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STATE OF MAHARASHTRA

v.

RAVIKANT SHANKARAPPA PATIL & ORS.
(Criminal Appeal Nos. 262-263 of 2005)

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MAY 5, 2011

[V.S. SIRPURKAR AND T.S. THAKUR, JJ.]

PENAL CODE 1860:

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ss.376,386 read with ss.148,, 452/149, 366/149, 342/149, 323/149, 506 (2)/149 IPC and S. 25(1) (a) of the Arms Act – Allegation against main accused that he threatened the prosecutrix and her family members and married the prosecutrix and raped her – Other accused prosecuted for various other offences –Conviction by trial court—Acquittal by High Court holding that the father and the brother of prosecutrix acted as vakils of the prosecutrix and gave consent for the marriage and in consideration Mehar was given and there was also a valid Nikahnama – Held: The judgment of the High Court cannot be faulted with and the findings given by it are perfectly justified – Judgment of High Court acquitting the accused persons is confirmed –Appeal against acquittal.

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Constitution of India, 1950:

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Article 136 – Appeal against acquittal – Held: Burden is on the prosecution to prove and justify its case that findings of High Court in acquitting the accused were perverse and were not justifiable and that the High Court miserably failed to do justice and inferences drawn by it are not possible or could not have been drawn in law – In the instant case, the prosecution has failed to discharge the burden – Penal Code, 1860 – ss. 376 and 386 read with ss. 148, 452/149, 377/149, 242/149, 323/149, 506 (2)/149 IPC – Arms Act, 1951 – s.25(1) (a) – Appeal.

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Respondent No.1 was prosecuted for committing offences punishable u/s. 376 and 386 IPC and s. 25(1)(a) of the Arms Act. He was also prosecuted with the other accused-respondents for committing offences punishable u/ss. 148, 452/149, 366/149, 342/149, 323/149, 506 (2)/149 IPC. The case of the prosecution was that the prosecutrix was a student of 3rd year Computer Engineering. Her father was a professor and after returning to India, he started Hotel business, and her brother was studying in a different city; that accused-respondent No.1 (A-1), who was an M.P., came in close contact with the family members of the prosecutrix and helped them initially in construction of their house; that he wanted to marry with the prosecutrix, but her father opposed it: that on 5.5.1999, A-1, under threat, took the prosecutrix and her whole family to Mumbai for getting married with the prosecutrix, and for this purpose, he converted himself into Islam; that Nikah was performed on 6.5.1999 at Mumbai in presence of Kazi (PW-3) with the help of accused-respondents No. 2 to 5; that after Nikah, A-1 took the prosecutrix to various places and under threat raped her from 9.5.1999 to 17.5.1999. The prosecutrix lodged an FIR on 5.6.1999. The trial court convicted the accused persons of the offences charged. But on appeal, the High Court set aside the conviction and acquitted all the accused.

In the instant appeal filed by the State, it was contended for the accused- respondents that the High Court considered the evidence of the prosecutrix, her mother (PW-8) and the Kazi (PW-3) and there was nothing on record to suggest that A-1 at any point of time coerced or threatened the prosecutrix or her family members who were educated and well to do parents; that the High Court went painstakingly through the whole list of events from November, 1998 up to 5.6.1999, the day

- A when the FIR was lodged, and took a reasonable and plausible view of the evidence of the prosecutrix, her mother and the Kazi, and the silence on the part of the material witnesses and failure to explain as to why they did not report the matter to the police of all these events,
- B created a doubt on the prosecution story, particularly, when the father and the brother of the prosecutrix were not examined as prosecution witnesses and they rather acted as vakils and gave consent for the marriage, and in consideration Mehar was given and the valid
- C Nikahnama was on record.

Dismissing the appeals, the court

- HELD: The impugned judgment cannot be faulted with. The findings given by the High Court are perfectly
- D justifiable. The High Court has not erred in coming to the conclusion that the whole prosecution story was a myth. This is an appeal against the acquittal. The burden was on the prosecution to prove and justify its case that the findings of the High Court were perverse and were not
- E justifiable and that the High Court has miserably failed to do justice and the findings and inferences drawn by it are not possible view or could not have been drawn in law. The prosecution has failed to discharge the burden. The well-considered judgment of the High Court acquitting
- F the accused persons is confirmed. [para 13-15] [1187-F-H; 1188-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 262-263 of 2005.

