

Bombay High Court
Amarkant Shalikram Samrit vs State Of ... on 7 July, 2017
Bench: V.M. Deshpande
Judgment

apeal211.01

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.211 OF 2001

Amarkant s/o Shalikram Samrit
Aged about 30 years,
R/o Bela, Tahsil and District Bhandara. Appellant.

:: VERSUS ::

State of Maharashtra,
Through its Police Station Officer,
Police Station, Bhandara. Respondent.

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Shri C.R. Thakur, Counsel for the appellant.
Ms T.H. Udeshi, Addl.P.P. for the respondent/State.

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CORAM : V.M. DESHPANDE, J.

DATE : JULY 7, 2017.

ORAL JUDGMENT

1. The appellant is before this Court in view of his conviction by learned Sessions Judge, Bhandara in Sessions Trial No.98 of 2000 dated 26.4.2001 for the offences punishable under Sections 376, 170, 419, and 506 of the Indian Penal Code.

.....2/-

Judgment apeal211.01 For the offence punishable under Section 376 of the Indian Penal Code, the appellant is sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.3,000/-, and in default of payment of fine amount to suffer further rigorous imprisonment for 6 months.

For the offence punishable under Section 170 of the Indian Penal Code, the appellant is sentenced to suffer rigorous imprisonment for 1 year.

For the offence punishable under Section 419 of the Indian Penal Code, the appellant is sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.1,000/-, and in default of payment of fine amount to suffer further rigorous imprisonment of 1 month.

Insofar as for the offence punishable Section 506 of the Indian Penal Code is concerned, no separate sentence was given to the appellant.

.....3/-

Judgment apeal211.01

2. I have heard learned counsel Shri C.R. Thakur for the appellant and learned Additional Public Prosecutor Ms T.H. Udeshi for the respondent/State. They took me through in detail notes of evidence and other proved documents on record.

3. The appellant was charged that in between 21.6.2000 to 27.6.2000 he pretended that he is a public servant being C.I.D. police and in such assumed character committed rape on the prosecutrix without her consent and thus committed an offence punishable under Section 170 of the Indian Penal Code. He was also charged that on 23.6.2000 and 26.6.2000 at Yeshwant Lodge, Tumsar and in the house of one Tanu alias Tongare Bisen at Baba Ashram Ramtek committed sexual intercourse with the prosecutrix without her consent and thus committed an offence punishable under Section 376 of the Indian Penal Code. He was also charged for the offence4/-

Judgment apeal211.01 punishable under Section 419 of the Indian Penal Code that he committed rape pretending that he is the C.I.D. officer.

4. The first information report is at Exhibit 32. The printed first information report is at Exhibit 33.

5. According to the prosecution, the prosecutrix was married to one Vishwanath. It was her love marriage. Said love marriage was not approved by her parents. After marriage, she went to her matrimonial house. On next day of her marriage, her husband left the house without informing anybody. The prosecutrix made a wait for 8 days. However, her husband failed to return. Her parents did not allow her to stay with them. Therefore, she stayed for 2 days with one Mandabai, who is her maternal aunt. Thereafter, she started residing at Salebhata with her grandmother Barubai Kohale. On 12.3.2000 a missing report was lodged by her in respect of her husband in Lakhani Police Station. Thereafter, she gave a5/-

Judgment apeal211.01 report to the Apatgrasta Women Cell at Bhandara in the month of April. In that context, she used to visit at Bhandara. When on 22.6.2000 she had been to the Women's Cell at Bhandara, one person by name Samrit was sitting in whose presence she revealed her name and address to the office.

6. As per the first information report, on 23.6.2000 appellant Samrit came to Salebhata. That time, prosecutrix was residing with PW7 Kunda w/o Anandrao Raut, her sister at Sakoli. There, appellant

Samrit along with brother-in-law of the prosecutrix Ghyanshyam Dharmaji Bhonde came. There, appellant Samrit disclosed that he is a C.I.D. Police and inquiry regarding her husband is entrusted to him and, thereafter, she was taken by him on his scooter. Appellant Samrit kept his scooter at Bhandara. Thereafter, by bus they went to Sihora. Then in evening, they came to Tumsar and resided at Yeshwant Lodge. A room in said Lodge was booked6/-

Judgment appeal 211.01 stating name of prosecutrix as Smt. Samrit. In the night, appellant Samrit had sexual intercourse with her. Then on next day i.e. 24.6.2000, they left the Lodge. She was dropped at Bhandara Bus Station. The prosecutrix came to the house of PW7 Kunda Raut at Sakoli. Then on 26.6.2000, appellant Samrit again came and took the prosecutrix with him on the pretext to go to Sihora. Thereafter, she was taken to Ramtek in the house of one Bowa. There also, the physical contacts were established with her against her wishes.

