Supreme Court of India
State Of Maharashtra vs Prakash And Another on 24 March, 1992
Equivalent citations: AIR 1992 SC 1275, 1992 CriLJ 1924, 1993 (1) SCALE 721, 1993 Supp (1) SCC 653
Bench: K Singh, B J Reddy
ORDER

1. This appeal is preferred by the State of Maharashtra against the judgment of a learned Single Judge of the Bombay High Court allowing the Criminal Appeal filed by the respondents-accused herein and acquitting them of all the charges. The learned Extra Additional Sessions Judge, Amravati had convicted both the accused-respondents under Section 376 read with Section 34 I.P.C. as well as under Section 342 read with Section 34 I.P.C. and sentenced them to rigorous imprisonment for three years on the first count and for two months on the second count.

2. The victim, Nirmala (PW-1) was originally a resident of Pathrot village where her parents continue to reside. She was married to PW-2, a resident of village Dahegaon. Every year a village fair called 'Dwarkecha Baill' is held on the next day after pola at Pathrot village. PWs-1 and 2 had come to Pathrot village to attend the fair. They were staying in the house of Nirmala's parents. The first respondent Prakash was a police constable working at headquarters, Amravati. He was deputed to village Pathrot on 6th September, 1978 for bandobast duty at the time of Ganapati festival. Second respondent, Sudhakar is a resident of the village. He is businessman. An idol of Ganapati was installed in the courtyard of second respondent, Sudhakar.

3. According to the prosecution, on the night intervening 9/10th September, 1978, the second respondent went to the house of Nirmala's parents at about 2.00 A.M. and called out PW-2. PW-2 was taken to the house of second respondent. After a little while, PW-2 returned but was again called out by second respondent saying that he was being called by the first respondent, police constable. PW-2 again went to the house of second respondent The first respondent caned PW-2 alleging that he was going to destroy the idol of Ganapati. The respondents asked both PWs-1 and 2 to accompany them to the house of second respondent where PW-1 was asked to sign on certain papers under a threat that her husband would be placed in custody in case she does not sign the papers. The first respondent then took PW-1 inside the house and committed the offence of rape upon her. Thereafter, the second respondent went inside and he too committed the said offence upon her. They threatened PWs-1 and 2 not to report the matter to the police. Afraid of them, PWs-1 and 2 went back to the house of PW-l's parents and spent the rest of the night there. On the morning of 10th September, PW-2 met another constable, Kailashpuri (PW-4) and told him of what happened on the previous night. PW-4 asked him to report to the police station. Accordingly, at 11.30 A.M. both PWs-1 and 2 went to the police Station Pathrot and gave the first information (Exh. 10). PW-5, Sub-Inspector registered the offence, inspected the spot, seized a carpet and some other articles from the scene of offence including the saree and blouse of PW-1 and sent PW-1 for medical examination. On receipt of the medical report and the report of the chemical analyser, a charge-sheet was filed against both the respondents. They were committed by the learned Magistrate to Sessions Court for trial.

4. Seven witnesses were examined by the prosecution. The respondent-accused denied the offence altogether claiming that they have been falsely implicated. The learned Sessions Judge found them guilty and convicted and sentenced them as stated hereinbefore.

5. At the trial, PWs-1 and 2 spoke to the prosecution case. Their evidence was corroborated by PW-4. The said evidence was accepted by the learned Sessions Judge. The learned Single Judge of the Bombay High Court, however, took a different view. The learned Judge held on the basis of the first information (Exh. 10) that "there were no threats given to the prosecutrix so as to make her surrender her body to the appellants. It is also clear that the husband had left the place and yet she went inside the room of accused No. 2. It is apparent from this report that she did not shout till entering the room, even after the door was closed by constable Prakash. She also did not shout till the police constable had removed the uniform and underwear from his person. For the first time, she shouted after the appellant was naked. She, therefore, did not shout even (when ?) accused No. 1 completed the sexual intercourse and went out and Sudhakar came in and had sexual intercourse with her." The learned Judge then compared the contents of her report (Exh. 10) with her oral testimony in court and found certain contradictions between them. On an examination of the evidence the learned Judge concluded that PW-1 had voluntarily went to the house of second respondent and that she was willing partner in the act of sexual intercourse. He referred to the absence of marks of violence upon her body and concluded therefrom that no force was used upon her.

