

Vilas Vs. State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Jan-29-2013

Judge : K.U. Chandiwal

Appeal No. : Criminal Appeal No.672 of 2011

Appellant : Vilas

Respondent : State of Maharashtra

Judgement :

This appeal is filed under Section 374 of Cr.P.C. against the judgment and order dated 19th October, 2011 passed by the Special Judge, Osmanabad in Special (Atro.) Case No.13 of 2010. Appellant is convicted for offence under Section 342 of Indian Penal Code and directed to undergo R.I. for three months and to pay fine of Rs.1,000/-, in default, to suffer S.I. for one month. For offence under Section 3(i)(xii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and directed to undergo R.I. for six months and to pay fine of Rs.1,000/-, in default, to suffer R.I. for one month. For offence under Section 376 of Indian Penal Code and directed to undergo R.I. for seven years and to pay fine of Rs.3000/-, in default, to suffer S.I. for six months. For offence under Section 323 of Indian Penal Code and to undergo S.I. for ten days and to pay fine of Rs.100/-, in default, to suffer S.I. for one day. All sentences were directed to run concurrently.

FACTS :-

2. On 25th January, 2010, the prosecutrix belonging to scheduled caste community was at the house of her maternal uncle and aunt, having come from Mumbai. Her husband had gone to nearby bus stop for chewing betel nuts. Since the prosecutrix was alone in the house of Srimant Pawar, her uncle, the accused appellant allegedly barged in the house and forced the prosecutrix for sex by mounting on her. The accused - appellant pushed the complainant down, assaulted her. He removed his pant and her punjabi dress, sexually abused her by committing rape by inserting his penis into vagina of prosecutrix. Her attempts to shout did not yield proper result as she was pressed. In spite of pains suffered by the prosecutrix, appellant continued sex with force. The prosecutrix was yelling, screaming. In the meantime, her husband reached and sensing his presence, the accused - appellant started running. He was apprehended. There was scuffle between the husband and the appellant. The appellant allegedly pushed her husband and ran away. Since the appellant was unknown to them and the scuffle was witnessed by adjoining persons, he was identified as Vilas Mule (Bitale) from same village. PW 7 Bandu had abused and tried to stop the accused. Consequently, identity of the appellant is established. In fact, the appellant has not disputed his identity or presence. Test identification parade was held by PW 10 - Kadam wherein, the accused - appellant was identified by prosecutrix and her husband.

3. Grievance and defence of the accused appellant is, at the house of maternal aunt / uncle of the complainant, he had been for drinking. He paid Rs.500/- currency note to purchase liquor of Rs.30/- and after its consumption, demanded balance amount. The complainant and her husband did not pay the balance under impression, accused was under influence of liquor. Accused was trying to take away currency note. Scuffle caused injuries to both sides. He reiterated that he has not committed any offence.

4. The F.I.R. by prosecutrix was lodged for offence under Sections 376, 451, 342 and 323 of Indian Penal Code vide C.R. No.9 of 2010. Spot panchnama was drawn. The articles, apparels of the victim, shirt of her husband were recovered. Further investigation was carried by Dy. Superintendent of Police Choudhari. Photographs of the complainant, her husband and accused were also snapped

immediately. The accused and the victim were referred for medical examination. The seized articles were sent to the office of Chemical Analyser at Aurangabad. Original caste certificate of the prosecutrix was collected including Medical Certificate and after completion of investigation, charge sheet against the accused was filed before learned Judicial Magistrate F.C., Osmanabad. Since the offence was sessions triable, it was committed to the Special Judge. Charge below Exhibit 7 was framed and explained to the accused in vernacular. Accused did not plead guilty and claimed to be tried. The defence is as stated earlier.

5. The appellant has also canvassed that the F.I.R. is lodged after deliberation with relatives, political persons in the village. It is a false case.

6. On the point of incident, the prosecutrix, her husband and PW 7 Bandu are material witnesses. On cumulative reading of the evidence coupled with spot panchnama, photographs illustrate the incident. The lace of complainant's pajama was found at the spot, taken charge. Her injuries at neck region, mark thereon are indicative of violent situation. Accused also had seven injuries (Exhibit 36) which he did not dispute and established in Medical Officer's evidence. PW 2 Medical Officer - Smt.Vasudha Deshmukh who was attached to Civil Hospital, Osmanabad, had examined the prosecutrix on 26th January, 2010 at 12:30 a.m. She has identified the certificate which incorporates the history disclosed by the victim (Exhibit 24). On clinical examination of the victim, there were no external injuries on her private part and no any seminal stain, blood stain or hairs were found on her clothes. However, as stated earlier, she has noted mark of violence on right forearm of the victim. There was blunt trauma on right wrist, blunt trauma and swelling on the right eye. Abrasions were seen on her right ear and neck. Hymen was ruptured. Uterus was anteverted normal in size. These facts are also recorded in medical certificate Exhibit 25. Victim has been identified by Medical Officer. Blood group of victim is "B". On her apparels, no stains were detected.