- G From the Judgment and Order dated 10.9.2004 of the High Court of Bombay in Criminal Appeal No. 658 and 644 of 2000.

Uday B. Dube, Sanjay V. Kharde and Asha Gopalan Nair for the Appellant.

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Sushil Karnajkar and Venkateswara Rao Anumolu for the Respondents. A

The Judgment of the Court was delivered by

V.S.SIRPURKAR, J. 1. Challenge in these appeals is to the judgment dated 10.9.2004 passed by the High Court of Bombay in Criminal Appeal Nos. 658 and 644 of 2000 whereby the conviction and sentence awarded by the trial court were set-aside and appeals of the appellants were allowed and they were acquitted of the charges levelled against them. Respondent Nos. 1 to 5 were convicted by the trial court for the offences punishable under Sections 148, 452 r/w 149, 366 r/w 149, 342 r/w 149, 323 r/w 149 and 506 (2) r/w 149, IPC. Respondent No. 1/accused No. 1 Ravikant Shankarappa Patil was also convicted for the offences punishable under Section 386 r/w Section 511, 376 IPC and 25(1)(a) of the Arms Act. B C D

2. Briefly stated, the prosecution case is that prosecutrix Fatima Sabin Nazir Ahmad Shaikh was studying in III year Computer engineering at Walchand Institute of Technology at Solapur and had brilliant education record. Her father was a professor. He left India for Libya in 1981 but returned to India in 1991 and started his hotel business. Her brother was also getting education at Pune. Accused No. 1 contested election from Solapur constituency and was elected Member of Parliament. Due to political activities, accused No. 1 came in close contact with the family members of the prosecutrix and also helped her family initially for the construction of their house. E F

3. It is further alleged that accused No. 1 developed fatal attraction for the prosecutrix. After hearing the proposal from accused No.1 for marriage with the prosecutrix, her father got annoyed with accused No.1 and asked him not to come to his house. It is alleged that with his muscle and money power, accused No. 1 started threatening the family members of the prosecutrix. On 5.5.2009, accused No. 1, under threat, took the prosecutrix and her whole family to Bombay for getting married G H

A with prosecutrix and for that purpose he also converted himself to Islam. Thereafter, Nikaah was performed on 6.5.1999 at Bombay in the presence of Kazi. In this nikaah, accused no. 1 was helped by other accused persons who were his henchmen. Even after the nikaah, accused No. 1 is alleged to have moved along with prosecutrix at various places including Khandala, Mysore and Hyderabad where according to the prosecutrix, under threat, she was raped by accused No. 1 from 9.5.1999 to 17.5.1999. In short, the case of the prosecution appears to be that it was only with the muscle and money power that the accused No. 1 forced the prosecutrix for nikaah and ravished her. The prosecutrix lodged an FIR against the accused persons on 5.6.1999.

4. In support of its case, the prosecution, in all, examined 12 witnesses including prosecutrix PW 2- Fatima Sabin Nazir Ahmad Shaikh, Kazi PW-3 Hajji Yusuf Shaikh and her mother PW8- Rashida Begum Nazir Ahmed Shaikh.

5. We have heard learned counsel appearing for the parties and gone through the record.

6. We were taken through the evidence of PW1, PW3 and PW8 by Mr. U.B. Dube, learned counsel appearing for the State of Maharashtra who painstakingly developed the whole argument to the effect that the family of the prosecutrix was a middle class family. With the help of muscle and money power, accused No. 1 used to threaten the prosecutrix and her family members. The whole family remained under the threat of the accused No. 1 and the nikaah was performed forcibly though the prosecutrix had not consented for it. Learned counsel, therefore, argued that it is established law that when the prosecutrix herself alleges the rape and other ill treatments by accused No. 1, her evidence was sufficient enough to convict the accused persons and rightly believed to be true by the trial court and, therefore, the High Court should not have upset the conviction awarded by the trial court.

