from her deposition that she had approached the Superintendent of Police within 2-3 days of the incident, which was factually incorrect since the report was lodged on January 18, 1996, that was only a slight discrepancy which did not in any way detract from her statement that she had immediately gone to the concerned police station but the police refused to take down her report. The High Court has also noticed the evidence of PW-6 PSI Laxman Borade who admitted in his cross-examination that the victim had come to the police station to lodge a report and that a non-cognizable offence had been registered on the basis of her statement. The High Court was of the view that this corroborated the statement of the prosecutrix, PW-2 regarding her coming to the police station, though no offence was registered. Surprisingly the High Court observed that PW-6 PSI Laxman Borade was not cross-examined on the question as to whether the complaint of the prosecutrix was reduced into writing. It went on to observe that the police for some inexplicable reason, which demonstrated their insensitive approach, had declined to take any action. The High Court, therefore, concluded that the delay, if any, in lodging the report was satisfactorily explained. It further held that assuming that there was some dispute between the father of the appellant and the family of the appellants, that was hardly a ground for inferring that on account of strained relations, the appellants have been falsely implicated. The High Court also noticed the slight variance in the testimony of PW-2, prosecutrix and her uncle PW-5, Fakkad. It concluded that PW-5 had given an exaggerated version and the variance was not of such a magnitude as to discredit the evidence of the prosecutrix. The testimony of PW-2 inspired confidence and was worthy of credence. The High Court confirmed the conviction of the appellants on the basis of her testimony.

Learned counsel for the appellants submitted before us that PW-2, prosecutrix cannot be relied upon. Her deposition in court is at variance with the report lodged by her, though belatedly. PW- 5 is a thoroughly unreliable witness. There was considerable delay in lodging the first information report for which no explanation has been furnished by the prosecution. The conduct of the witnesses

in keeping quiet and not reporting the matter immediately, atleast to the villagers, is most unnatural. Though a report was lodged at the police station regarding a non cognizable offence, that report was not produced before the court. In the first information report there was a reference to this report but in her deposition before the court, PW-2 has completely concealed this fact from the court. These features of the case establish that the case of the prosecution is not true and in all probability at the instance of her father, and taking advantage of some other minor incident, the appellants have been falsely implicated on account of enmity.

On the other hand learned counsel for the State submitted that the evidence of PW-2 can be implicitly relied upon. Delay in lodging the report in such a case is immaterial. The improvements made by the prosecutrix were not such as to discredit her testimony. He, therefore, supported the conclusion reached by the High Court and sought dismissal of the appeals.

Before dealing with the evidence of the prosecutrix and the question of delay in lodging the first information report, we shall first consider the evidence of PW-5. In his deposition before the court this witness stated that on the earlier night sometime before the occurrence, Sharda, the niece of the prosecutrix came running to him and told him that there was some one concealing himself behind their house. He went in search of that person but he found no one there. While returning he saw accused No.1 Ramdas standing behind his house, who on being questioned did not reply but went to the house of the prosecutrix and using abusive language caught hold of her and took her to Pimpri field. He attempted to rescue the prosecutrix but he was threatened by the accused. He further stated that two more persons had joined appellant Ramdas after he signalled to them by whistling twice, but he did not see them. He also asserted that on the fourth day after the occurrence he had accompanied the prosecutrix to Kaij police station for lodging the report. In the early hours of the morning the prosecutrix had come to him and stold him that she had been raped by appellant Ramdas. He did not enquire as to how many persons were involved nor did she tell him about the number of persons who raped her.

It is worth noticing that the prosecutrix has not even referred to the presence of PW-5 in her first information report nor about his attempt to rescue her. The only reference to him is to the effect that he had earlier been threatened by appellant Ramdas. Even in the course of her deposition, PW-2, prosecutrix, did not say that her uncle PW-5 had intervened. The prosecutrix has also not stated that 3 or 4 days later PW-5 had accompanied her to the police station. It is not even the prosecution case that minor Sharda had gone to inform him earlier in the night about some one concealing himself behind their house. Thus almost every factual statement made by this witness appears to be false. Moreover his conduct was rather unnatural. Assuming that he had been threatened by appellant Ramdas, it is too much to believe that after the appellants took away the prosecutrix from her house, he could not atleast inform the villagers and seek their help. In fact he does not claim to have even narrated the incident to anyone and kept himself confined in his house. Though he claims that on the following morning the prosecutrix came and informed him about the occurrence, the prosecutrix herself in her evidence has not said so. He gave a rather unconvincing explanation as to why he did not inform anyone about the occurrence. His explanation was that he did not do so because the prosecutrix had asked him not to do so.

We have no doubt that PW-5 is a thoroughly discredited witness and cannot be relied upon. He appears to be a wholly untruthful witness and was introduced by the prosecution only to buttress the case of the prosecution. We, therefore, reject his evidence outright.