7. With this first information report, criminal law was set into motion.

8. PW6 Dr. Mrs. Chhaya Ravindra Kapgate examined the prosecutrix. She has proved medical certificate of the prosecutrix which is on record at Exhibit 24. The evidence of said doctor and the report clearly show that there were no external injuries on the body of the prosecutrix. The doctor7/-

Judgment appeal 211.01 also noticed that there were no injuries on her private parts. The doctor also noticed that the prosecutrix was habituated to sex.

9. According to PW10 prosecutrix, on 22.6.2000 she had been to the Women's Cell at Bhandara in connection with enquiry of her husband. There, she was accompanied by PW1 Omkar Bhonde.

As per the evidences of PW1 Omkar and the prosecutrix, in the said Cell appellant accused was sitting there and he told Omkar that he is a C.I.D. Police Officer and he showed one card. It was also informed him that the matter about enquiry of missing husband is entrusted to him. As per the evidences of PW1 Omkar and the prosecutrix, the appellant introduced for the first time to them as an Officer.

10. The aforesaid important fact is totally absent from the first information report of the prosecutrix. Further, from8/-

Judgment appeal 211.01 the evidence of PW1 Omkar, it is clear that when statement of the prosecutrix was recorded in his presence in the police station. PW1 Omkar did not state from the witness box about sexual assault on prosecutrix.

Further, even as per the prosecution case, the appellant for the first time disclosed that he is a C.I.D. Officer in the Women's Cell at Bhandara. Not only that, it is the evidence of PW1 Omkar and PW10 prosecutrix that time other officers were present. However, no Officer from the said Cell is examined by the prosecution to prove the fact of presence of the appellant on 22.6.2000 in the Cell.

Also, even after arrest of the appellant, no attempt was made by the prosecuting agency to recover the identity card, which according to the prosecution and other prosecuting witnesses the appellant showed to them to make them believe that he is a police officer.

.....9/-

Judgment apeal211.01

11. From the evidences of PW3 Shailesh Yeshwantrao Sakharwade, PW4 Yeshwant Dinaji Sakharwade, who is father of PW3 Shailesh, and Lodge Register Exhibit 18, it is clear that in the night of 23.6.2000 the appellant had stayed with the prosecutrix in the said Lodge.

12. According to the prosecutrix, in the Lodge the appellant committed sexual intercourse with her without her consent. However, her evidence is totally silent that he committed rape on her on the pretext that he being a Police Officer he will try to help the prosecutrix in searching her husband.

13. The evidences of PW10 prosecutrix, PW7 Kunda Raut, and PW1 Omkar Bhonde are totally silent that when the prosecutrix had occasions to meet them on 3 different dates. She did not disclose to them that either under the pretext that appellant Samrit is a Police Officer or under the threats given

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Judgment apeal211.01 by him or without her consent the appellant has committed sexual intercourse with her.

14. The prosecutrix version is not at all corroborated by any of the witnesses. If the prosecutrix evidence does not inspire confidence, the Court should look for corroborative evidence. In the present case, looking to the conduct on the part of the prosecutrix that she was having an opportunity to disclose the fact of sexual assault on her, she chose not to disclose to anybody.

15. In that view of the matter, the prosecution has not proved its case beyond reasonable doubt warranting me to pass the following order:

O R D E R

i) The criminal appeal is allowed.

ii) Judgment and order of conviction, passed by11/-

Judgment apeal211.01 learned Sessions Judge, Bhandara, in Sessions Trial No.98 of 2000 dated 26.4.2001, is set aside.

iii) The appellant is acquitted of the offences punishable under Sections 376, 170, 419, and 506 of the Indian Penal Code.

iv) Bail bonds of the appellant stand cancelled.

JUDGE !! BRW !!/-