

Bombay High Court

State Of Maha vs Mahadeo Gaikwad on 31 October, 2017

Bench: T.V. Nalawade

Cri. Appeal No. 59/04

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IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 59 OF 2004

The State of Maharashtra
Through Godabai w/o. Maruti Gurav,
Age 67 years, Occu. Labour,
R/o. Andur, Tq. Tuljapur,
Dist. Osmanabad.

....Appellant.
(Ori. Complainant)

Versus

Mahadeo Abhimanyu @ Abhiman Gaikwad
Age 30 years, Occu. Business,
R/o. Watchalanagar Zopadpatti,
Andur, Tq. Tuljapur, Dist. Osmanabad.Respondents.
(Ori. Accused)

Mr. S.D. Ghayal, APP for appellant/State.

CORAM : T.V. NALAWADE AND
ARUN M. DHAVAL, JJ.

DATED : October 31, 2017

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed against judgment and order of

Sessions Case No. 186/2000, which was pending in the Court of 2nd Additional Sessions Judge, Osmanabad. The respondent is acquitted of the offences punishable under section 376 and 326 of Indian Penal Code ('IPC' for short). Heard the learned APP.

2) The prosecutrix was aged about 65 years at the relevant time and she was resident of slum area of Andur. In the past, one Cri. Appeal No. 59/04 Muslim lady by name Banu was living in the hut of prosecutrix on rent basis, as a tenant. It is the case of State that accused used to visit the house of said Muslim lady and due to that, prosecutrix had asked the said lady to vacate the premises. Prosecutrix was suffering from leprosy and she was living by begging in village. It is the case of State

that the accused was angry with the prosecutrix as prosecutrix had evicted aforesaid Muslim lady from her place.

3) The incident in question took place on 18.2.2000 at about 9.00 p.m. It is the case of prosecution that accused entered the hut and by using force, he took sexual intercourse with the prosecutrix. Prosecutrix raised hue and cry, but nobody could hear it as the floor mills in the vicinity of the house of the prosecutrix were creating such noise that nobody could hear her hue and cry. After having sexual intercourse, accused inflicted injury on private part of the prosecutrix by using knife to express his anger against her. Prosecutrix went to Naldurg Police Station and gave report against the accused on the same day. The crime came to be registered at C.R. No. 28/2000 for aforesaid offences at 13.20 hours of 19.2.2000. Prosecutrix was referred for medical examination and she was medically examined. One C.L.W. was found on her private part.

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4) Accused was not available for quite some time. During the course of investigation, statements of some neighbours came to be recorded. The clothes of the prosecutrix were taken over. The clothes were sent to C.A. Office. The blood of prosecutrix was detected on the clothes. The chargesheet came to be filed for aforesaid offences. When the charge was framed for aforesaid offences, accused pleaded not guilty. Prosecution examined in all five witnesses. The Trial Court has not believed the prosecutrix for the reasons recorded in the judgment.

5) The evidence of prosecutrix (PW 1) is as per aforesaid case of prosecution. She has deposed that she was alone in her hut and at about 9.00 p.m. of 18.2.2000 the accused raped her. She has given evidence that she first went to police and after recording her report in the morning, she was referred for medical examination. The F.I.R. is proved as Exh. 19. In the F.I.R. also, it is mentioned that she was referred to Government Hospital only after recording the F.I.R.

6) The evidence of Dr. Rodke (PW 4) is not consistent with the version given by prosecutrix. The evidence of Dr. Rodke shows that on 19.2.2000 at about 6.40 p.m. prosecutrix was brought to Civil Hospital Osmanabad by police constable for medical Cri. Appeal No. 59/04 examination. The Medical Officer had taken vaginal swab. There was old healed hymen tear. There was one C.L.W. over posterior aspect of fornix of the size $2\frac{1}{2} \times 1 \times 1\frac{1}{4}$ c.m. The evidence of doctor shows that there were no marks of violence showing that force was used against the prosecutrix. The C.A. report in respect of clothes of the prosecutrix shows that only blood stains were detected on her clothes.

7) In the evidence of Patil (PW 5), Investigating Officer, it is brought on the record that on 19.2.2000 in the morning Medical Officer of Primary Health Center, Andur had given information to police in writing vide Exh. 32 that prosecutrix had approached the Primary Health Center. This document at Exh. 32 and the evidence show that the prosecutrix had informed to Primary Health Center that some unknown person had inflicted injury on her private part by using sharp weapon. This information, letter was sent by Primary Health Center to police on 19.2.2000 at 11.50 a.m. Thus, prior to registration of F.I.R., prosecutrix had approached Primary Health Center and she had given such history to Primary Health Center. It can be said that only after giving of information by

Primary Health Center to police, inquiry was made by police with prosecutrix and then report at Exh. 19 of the prosecutrix came to be recorded. That is why report was recorded at 13.20 hours of 19.2.2000. The Cri. Appeal No. 59/04 evidence of Dr. Rodke shows that prosecutrix was referred by police to Civil Hospital Osmanabad at 6.40 p.m. There is no explanation with regard to Exh. 32 from prosecution.

8) The evidence of prosecutrix shows that there is no connection of electricity to her hut. If the incident took place in the night time, there is possibility that somebody assaulted her and caused injury to her and accordingly, she had informed about it to Primary Health Center. Only during giving of statement to police she took the name of accused. No marks of violence for committing rape were found on her person and only blood stains were detected on her clothes and they were there only due to injury sustained by her to her private part and that was caused by using weapon as per the version of prosecutrix. Dr. Rodke (PW 4) has given evidence that it was C.L.W. and such injury can be caused by hard and blunt weapon and not by sharp weapon. No knife is recovered by police in the present matter.

9) It can be said that the prosecutrix suspected involvement of the accused and by exaggerating the things, she made allegations against the accused. Other witnesses have turned hostile. There is no evidence with the prosecution to show that immediately after the incident prosecutrix had approached Cri. Appeal No. 59/04 neighbours and she had disclosed the incident to them. The spot panchanama is not disputed by defence and the document at Exh. 15 shows that on southern side there is house of Shankar Gaikwad and on the east side, there is house of Shantabai Bansode. Thus, no floor mill is shown in the vicinity of the hut of prosecutrix. These circumstances also create doubt about the version given by the prosecutrix. In the spot panchanama, no blood stains are mentioned. Thus, there was nothing suspicious found in the hut, showing that some incident had taken place in the hut. Thus, there is no circumstantial check to the version given by the prosecutrix. It needs to be kept in mind that as per the version of prosecutrix she was suffering from leprosy and she has made allegations of aforesaid nature against the accused. As there is no circumstantial check, this Court holds that the Trial Court has rightly given benefit of doubt to the accused. This Court sees no reason to interfere in the decision given by the Trial Court. In the result, the appeal stands dismissed.

[ARUN M. DHAVALÉ, J.]

[T.V. NALAWADE, J.]

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