

Ramchandra Vs. The State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Aug-17-2015

Judge : V.M. Deshpande

Appeal No. : Criminal Appeal No. 19 of 2013

Appellant : Ramchandra

Respondent : The State of Maharashtra

Judgement :

Oral Judgment:

1. The present appeal is directed against the judgment and order of conviction passed by the learned Sessions Judge, Gadchiroli, in Sessions Case No. 51 of 2011 on 02.5.2012, thereby convicting the present appellant for the offences punishable under Sections 376 and 506 Part II of Indian Penal Code and sentencing him to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- and also to suffer rigorous imprisonment for two years together with rigorous imprisonment of two months in default of fine amount.

2. The prosecution case, in nut shell, is as under:

In the month of January, 2011, Panjabrao Pardhane (P.W.9) was in-charge P.S.O. of police station Dhanora. On 27.1.2011 Gurudeo Shedmake (P.W.2) came in the police station and filed a written complaint. The said written complaint is at Ex.14.

Necessary entry in that behalf was taken in the station diary. The complaint was in respect of physical atrocity on the victim. Therefore, after taking the entry in the station diary, Panjabrao (P.W.9) sent the victim to the hospital at Gadchiroli for her medical examination. She was sent through a reference letter (Ex.27). On 29.1.2011, Panjabrao (P.W.9) received the opinion of the medical officer and thereafter a crime was registered on 30.1.2011 for the offences punishable under Sections 376 and 506 of Indian Penal Code vide Crime No. 9 of 2011. The printed first information report is at Ex.15. On the very same day, the appellant was arrested under arrest panchanama vide Ex.29. After completion of usual investigation, the Investigating Officer filed charge-sheet before the Court of law. The case was committed to the Court of Sessions. After it was committed to the Court of Sessions, it was registered as Sessions Case No. 51 of 2011.

3. The learned Sessions Judge framed a charge against the appellant under Ex.6 for the offences punishable under Sections 376 and 506(B) of Indian Penal Code. The appellant denied the charge and claimed for his trial.

4. In order to bring home guilt of the appellant, prosecution has examined in all nine witnesses. They are -

Sr.No.	Name and witness No.	Status of witness
1.	Kailash Shiwarkar (P.W.1)	Career of sample to C.A.
2.	Gurudeo Shedmake (P.W.2)	Lodging of F.I.R.
3.	Tarabai Shedmake (P.W.3)	Narrating of incident to her by victim
4.	Chandrabhan (P.W.4)	Witness to spot panchanama, Turned hostile
5.	Prabhakar Raisidam (P.W.5)	Attended the meeting called by P.W.2
6.	Daulat Sidam (P.W.6)	Witness to the panchanama, Turned hostile
7.	Jyoti Maroti Alam (P.W.7)	Victim of incident

8.	Dr.Deepchand (P.W.8)	Medical Officer who examined the prosecutrix
9.	Panjabrao Pardhane (P.W.9)	Investigating Officer

5. The F.I.R. (Ex.15) lodged by P.W.2 Gurudeo, a close relative of the prosecutrix, bears the date as 26.1.2011. The date of incident is 21.1.2011. The evidence of P.W.2 Gurudeo would reveal that on 21.1.2011, i.e. on the date of incident, he was not present in the village. He was at Nagpur in connection with the examination of nurses as he was a clerk in Salve Nursing College, Gadchiroli. Gurudeo is very specific from the witness box that he came to the village on 27.1.2011. His evidence further discloses that he got the information in respect of the incident from his mother P.W.3 Tarabai. Therefore, he held a meeting and in the said meeting of the villagers it was decided to lodge a report and consequently a report (Ex.15) was lodged. A close scrutiny of evidence of P.W.2 Gurudeo would reveal that he was not having any occasion to know about the incident prior to his reaching at the village on 27.1.2011. In the backdrop of such prosecution evidence, the date which is reflected in the F.I.R. as 26.1.2011 creates a doubt. Further, Gurudeo himself destroys the prosecution evidence. In the examination-in-chief itself, he has stated as under:

I drafted the report on 26.1.2011. I had given copy of the report to Pradhan Samaj.?

