

SUPREME COURT OF INDIA

Shrawan Atmaram Sisode

Vs

State of Maharashtra and Another

Criminal Appeal No. 1493 of 2005

(B. P. Singh and Altamas Kabir, JJ)

27.07.2006

JUDGMENT

B. P. SINGH J.

1. This appeal by special leave is directed against the judgment and order of the High Court of Judicature at Bombay, Bench at Aurangabad, dated 18-3-2005 in Criminal Appeal No. 62/2004. The High Court by its impugned judgment and order has affirmed the order of conviction and the sentence imposed under Section 376 IPC. The appellant has been sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 10, 000/- (Rupees Ten Thousand only) and in default to suffer rigorous imprisonment for 1 year.

2. This case arises out of a criminal complaint filed before the Magistrate First Class, Shindkheda who took cognizance of the offence punishable under Section 376 IPC and thereafter committed the appellant to stand trial before the Court of Sessions. The complainant S (P.W. 2) is the wife of B (P.W. 3). They were residing at Nardana and the appellant was their immediate neighbour. The case of the prosecution is that on October 07, 1999 between 12.00 noon and 1.00 p.m. when the complainant was alone in the house, since her husband and mother-in-law had gone to the fields, the appellant entered the house from the rear door and dragged the complainant to the room in front and had forcible sexual intercourse with her. Soon thereafter, the mother of the appellant came to the complainant and begged her pardon for the misdeeds of her son. She requested her mx to report the matter to anyone. In the evening when the husband and mother-in-law of the complainant came

home, the complainant immediately reported the matter to them. The husband of the complainant, i.e., P.W. 3 was disturbed and offended and he immediately went to the house of the appellant to question him as to why he had committed such a heinous act. When he went to protest he was assaulted by the appellant and members of his family. He received several injuries including a head injury. The complainant and her husband were immediately removed to Nardana Hospital where Dr. Nilesh Aaher (P.W. 1) attended to the injuries of the husband of the complainant. He was later removed to the hospital at Dhule.

3. It is the case of the prosecution that Dr. Aaher (P.W. 1) had informed the police about the arrival of P.W. 3 in the hospital with injuries and pursuant to the report received from the Medical Officer, a police constable was deputed to visit the hospital. It is also the case of the prosecution that the husband of the complainant, i.e., P.W. 3 made a detailed report to the police constable both regarding assault on him and commission of rape on the complainant (P.W. 2). However, as it transpires, the report recorded by the police constable was only in relation to the offence of assault and there was no mention about the offence of rape committed by the appellant. The complainant and her husband were distressed on account of inaction of the police and therefore they reported the matter to the Superintendent of Police, Dhule on 11-10-1999. They made a written report to the Superintendent of Police wherein they mentioned the fact that the complainant had been raped by the appellant but the police was not taking appropriate action.

4. Despite the complaint made to the Superintendent of Police, Dhule, no action was taken and this led the complainant to ultimately lodge a complaint before the concerned Magistrate on 15-11-1999. In the complaint made to the Judicial Magistrate First Class, Shindkheda the full facts were stated with regard to the earlier incident which took place in the afternoon and the later incident which took place after the husband of the complainant returned home from the fields and went to the house of the appellant to record his protest. The complaint also mentions that P.W. 3 was attended to by Dr. Aahre (P.W. 1) in the hospital who put stitches on his head injury. The complaint also mentions the fact the P.W. 1 had informed the police station, Nardana, and a constable had come to whom the entire incident had been narrated by P.W. 3 in the presence of Dr. Aahre (P.W.1). However, the constable did not mention the episode relating to rape in the report recorded by him. Therefore, P.W. 3 lodged a report with the Superintendent of Police, Dhule on 11-10-1999. Even thereafter no action was taken by the police, and ultimately a complaint was filed before the Magistrate.

5. We have gone through the entire evidence on record and the judgments of the courts below. We do not consider it necessary to repeat the reasoning of the Courts below in this judgment.

6. The Trial Court has placed implicit reliance on the testimony of the prosecutrix (P.W. 2) and so has the High Court. The Trial Court has also observed about the demeanour of the prosecutrix and that she belonged to the lowest rung of the society being an illiterate woman. Her evidence impressed the Trial Court as truthful. The High Court has also affirmed this finding. It is no doubt true that the prosecution case rests on the testimony of the prosecutrix P.W. 2.

7. It was sought to be argued before us on behalf of the appellant that the evidence of the prosecutrix is not so reliable that the Court could record a conviction solely on the basis of her

evidence. According to the learned counsel for the appellant, the earliest version of the incident did not refer to commission of the offence of rape. According to him the mention of rape is for the first time found in the complaint made to the Superintendent of Police, Dhule. The prosecutrix (P.W. 2) as well as her husband (P.W. 3) have consistently stated that they had reported the entire matter to the police, but only a portion of it was recorded and the occurrence so far it related to the commission of the offence of rape was excluded. That is why P.W. 3 considered it necessary to lodge a report with the Superintendent of Police, Dhule. Surprisingly, the report made to the Superintendent of Police, Dhule was not on record. When the High Court noticed that such a report had been marked as article 'A' by P.W. 3, it required the Trial Court to make an inquiry and return a finding as to whether the said report was made to the Superintendent of Police on 11-10-1999. The evidence of the concerned dealing assistant was recorded who was examined as P.W. 4 and the Trial Court after considering his evidence recorded a finding that such a report was in fact made on 11-10-1999 to the Superintendent of Police, Dhule. P.W. 4 also proved the acknowledgment of the receipt of the report. The original report was also produced before the Court. It thus appears that there is substance in the complaint of the complainant of her husband that the police were siding with the appellant and a serious charge of rape levelled against him was not even recorded by the police constable who came to the hospital at Nardana to record the statement of P.W. 3. Within 3-4 days of the occurrence a report was made to the Superintendent of Police mentioning the fact that the complainant had been raped by the appellant. Despite this no action was taken by the Superintendent of Police to get the matter investigated regarding the allegation of rape levelled against the appellant. It was in these circumstances, that the complainant (P.W. 2) and her husband (P.W. 3) were compelled to move the learned Magistrate by filing a complaint alleging commission of offence punishable under Section 376 IPC.

8. It was also sought to be argued before us that in the first report made by P.W. 3 there was no allegation of rape and therefore the said allegation made subsequently is only an afterthought. Having regard to the totality of the facts of this case we are not impressed with this argument. Within 3-4 days of the occurrence a report was made to the Superintendent of Police, Dhule, since in the earlier report made by P.W. 3 the police deliberately left out that portion which related to the commission of the offence under Section 376 IPC. We find no reason why the prosecutrix, aged about 20 years, should make a false allegation against the appellant of having raped her. The plea of the appellant that at best he may have gone to the house of the prosecutrix but had only abused her and not raped her, does not appear to be convincing.

9. Having considered all aspects of the case and after having gone through the entire evidence on record, we are not persuaded to take a view different from the one taken by the Trial Court and upheld by the High Court concurrently finding the appellant guilty of the offence punishable under Section 376 IPC.

10. We find no merit in this appeal and the same is dismissed