7. In the examination of the accused by Dr.Lakal, PW 4, he has noticed injuries mentioned in certificate Exhibit 33 which could be due to scuffle in between two persons. He did not find any sign of incapability of accused to perform sexual intercourse. He had admitted, injuries nos.2 to 5 are possible while committing

rape on the victim by accused. If victim had created any resistance, injuries nos.1, 6 and 7 could be possible due to scuffle. C.A. report Exhibit 28 did not accelerate prosecution case as it was negative.

8. The analysis of evidence of PW 1 - prosecutrix, her husband PW 3 and PW 7 Bandu, does not leave any doubt about events. The appellant, as could be seen, accepts having entered in the house of the prosecutrix (her maternal uncle). He confined movements of the prosecutrix without any reason. His contention that he had been for purchase of liquor, is not established. The presence of accused - appellant is indicated by afore referred three witnesses. Again, events of abuse to the prosecutrix are to be scanned in the light of medical evidence. The defence raised by the accused is, he was demanding return of Rs.470/- after consumption of liquor, however, there is no independent witness to substantiate his defence. As there was scuffle, he could have examined an independent witness to cement his narration. He even did not venture to lodge his protest first in time, before police authorities or before the Medical Officer. This vital aspect makes it difficult to lean to the theory propagated by the accused appellant. The tell-talling injuries to the prosecutrix are suggestive of the accused mounting on her and attempting to commit sexual abuse / rape, having obstructed by her, coupled with her husband, accused did not succeed in it. This is indicated in the medical evidence.

9. Learned counsel for the accused - appellant has pointed to the controversies i.e. in the F.I.R., prosecutrix stated, her husband pushed the door while in the evidence, it has come that her husband has jumped from the window. However, the photograph and spot panchnama indicate that window of the room is nearby door without grills and provides easy access due to its size for jump. The objection in respect of PW 2 and PW 4, Medical Officers, having not followed guidelines of Dr.Parikh jurisprudence while giving opinion, will not shatter their evidence, as they have, in unequivocal terms, suggested the clinical examination of the victim and accused and presence of injuries. Even if PW 2 has accepted, if a person commits rape on victim against her will, there is possibility of remaining seminal stains on apparels of the victim as well as accused, however, that by itself, will not be a ground to discard the attempt committed by the accused. The evidence illustrates, the accused without any authority / right entered the house of the

prosecutrix who was totally new to the village having come from Mumbai for the first time to her maternal uncle. She had no reason to ruse / grieve enmity against the accused to ensure rope him in a false case. The improvement of the prosecutrix, not stating of accused removing clothes, pulling the accused - appellant in the F.I.R. will not change the scenario. The appreciation of the evidence carried by the learned Judge also needs to be considered as he too accepted that the prosecutrix and her husband being strangers to the village and particularly, to the accused - appellant, they had no reason to implicate the accused in the case.

10. In the light of above scenario, though - accused appellant is prosecuted for offence under Section 376 of Indian Penal Code, however, there was absence of seminal stains on the body or apparels of accused-appellant and victim. C.A. report is also negative. Thus, indication of evidence is that there was attempt by accused with intention to commit crime, however, he could not actually consummate the same. The legal position is, normally, the accused first intends to commit the offence, then makes preparation of committing it and thereafter, attempts to commit the offence. Though the attempt has not succeeded, however, it can safely be construed that the accused has attempted to commit the offence. It was in furtherance of his preparation, intention and mindset due to which, sensing the victim lonely, he sneak-up in the house and attempted to commit the offence. The victim is belonging to scheduled caste community ('Mang'), therefore, ingredients of Section 3(i)(xii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act will operate against him. He injured the victim, prevented her and hence, he is also found guilty for offence under Section 323, 342 of Indian Penal Code. However, accused-appellant succeeds in establishing that there was no rape. The evidence suggests that there was attempt to commit the rape. Consequently, accused appellant is convicted for offence under Section 376 read with 511 of Indian Penal Code.

ORDER

A] Criminal Appeal is partly allowed.

B] Conviction and sentence for offence under Section 3(i)(xii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and Sections 323 and 342 of Indian Penal Code, is maintained.

C] Conviction for offence under Section 376 of Indian Penal Code is set aside. Instead, accused appellant is convicted for offence under Section 376 read with Section 511 of Indian Penal Code and is sentenced to suffer R.I. for a period of 4 years (four years) and to pay fine of Rs.3,000/-, in default, to suffer S.I. for one month.

D] All the sentences shall run concurrently.

E] Set off under Section 428 of Code of Criminal Procedure be given to the accused - appellant.

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