

Suresh N. Bhusare and Others

Vs

State of Maharashtra

Criminal Appeal No. 869 of 1997

(G. T. Nanavati, S. P. Kurdukar JJ)

11.08.1998

JUDGMENT

1. The three appellants were tried in the Court of Additional Sessions Judge, Nasik, in Sessions Case No. 117 of 1983, for the offences punishable under Sections 376 and 342 IPC. The trial court acquitted them but their acquittal was reversed by the High Court. Therefore, they have filed this appeal.
2. It was alleged against the appellants that on 28-7-1983, at about 11 o'clock, they committed the rape of Gangu Bai when she had gone to the shop of Appellant 1 for purchasing a matchbox. In order to prove its case, the prosecution had examined PW 3-Gangu Bai and PW 4-Shankar, brother-in-law of Gangu Bai. The prosecution had also led evidence of the doctor who had examined Gangu Bai. The circumstance that from the house of Appellant 1, some beads of a broken necklace of Gangu Bai were found, was also relied upon. The trial court, however, found that the evidence of PW 3-Gangu Bai could not be relied upon safely as it suffered from serious infirmities. Her evidence was found to be inconsistent with the FIR lodged by her on material aspects. The trial court also took note of the fact that no injury was found on her person even though her version was that she was dragged and had in fact received some scratches. The trial court also took into consideration the delay in filing the FIR. The circumstance that some beads of a broken necklace of PW 3-Gangu Bai were found in the house of Appellant 1 was not believed as it was considered unnatural that even after four days, the appellant would have allowed the beads to remain there. For these reasons, the trial court acquitted the appellants.
3. The High Court found the evidence of PW 3 reliable and observed that it was such that implicit reliance could be placed upon it. Therefore, accepting the evidence of PW 3-Gangu Bai alone, the High Court reversed the acquittal of the appellants and convicted the appellants under Sections 376 and 342 IPC.
4. Mr Jain, learned counsel appearing for the appellants, submitted that the High Court has committed a grave error in placing implicit reliance on the evidence of PW 3-Gangu Bai as her evidence was not trustworthy and consistent with the evidence of PW 4, her brother-in-law.
5. It is proved that in her police statement, PW 3 had stated that Vishnu was following while she was going to the shop of Appellant 1 and had not referred to Shankar, PW 4 at all. She changed her version in the Court and stated that Vishnu had not followed her. She also stated that Shankar, her brother-in-law, met her on the way. He was sitting on his bullock-cart and had asked her as to where she was going. She had replied by saying that she was taking food for her husband who had gone to the field. She further stated that after about ten minutes, he had come to the shop of Appellant 1 to

purchase tobacco and finding the door closed had kicked the door and shouted in the name of Appellant 1 to open the door. He then forcibly took her out and kicked her and told her to go home. She had not disclosed anything to him at that time.

6. In her evidence, she has stated that when the incident took place she was pregnant. It was about seven months' old and because of the rape she had aborted on the third day. But when she was examined by Dr Sulay after a few days, no positive sign of recent abortion was noticed. It is proved that she had not stated like that in her FIR. It would go to show that she was making a deliberate improvement on a material point when she stated that at the time of rape she was in an advanced stage of pregnancy with a view to rule out consent.

7. Her further version was that when she had gone to purchase a matchbox from the shop of Appellant 1, she was carrying a bundle of food articles on her head and she kept it on the "ota" (platform) of the shop. If she had really gone only for that purpose, there was no necessity for her to do so. Moreover, PW 5-Shankar had not found it outside the shop but outside the door of the middle room, i.e., well within the shop. If that was so, then it would mean that she had gone inside the shop willingly and was not lifted from the outer portion of the shop and then dragged and taken into the middle room. She had deposed that because of dragging and resistance, she had received scratches on her back, neck and thighs. But not a single injury was found on her person when she had lodged her complaint.

8. The High Court had rightly not relied upon the evidence of Shankar, brother-in-law of Gangu Bai. His conduct was not consistent with his claim that Gangu Bai had told him that the three appellants had raped her. He behaved thereafter as if nothing had happened. He even purchased tobacco from Appellant 1 thereafter. He did not inform anyone till next day morning about what had happened. On the contrary, his conduct in pulling her out from the middle room, giving a kick to her and telling her to go home, not taking any other action and waiting at the shop of Appellant 1 and purchasing tobacco leads to an inference that no complaint was made by Gangu Bai at that time that she was raped. Gangu Bai herself has not stated that she had told PW 4 like that when she came out of that room.

9. With all these infirmities in her evidence, no implicit reliance could have been placed upon her evidence. The High Court having failed to consider all these important aspects erroneously came to the conclusion that her evidence was reliable. The High Court was wrong in reversing the order of acquittal passed by the trial court and convicting the appellant for both the offences.

10. We, therefore, allow this appeal, set aside the order of conviction and sentence passed by the High Court. They are therefore ordered to be released from jail, if their presence in jail is not required in connection with some other case.