It is to be noted that the prosecutrix, P.W.2 Gurudeo and P.W.3 Tarabai belong to Pradhan community. There is nothing in the prosecution case that prior to 27.1.2011 there was any occasion for P.W.2 Gurudeo to know about the incident through his mother. In that view of the matter, the prosecution case comes under the dark cloud of suspicion. If Gurudeo (P.W.2) was not knowing the incident prior to 27.1.2011, drafting of report on 26.1.2011 and handing over copy of the same to Pradhan Samaj create a serious doubt on the prosecution case.

6. Further, according to the prosecutrix P.W.7 Jyoti, on the day of incident when she had been to her agricultural field, that time the appellant came there and first requested her to accompany him and when she refused he took her on his back

towards another field and in the said field the prosecutrix was physically ravished. According to the evidence of the prosecutrix, the forcible sexual intercourse took place in the field of one Prakash Chudari. She is very specific on that. However, the spot panchanama, which is at Ex.32, shows that the place of occurrence as shown to the Investigating Officer by the prosecutrix is the agricultural field of prosecutrix herself. Further, according to the prosecutrix herself, after the commission of rape on her, when she came to the house she told the incident to her aunt on the next day. However, there is a variance on that aspect. Tarabai (P.W.3), who is the aunt of the prosecutrix, has stated that the incident was narrated to her by the prosecutrix on the very same day.

A close scrutiny of the evidence of the prosecutrix would reveal that in the meeting which was conducted as per the request of P.W.2 Gurudeo, the prosecutrix had told the name of Rama Hedami in the said meeting. Though the incident has occurred on 21.1.2011, the matter was reported to police on 27.1.2011. The delay cannot always be fatal to the prosecution, if it is properly explained. In the present case, in my view, the delay is not properly explained.

7. Tarabai (P.W.3) is the first person to whom the incident was narrated by the prosecutrix. According to Tarabai, the incident was reported on the date of incident itself. Her evidence would reveal that she went to village Police Patil, however he was not present. Then he went to Sarpanch but he did not take action. What is important to note is that Tarabai was knowing that the matter has to be reported to the higher-ups. Evidence of Tarabai would further reveal that her husband was also present when the incident was told to her. The learned trial Court recorded a finding that husband of Tarabai was ill. From the evidence of Tarabai it is clear that her husband had suffered an accident. However, there is nothing on record to show that her husband was unable to move and/or his physical condition was such that Tarabai was unable to move to the police station to lodge the report.

8. Dr.Deepchand, who had examined the prosecutrix, has issued the medical certificate which is at Ex.25. The medical certificate shows no injuries on the person of the prosecutrix. What is important to note is that the medical officer has admitted in his evidence that if there is a rape, there must be injury to the private

part of the female. Further, according to the prosecutrix, there was resistance on her part. However, there are no injuries showing any such resistance. In the backdrop of such evidence, the suggestions given to the prosecution witnesses during their cross-examinations assume importance. According to defence, the appellant belong to Gond Samaj?. The prosecutrix herself has admitted that there is a dispute between her uncle Daulat Sidam and accused. Daulat Sidam is the president of Pradhan community, to which the prosecutrix belongs.

9. Further, the age of the prosecutrix is not conclusively proved by the prosecution. There is nothing available on record to establish the date of birth of the prosecutrix. It is not the case of the prosecution that the prosecutrix had at no point of time attended the school. On the contrary, there is sufficient evidence available on record that she had attended the school. In that view of the matter, the best possible evidence in respect of age of prosecutrix has not come on record.

10. The evaluation of the aforesaid evidence leads me to hold that false implication of present appellant is not completely ruled out and, therefore, the appellant is entitled for the benefit of doubt. The appellant is in jail since 30.1.2011. That leads me to pass the following order.

11. Appeal is allowed. Judgment and order of conviction passed by the learned Sessions Judge, Gadchiroli, on 02.5.2012 in Sessions Case No. 51 of 2011 are hereby quashed and set aside. The appellant is acquitted of the offences with which he was charged. He be set at liberty forthwith, if not required in any other case.

Mrs. S.P. Kulkarni, learned counsel, appointed to defend the appellant is entitled to receive Rs.5,000/- as her fees.

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