

Bombay High Court

Charandas S/O Hansraj Mohod And ... vs State Of ... on 9 November, 2017

Bench: R. B. Deo

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apeal557.02

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 557 OF 2002

1) Charandas s/o Hansraj Mohod,
Aged about 25 years,

2) Ramdas s/o Namdeo Bhise,
Aged about 40 years,

Both resident of Taroda, Tahsil-
Karanja (Gh), District Wardha.

.... APPELLANT

VERSUS

The State of Maharashtra,
through P.S.O. Karanja (Gh),
District Wardha.

.... RESPONDENT

Shri R.M. Daga, Advocate for the appellant,
Shri N.B. Jawade, Additional Public Prosecutor for the respondent.

CORAM : ROHIT B. DEO, J.

DATE OF RESERVING THE JUDGMENT

: 29-09-2017

DATE OF PRONOUNCING THE JUDGMENT

: 09-11-2017

JUDGMENT :

The appellants seek to assail the judgment and order dated 07-10-2002 in Special Case 91/1997 delivered by the learned Special 2 appeal557.02 Judge & 3rd Ad hoc Assistant Sessions Judge, Wardha, by and under which the appellants are convicted for offence punishable under Section

376(2)(g) of the Indian Penal Code and are sentenced to suffer rigorous imprisonment for five years and to payment of fine of Rs.2,000/-. The appellants are, however, acquitted of the offence punishable under Section 3(1)(x)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act").

2. Heard Shri R.M. Daga, learned Counsel for the appellants and Shri N.B. Jawade, learned Additional Public Prosecutor for the respondent/State.

3. Shri R.M. Daga, learned Counsel for the appellants (hereinafter referred to as the "accused") submits that the judgment of conviction is against the weight of evidence on record. The evidence of the prosecutrix and the evidence of Punjab Khandare (P.W.3) is at stark variance with each other. The version of the prosecutrix is falsified by the medical evidence, is the submission.

Per contra, Shri N.B. Jawade, learned Additional Public Prosecutor for the respondent would submit that the evidence of the 3 appeal557.02 prosecutrix is implicitly trustworthy and confidence inspiring. The absence of injuries on the person including the genitalia of the prosecutrix is not decisive. In view of the evidence of the prosecutrix, which is cogent and reliable, the absence of injuries would be of scant significance, is the submission.

4. The prosecution case, as is unfolded, during the course of the trial, is that the prosecutrix was a student of Adiwasia Ashram School. In Diwali vacation, she was visiting her grandfather Punjabrao, a resident of Taroda. The incident occurred on 09-11-1997. On the fateful day, the prosecutrix went to sleep at 9-00 p.m. or thereabout alongwith one Sarla in the room of the house. Her grandfather Punjabrao and grandmother were sleeping in the verandah of the house. Between 10-00 to 10-30 p.m. the prosecutrix felt uneasiness in the abdomen and went to answer the nature's call. She went towards the road, after placing the water container on the ground when she was about to remove the underwear, two persons accosted her from behind, one of them pressed her mouth and the other caught her hands, both bodily lifted and took the prosecutrix to the adjacent field. One person pressed her mouth by his right hand and held her both hands with the left hand. The other person untied her Salwar, 4 appeal557.02 removed her underwear and after lifting the salwar upwards, committed forcible sexual intercourse. The other person had gagged her mouth while she was being ravished. No soon did the hand was removed from the mouth, the prosecutrix cried aloud. Her grandfather Punjab and two to three others rushed to the spot. Both the persons, on seeing Punjabrao and others rushing to the spot, fled. The prosecutrix was in a position to identify them by face.

The prosecutrix and her grandfather Punjabrao went to Karanja Police Station. The prosecutrix lodged oral report which was reduced into writing. The prosecutrix was referred for medical examination and the Medical Officer, Primary Health Center, Karanja examined the prosecutrix and issued a medico legal certificate. On the basis of the oral report and medical certificate, offence under Section 376(2)(g) of the Indian Penal Code and 3(1)(x)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act was registered against the accused.