On the question of delay in lodging the first information report, the evidence is equally unconvincing. The occurrence took place in the night intervening 9th and 10th January, 1996. The first information report Ext. 22 was recorded on the 18th of January, 1996. There is apparently a delay of about 8 days in lodging the first information report. In the first information report a somewhat different version has been given with a view to explain the delay. It was stated that when on the 11th of January, 1996 the police did not register a case, and the father-in-law of the prosecutrix came to know about the fact, he accompanied the prosecutrix and went to the police station and lodged a report. However, since she was not sent for medical examination and the police did not take any action to arrest the accused, she went to her father, who was working in the Jagdamba Sugar Factory on 17th January, 1996. On the next day i.e. on 18th January, 1996 they came to Beed and lodged the complaint with the Superintendent of Police and thereafter, on the information given by her, a case was registered against the appellants. This story has been given a go bye by the prosecutrix in the course of her deposition. Her evidence before the court was to the effect that she went to her sister Sindhubai in the morning and reported the matter to her. This happened on 11th January, 1996. She alongwith Sindhubai, PW-3, went to police station Kaij but the police did not register a case on the basis of the information given by her. On the next day she went to her father, who was then at the Jagdamba Sugar Factory in Ahmadnagar District. She narrated the entire incident to him on that day. On the next day they went to Beed and complained to the Superintendent of Police whereafter they were directed to go to the police station and lodge the report which they did on 18th January, 1996. If her evidence is carefully analysed the following facts would emerge. The first attempt to lodge the report was made on the 11th January, 1996. Thereafter the prosecutrix went to her father-in-law on the 12th of January, 1996. On the next day i.e. on 13th January, 1996 they went to the Superintendent of Police at Beed and made a complaint. Thereafter they came to police station Kaij on the same day and lodged the report. If we accept the statement of PW-2, the report should have been lodged on 13th or 14th January, 1996. There is no explanation as to how it was lodged 4 days later.

Another aspect of the matter which deserves notice is the fact that PW-6 Laxman Borade PSI Kaij admitted in his deposition that a report had in fact been lodged by the prosecutrix but that related to a non cognizable offence. No doubt the prosecution has not placed before the court the aforesaid report which perhaps contained the earliest version of the occurrence. Though in her first information report the prosecutrix admitted that on the second attempt when she went with her father-in-law to lodge the report, a report was recorded and she gave her thumb impression on the said report. In the course of her deposition, however, she has omitted these facts. However, we have the evidence of PW-6 to the effect that an earlier report was in fact recorded at the police station on the information given by the prosecutrix but that related to a non cognizable offence.

It would thus appear that there is no reasonable explanation forthcoming from the prosecution explaining the delay in lodging the report with the police, which was in fact lodged 8 days later. Though in her first information report, the prosecutrix mentioned about her earlier report being

recorded, she did not say so in her deposition, but that fact has come in the deposition of PW-6 PSI Laxman Borade.

It is no doubt true that the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity. If the evidence of the prosecutrix is of such quality that may be sufficient to sustain an order of conviction solely on the basis of her testimony. In the instant case we do not find her evidence to be of such quality.

Counsel for the State submitted that the delay in lodging the first information report in such cases is immaterial. The proposition is too broadly stated to merit acceptance. It is no doubt true that mere delay in lodging the first information report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the court must take notice. This fact has to be considered in the light of other facts and circumstances of the case, and in a given case the court may be satisfied that the delay in lodging the report has been sufficiently explained. In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay. There are cases where much time is consumed in taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report. It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them. In the case of sexual offences there is another consideration which may weigh in the mind of the court i.e. the initial hesitation of the victim to report the matter to the police which may affect her family life and family's reputation. Very often in such cases only after considerable persuasion the prosecutrix may be persuaded to disclose the true facts. There are also cases where the victim may choose to suffer the ignominy rather than to disclose the true facts which may cast a stigma on her for the rest of her life. These are case where the initial hesitation of the prosecutrix to disclose the true facts may provide a good explanation for the delay in lodging the report. In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No strait jacket formula can be evolved in such matters, and each case must rest on its own facts. It is settled law that however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. (See AIR 1956 SC 216 : Pandurang and others vs. State of Hyderabad). Thus mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of

appreciation of evidence by the court of fact.

In the instant case there are two eye witnesses who have been examined to prove the case of the prosecution. We have rejected outright the evidence of PW-5. We have also critically scrutinized the evidence of the prosecutrix, PW-2. She does not appear to us to be a witness of sterling quality on whose sole testimony a conviction can be sustained. She has tried to conceal facts from the court which were relevant by not deposing about the earlier first information report lodged by her, which is proved to have been recorded at the police station. She has deviated from the case narrated in the first information report solely with a view to avoid the burden of explaining for the earlier report made by her relating to a non cognizable offence. Her evidence on the question of delay in lodging the report is unsatisfactory and if her deposition is taken as it is, the inordinate delay in lodging the report remains unexplained. Considered in the light of an earlier report made by her in relation to a non cognizable offence, the second report lodged by her after a few days raises suspicion as to its truthfulness.

Having carefully scrutinized the evidence on record, we are not satisfied that the prosecution has proved its case beyond reasonable doubt. We are left with a strong suspicion that the case put forward by the prosecution may not be true. In any event the appellants are entitled to the benefit of doubt.

Accordingly we allow these appeals and set aside the conviction and sentence of the appellants herein and direct that they be released forthwith, if not required in any other case.