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(1991) 10 BOM CK 0068

Bombay High Court (Nagpur Bench)

Case No: Criminal Application No. 1230 of 1991

Ramdas Mahadeorao Shrirao and others	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision: Oct. 4, 1991

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438
- Penal Code, 1860 (IPC) - Section 109, 186, 332, 34, 342

Citation: (1991) 4 BomCR 533 : (1992) CriLJ 2641

Hon'ble Judges: B.U. Wahane, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. There Police Officials who are the protector of law and order, are prosecuted u/S. 376(2) of I.P.C. for committing rape on a Adiwasi Korku woman of village Toranwadi. Out of the three Police Officials, the applicant Nos. 1 and 2 are the Constables and the accused No. 3 P. H. C. Ramchandra is absconding as he was denied anticipatory bail by this Court. Besides three Police Officials, the applicant No. 3 Turrebajkhan and P.S.I. Patil are also prosecuted for abetting the offence.

2. The applicants Nos. 1 and 2 and the absconding accused P. H. C. Ramchandra were attached to Police Station, Chikhaldara, Tahsil Achalpur, District Amravati. Police Out-post Katkumbh is within the jurisdiction of Police Station, Chikhaldara. At the relevant time, i.e. on 17-8-1991, Constable Mohansingh was posted at the Out-Post, Katkumbh. On or about 15th or 16th August, 1991, one Shalikram, a resident of village Toranwadi and nephew of Tanu Darshimbe, reported to Police Out-post, Katkumbh, that his uncle Tanu extended threats to him. Constable Mohan singh along with the reporter Shalikram, went to the village Toranwadi, which is hardly 3 kms. away from the Out-Post Katkumbh. P. C. Mohansingh was highly

intoxicated. He enquired about Tanu. The only inmate then present in the house was the prosecutrix Smt. Munnibai wife of Sukhdeo. P. C. Mohansingh entered into the house of Smt. Munnibai and pressed her breast and tried to out-rage her modesty. She raised hue and cry. Her mother-in-law as well as the other women-folk from the neighbourhood came on the spot and over powered P. C. Mohansingh. Initially, the women-folk of the village tried to tie P. C. Mohansingh by dupatta, but they found themselves not in a position to do so, they raised the shouts and thereby male members also came to the house of the prosecutrix. The male members of the village, who had assembled, then tied P. C. Mohansingh with the help of rope.

3. After the arrival of Tanu, the father-in-law of Smt. Munnibai, she narrated the story to him. He immediately rushed to village Jarinda the Forest Outpost, where the facility of wireless is available. It being the night time, the Forest officials who were present then, declined to send the message to Chikhaldara Police Station Tanu c halted there overnight and on the next morning again he requested the Forest official to convey the message to Chikhaldara Police Station, of out-raging the modesty of his daughter-in-law. They demanded money. He was not in a position to pay anything, no message was sent to the Police Station, Chikhaldara.

4. Shalikram, who reported the Police against his own uncle Tanu, seeing P. C. Mohansingh tied by the people, rushed to Police Outpost, Katkumbh and reported the P.H.C. who was then present. P.H.C. along with the applicant No. 3 Turrebajkhan, who was working as a cook in the Police Outpost, Katkumbh, went to Toranwadi and released and brought back P. C. Mohansingh.

5. P. C. Mohansingh then reported the matter to Police Station, Chikhaldara. On the basis of his report, the offence has been registered against Tanu, his son Sukhdeo, Tanu''s wife and the prosecutrix, punishable u/Ss. 353, 342, 332, 186 read with 34 of the Indian Penal Code. Shri Patil P.S.O. along with two other constables and present applicants Nos. 1 and 2, went to village Toranwadi. Tanu and Sukhdeo not being in the village, the Police brought the prosecutrix Munnibai in a jeep to Outpost, Katkumbh. As per the prosecution, the prosecutrix was not even allowed to take her sucking child of one year.

6. Between the night of 18th and 19th August, 1991, prosecutrix Munnibai alleged that, the applicants Nos. 1 and 2 and the absconding accused P. H. C. Ramchandra, committed rape on her. At that time P. S. I. Patil was sleeping in the Chhapari, while the applicant No. 3 was in the kitchen. Next morning, i.e. on 19-8-1991, her husband Sukhdeo came to the Outpost, Katkumbh. He was also taken into custody. On 20-8-1991, Sukhdeo and his wife-prosecutor Munnibai, were produced before the Judicial Magistrate, First Class, Achalpur and both were released on bail by the Judicial Magistrate, First Class, Achalpur.