5. Police Sub-Inspector Yadav Rathod investigated the crime. He prepared the spot panchanama, arrested both the accused and referred them for medical examination. The accused were medically examined and the medico legal certificates were obtained. The 5 appeal557.02 investigating officer seized the clothes from the prosecutrix and both the accused. Blood sample, vaginal swab and pubic hair of the prosecutrix which were collected by the Medical Officer were seized by the investigating officer and a seizure memo was drawn in the presence of the panch witnesses. The statements of witnesses were recorded, the seized articles were sent to the Chemical Analyzer, Nagpur. The completion of investigation led to submission of the charge-sheet in the Court of Judicial Magistrate First Class, Karanja who committed the case to the Sessions Court.

6. The learned Special Judge framed charge at Exhibit C-21, the accused abjured guilt and claimed to be tried. The defence, as is discernible from the trend of the cross-examination and the statement recorded under Section 313 of the Criminal Procedure Code is of total denial and false implication. The accused stated that they caught the prosecutrix and her grandfather Punjabrao red handed while committing theft in the field. The accused did not enter the witness box. However, the accused examined one Hemraj Mohod as the sole defence witness.

7. The prosecutrix, who is examined as P.W.1 has deposed 6 appeal557.02 that when she was intending to answer the nature's call by the side of the road, both the accused came from behind, one of the accused pressed her mouth, both the accused bodily lifted and carried the prosecutrix to a field. The accused Charan pressed her breast and after untying the salwar committed forcible sexual intercourse. The complainant has further deposed that when the other accused removed his hand from her mouth, she cried out and when her grandfather Punjabrao rushed to the spot, both the accused fled. The prosecutrix states that she lodged oral report at Exhibit 30 and proves the printed first information report Exhibit 32.

8. In the cross-examination, the prosecutrix states that she was taken about 200 feet inside the field belonging to Dhanraj Mohod, soyabean was harvested and kept in the said field. It would be relevant to notice the following portion of the cross-examination of the prosecutrix :

"Such incident occurred for the first time in my life. Therefore, there was much bleeding. I was, therefore, not in a position to walk properly. Punjabrao rushed on the spot after about 5-6 minutes of my cry."

7 appeal557.02 The prosecutrix states that the incident was narrated to the police by Punjabrao. She denies the suggestion that she and Punjabrao had been to the field to remove the soyabean crop. She further denies the suggestion that when caught red handed, she and Punjabrao fled from the field.

9. Be it noted, that in the oral report Exhibit 30, the prosecutrix states that the accused were identified by her grandfather Punjabrao who disclosed the names of the accused Ramu Bhise and Charan Mohod.

10. Punjabrao, the grandfather of the prosecutrix is examined as P.W.3. He states that on hearing the shouts of the prosecutrix, he rushed to the spot and saw both the accused running away. In the examination-in-chief, he deposes thus :

"I brought Kamla to the home. Kamla told me that accused Charan committee rape on her. She also told me that accused no.2 had pressed her mouth."

In the cross-examination, Punjabrao admits that he is convicted of theft. He, however, denies that another prosecution is pending in 8 apeal557.02 which he is alleged to have stolen a pot belonging to one Deshmukh. He denies the suggestion that prosecutions are pending against him for gambling and prohibition related offences. In the cross-examination, Punjabrao states that he rushed to the spot alongwith his wife. He denies that the spot of incident is 200 feet inside the field of Dhanraj Mohod which denial is inconsistent with the version of the prosecutrix. He denies the suggestion that in the night of the incident he and the prosecutrix had gone to the field of Dhanraj Mohod to steal soyabean crop. He further denies the suggestion that both the accused saw him and the prosecutrix while committing theft of the soyabean crop. Punjabrao denies the suggestion that while lodging the report, he stated the names of both the accused.

