

State of Maharashtra

Vs

Prakash and another

Criminal Appeal No. 459 of 1983

(Kuldip Singh, B. P. Jeevan Reddy JJ)

24.03.1992

JUDGEMENT

B. P. JEEVAN REDDY, J.:-

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 S. 376 read with S. 34, I.P.C. as well as under S. 342 read with S. 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 (P.W. 1) was originally a resident of Pathrot village where her parents continue to reside. She was married to P.W. 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. P.Ws. 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 a 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 P.W. 2. P.W. 2 was taken to the house of second respondent. After a little while, P.W. 2 returned but was again called out by the first respondent, police constable. P.W. 2 again went to the house of second respondent. The first respondent caned P.W. 2 alleging that he was going to destroy the idol of Ganapati. The respondents asked both P.Ws. 1 and 2 to accompany them to the house of second respondent where P.W. 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 P.W.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 P. Ws. 1 and 2 not to report the matter to the police. Afraid of them, P.Ws. 1 and 2 went back to the house of P.W. 1's parents and spent the rest of the night there. On the morning of 10th September, P.W. 2 met another constable, Kailashpuri (P.W. 4) and told him of what happened on the previous night. P.W. 4 asked him to report to the police station. Accordingly, at 11.30 a.m. both P.Ws. 1 and 2 went to the Police Station, Pathrot and gave the first information (Exh. 10). P.W. 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 P.W. 1 and sent P.W. 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, P.Ws. 1 and 2 spoke to the prosecution case. Their evidence was corroborated by P.W. 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 P.W. 1 had voluntarily went to the house of second respondent and that she was a 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 P.Ws. 1 and 2. P.Ws. 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, P. W. 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 P. Ws. 1 and 2 into total abject surrender. It is, therefore, not a case of P. W. 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 fulfil their illegal desires.

7. Both the trial Court and the learned single Judge of the High Court have found that P. Ws. 1 and 2 were indeed taken to the second respondent's house and that both the accused were present there and further that P.W. 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 P. W. 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 P.W. 4 advised P.W. 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 P.W. 1 being a willing party to sexual intercourse is totally misplaced in circumstances. It is not suggested that P.W. 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 or use of force is sufficient. See the clause "thirdly" in the definition of rape in S. 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 P.W. 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 P.W. 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 P.Ws. 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 finding 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 P.W. 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, got 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 P.Ws. 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 followed. The situation may perhaps have been different if they were educated or 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 opinion that the, learned single Judge was in error in acquitting the accused. Accordingly, we set aside the judgment 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. Appeal allowed.

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