6. We are of the opinion that the learned Single Judge has thoroughly erred in appreciation of the evidence of PWs-1 and 2. PWs-1 and 2 belong to labour class. They were poor rustic villagers eking out their livelihood by daily labour. In the middle of night, the husband was called by the police constable through the second accused and he was beaten there by the police constable. The allegation levelled was that he wanted to desecrate and destroy the idol of Ganapati and for that he would be placed in the police remand. Under this threat and duress, PW-1 was made to surrender herself to both the accused. It is worthy of note that police constable was in uniform and on bandobast duty. By show of his authority, he coerced PWs-1 and 2 into total abject surrender. It is, therefore, not a case of PW-1 being a willing party to sexual intercourse. It is a case where she has surrendered herself involuntarily, under duress and threat held out by the first accused. Both the accused had entered into an unholy plan and adopted a stratagem to fulfill their illegal desires.

7. Both the trial court and the learned Single Judge of the High Court have found that PWs-1 and 2 were indeed taken to the second respondent's house and that both the accused were present there and further that PW-1 was taken inside the house where both the accused had sexual intercourse with her. The only question is whether the said intercourse had taken place with the consent of PW-1 or was it a case where she was deprived of her will by show of authority and by the beating administered to her husband accompanied by threat of putting him in police remand, where, as the common belief of rustic villagers goes, they would be subjected to 'third degree methods'. Not only that, after the act they were threatened not to report to the police. This explains their silence for a few hours. Only when PW-4 advised PW-2 to report to the police, did they pick up the courage to go and report to the police station. In our opinion, the theory of PW-1 being a willing party to sexual intercourse is totally misplaced in circumstances. It is not suggested that PW-1 agreed to the said

intercourse either out of love or for money. The only other explanation that remains is that she was coerced into the act. For the offence of rape, it is not necessary that there should be actual use of force. A threat of use of force is sufficient See the clause "thirdly" in the definition of rape in Section 375 of I.P.C. It reads: "Thirdly. -with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt." It is also not suggested that PW-1 was a prostitute. Even a prostitute has to be paid to make her agree to such intercourse. It is no one's case either that PW-1 is a prostitute or that she was paid any money by the accused. In all the circumstances of this case, the minor contradictions between -her oral testimony and the report are of little consequence.

8. The respondents-accused denied the charge totally. Their only plea was that they have been falsely implicated. It is not even suggested as to who implicated them and why. It is not suggested that PWs-1 and 2 had any animus or motive against the accused. Nor is it suggested that they were being used by someone else to implicate the respondents falsely. In the circumstances, the mere allegation of false implication has no significance. Not that we are basing our rinding on this score. We are referring to this aspect only as a minor corroborating aspect.

9. The learned Counsel for the respondent-accused repeatedly stressed the absence of marks of violence upon the body of PW-1 and also her conduct subsequent to the incident The learned Counsel suggested that if her story is true, she would not have gone back to her house, slept there as usual, get up in the morning, attend to her normal duties, and search for employment as usual. According to the learned Counsel, she ought to have immediately rushed to the police station and reported the matter. This argument, in our opinion, ignores and fails to take into consideration the ground realities. We have already referred to the fact that PWs-1 and 2 were poor rustic villagers earning their livelihood by daily labour. They were threatened by the police constable, who was in uniform on bandobast duty, of having attempted to defile the Ganapati idol and threatened with police remand and all that follows. This situation may perhaps have been different if they were educated of at least reasonably well connected persons. To these poor rustic helpless villagers, the police constable represents absolute authority. They had no option but to submit to his will. In all the facts and circumstances of the case, therefore, we are of the option that the learned Single Judge was in error in acquitting the accused. Accordingly, we set aside the judgement of the learned Single Judge and restore that of the learned Sessions Judge.

10. We are aware that the offence had taken place in the year 1978 and that they were acquitted by the High Court as far back as August, 1981 and we are reversing the acquittal after a lapse of more than 10 years but having regard to the nature of the offence and the circumstances in which it was perpetrated, we are of the opinion that the respondents deserve no mercy. They should suffer for their deed.

11. The appeal is accordingly, allowed. The High Court judgment is set aside and that of Trial Court restored. The respondents Shall undergo the sentence awarded by the Trial Court. They shall surrender to their bail bonds to undergo the sentence of imprisonment.