7. The prosecutrix, with the help of correspondent of newspapers, got her complaint typed on 29th August, 1991 and produced the same before the P.S.O. Gadge Nagar,

Amravati, on 30th August, 1991. The P.S.O., Gadge Nagar, Amravati, registered the offence against the applicants, P.S.I. Patil and absconding accused P. H. C. Ramchandra. Accused No. I.P.C. Ramdas was arrested on 31st August, 1991, while the accused No. 2 and 3 viz. Suresh and Turrebajkhan were arrested on 1-9-1991. P.S.I. Shri Patil was arrested on 4-9-1991 and bailed out by the J.M.F.C., Achalpur.

8. Mr. Manchar, the learned counsel for the applicants/accused, submitted that in the case, practically, the investigation is complete. He specifically pointed out that when the prosecutrix and her husband were produced before the Judicial Magistrate, First Class, Achalpur, on 20-8-1991 and the prosecutrix was asked about the illtreatment, by the learned Magistrate, she did not disclose about the incident. As the applicants/accused Nos. 1 and 2 and the absconding accused were not known to the prosecutrix, she did not name them in the F.I.R. Therefore, identification parade was held on 18-9-1991. According to Shri Manohar, the learned counsel for the applicants/accused, prior to the identification parade, thrice they were produced before the Judicial Magistrate, First Class, Achalpur, and thereby, the chance of seeing the applicants cannot be ruled out. The report is belated one and there is no explanation whatsoever, either from the prosecutrix or from the prosecution. If the accused are not released on bail, it will be nothing, but a pretrial conviction. Similarly, it is submitted that the applicant/accused No. 3 Turrebajkhan is working as a Cook and there is no allegation of rape against him, which is an admitted fact. The only allegation against him is that though he has seen the act committed by the applicants accused Nos. 1 and 2 the absconding accused, he neither brought this fact to the notice of the P.S.I. Patil, nor prevented the brutes committing rape on the prosecutrix. Therefore, the offence against him is registered u/S. 109 of the Indian Penal Code. Further it is submitted that there is no medical evidence supporting the prosecution. Doctor who examined the prosecutrix reported that there are no signs of rape. Under these circumstances, the applicants/accused be released on bail imposing any conditions.

9. Shri Mardikar, the learned Special Prosecutor on behalf of the State, filed the reply and opposed the bail application. According to Shri Mardikar, the learned Special Counsel, the prosecutrix being a married woman, having a child and she was under the Police custody, it was not possible for her to resist and, therefore, no injury could be possible under these circumstances. Similarly, the prosecutrix was examined after a week from the date of incident and, therefore, also no injuries could be seen. She identified the two applicants i.e. applicants Nos. 1 and 2 in the identification parade and whether she had seen or not seen the accused prior to the identification parade, is not the aspect to be considered at this time. It is the matter to be considered at the time of trial. Further it is submitted that the lady and other members of her family being poor even they were not in a position on 20-8-1991 to meet the expenses of their return journey to their village. Therefore, they sold their country made blanket for Rs. 30/- and thereafter they could manage to return to their village Toranwadi. This aspect has been mentioned by the prosecutrix in the

F.I.R. which has been placed along with the application. The explanation given by the prosecution, why the prosecutrix did not disclose this fact to the learned Magistrate when she was produced before him is that she being in shock, she and her husband were taken to an advocate and not only her honour, but the honour of the family being at stake, she might have not disclosed to the Magistrate about the rape committed by the Police Officials in the Police Outpost, Katkumbh. This being the matter to be considered at the time of appreciating the evidence, needs no comments at this sage. But still I find considerable weight in the submissions made by Shri Mardikar, the learned Special Pro1utor.

10. It has been brought to my notice that P. H. C. Ramchandra, who was denied anticipatory bail by this Court u/S. 438 of the Criminal Procedure Code, is absconding and in spite of the efforts made by the investigating agency, they could not lay their hands. If the applicants Nos. 1 and 2 are released in such a heinous crime of gang rape, there is possibility of their absconding. Considering the facts and circumstances, the possibility of absconding and also tampering with the evidence cannot be ruled out. Considering the facts and circumstances of the case, particularly, it is a gang rape and that too committed by the persons who are responsible for the protection of law and order and who are the savior not only of the persons but also of the property, at least applicants Nos. 1 and 2 do not deserve to be released on bail at this stage. Therefore, the application of applicants Nos. 1 and 2 is rejected.

11. The allegations against the applicant No. 3 are only that at the time of the incident, he was sleeping in the kitchen and though he had seen actual act committed by the applicant/accused and absconding accused, he neither prevented them nor informed the P.S.I. and, therefore, he abetted the offence. He is a man of 70 years of age. Therefore, the applicant No. 3 Turrebajkhan deserves to be released on bail. The applicant No. 3 is released on bail on executing a bond of Rs. 5,000/- with one surety in the like amount.

12. Order accordingly.