11. Be it noted, that the versions of P.W.1 prosecutrix and P.W.3 Punjabrao as regards the identification of the accused are inconsistent and cannot be reconciled. P.W.3 denies that he stated the names of the accused to the police. The prosecutrix on the other hand claims that the accused were identified by Punjabrao who revealed their names to the prosecutrix. The prosecutrix further states that the incident was narrated to the police by P.W.3 Punjabrao.

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12. Be it noted, that although cited as a witness in the charge- sheet, the wife of Punjabrao, i.e. the grandmother of the prosecutrix, who according to Punjabrao was with him when he rushed to the field in response to the cry for help, is not examined for the reasons best known to the prosecution. While it is true that evidence is to be weighed and not counted, and it is the absolute discretion of the prosecution to examine such witnesses as the prosecution deems fit, the failure of the prosecution to examine the wife of Punjabrao or any other witness is of some significance in view of the defence of the accused that the prosecutrix and Punjabrao were attempting to steal the soyabean crop and since the accused caught them red handed, the prosecutrix and Punjabrao ventured to falsely implicate the accused.

13. P.W.4 Sudhakar Kodape who was examined as a witness to the accused running away, did not support the prosecution. Nothing is elicited in the cross-examination of P.W.4 by the learned Additional Public Prosecutor, to assist the prosecution. The medico legal certificate dated 10-11-1997 of the prosecutrix is exhibited on admission. The medico legal certificate records that no signs of struggle were seen nor was any lacerated wound or abrasion noticed on the person of the prosecutrix. No bleeding was noticed. Hymen 10 apeal557.02 was ruptured and the opinion recorded is that the prosecutrix is accustomed to coitus. No injury is noticed on the genitalia or any other part of the body of the prosecutrix. The medico legal certificates as regards the examination of

the accused Charandas Mohod and Ramdas Bhise are at Exhibit 51 and Exhibit 52 respectively. The medical examination does not reveal any injury on the genitalia organ of the accused.

14. The learned Additional Public Prosecutor would submit that the conviction can be based on the sole uncorroborated testimony of the prosecutrix. The Court is not obligated to seek corroboration and absence of injuries is not conclusive and forcible sexual intercourse is not ruled out merely because the person including the genitalia and the prosecutrix does not have any injury. The submission, as a proposition, is unexceptionable. The legal position is too well settled and a lengthy or elaborate discussion is not really necessary. However, while the Court is not obligated to seek corroboration from medical evidence, in the factual matrix, I am not persuaded to hold that the evidence of the prosecutrix is implicitly reliable. The versions of the prosecutrix and her grandfather are inconsistent. The grandfather of the prosecutrix Punjabrao admits to have been convicted for theft. It is 11 appeal 557.02 true that the evidence of Punjabrao cannot be disbelieved only because of the criminal record, but then the credentials of Punjabrao assume some significance in view of the defence of the accused that they saw the prosecutrix and Punjabrao stealing the soyabean crop and the false implication is a retaliatory act.

15. The inconsistencies in the evidence of P.W.1 prosecutrix and P.W.3 Punjabrao, the failure of the prosecution to examine the wife of Punjabrao or any other witness amongst the villagers who accompanied Punjabrao according to the prosecutrix, the failure of P.W.4 to support the prosecution, the medical evidence, the fact that the evidence of the prosecutrix that she was subjected to sexual intercourse for the first time and was bleeding, is falsified by the medical evidence, are circumstances which cumulatively would suggest that the benefit of doubt must be extended to the accused. It would be unsafe and hazardous to rest the conviction on the evidence available on record.

16. The judgment and order impugned is set aside and the accused are acquitted of offence punishable under Section 376(2)(g) of the Indian Penal Code. The bail bonds of the accused shall stand 12 appeal 557.02 discharged. Fine paid by the accused, if any, be refunded to them.

The appeal is allowed accordingly.

JUDGE adgokar