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7. Mr. Dube submitted that in committing the crime, A
accused No. 1 was helped by all the other accused persons
who were his henchmen. He also stated that accused No. 1
was an influential political leader having been once elected as
a Member of Parliament and once as a Member of Legislative
Assembly of Karnataka. He, therefore, pointed out that accused B
No. 1 along with his henchmen overawed the family of the
prosecutrix and also obtained forceful consent from the
prosecutrix for their nikaah. He, further argues that there was
no valid nikaah and that the act of the accused No. 1 in
ravishing the prosecutrix would amount to rape under Section C
376 IPC. He also argued that the prosecutrix was forcibly taken
away from the custody of her parents. The conviction and
sentence ordered by the Sessions court for the various offences
including criminal intimidation and causing injuries were well
justified. D

8. Mr. Sushil Karanjkar, learned counsel for the respondent
pointed out that the High Court has very painstakingly gone
through the whole list of events from November, 1998 right up
to 5.6.1999, the day when the first information report was
lodged by the prosecutrix. Mr. Karanjkar, pointed out that even E
though it was alleged that because of his desire to marry with
the prosecutrix as he was not happy with his wife, accused No.
1 overawed the family with the revolver, but the incident was
never reported to the police. Mr. Karanjkar further pointed out
that even though in the Ramzaan Eid festival in January, 1999, F
when the prosecutrix and her family members had shifted to new
house at Jule, Solapur, accused No. 1 came there and
threatened them to pay Rs. 12,00,000/-, this matter was also
not reported to the police. Learned counsel further argues that
in the last week of April, 1999 when accused No. 1 again came G
to the residence of the prosecutrix and started threatening and
insisted for payment of Rs. 8,00,000/- and also insisted the
prosecutrix to marry him, no report to that effect was lodged.
Likewise, the learned counsel pointed out that the event of
5.5.1999 was not reported to the police when the prosecutrix H

A and her family was made to travel to Bombay in a car belonging to accused No. 1 for the purpose of nikaah. Learned counsel points out that for the purpose of nikaah, accused No. 1 converted himself to Islaam and there was a kazi who got the nikaah performed between accused No. 1 and the prosecutrix.

B Thereafter, learned counsel relied on all the documents including the affidavit filed by the accused No. 1 to the effect that he had converted himself into Islaam as also the oral evidence of the Kazi - PW3. Therefore, there was no question of any undue influence or coercion having been exercised by

C or at the instance of accused No. 1.

9. Mr. Karanjkar also points out that for the purpose of this nikaah, the rest of family members including the father and mother of the prosecutrix travelled by train and accompanied accused No. 1 and the prosecutrix to the house of Shakil

D Noorani in Bombay where nikaah was performed. Learned counsel further points out that there was no question of this marriage having been performed under the undue influence, coercion, threat or fraud. Learned counsel points out that after the marriage, accused No. 1 and the prosecutrix went to a

E resort in Khandala and thereafter, they also went to Hyderabad, Mysore etc. including the Vrindavan gardens where accused No. 1 is alleged to have taken the photographs of the prosecutrix.

F 10. Mr. Karanjkar further points out that the High Court has threadbare appreciated the evidence of PW2, her mother PW8, Kazi- PW 3 and other prosecution witnesses. There is nothing on record to suggest that accused No. 1, at any point of time, coerced or threatened the prosecutrix and her family members.

G Mr. Karanjkar wonders that the educated family and well to do parents do not find time to report the serious matter concerning their daughter to the police. He further supports the finding of the High Court to the effect that though accused No. 1 had ravished the prosecutrix in her own house in a bed room when

H the other family members were also present, but none of them

came forward to the rescue of the prosecutrix despite her cries for help and lodged any report. Learned counsel points out a very substantial discrepancy in the prosecution case that the father and brother of the prosecutrix, who were professor and student, have not been examined as prosecution witnesses. Learned counsel further points out that the High Court has taken a reasonable and plausible view of the evidence of PWs 1, 3 and 8 and silence on the part of the material witnesses and failure to explain as to why they did not report the matter to the police of all these events creates a doubt on the prosecution story.

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11. Mr. Dube, learned counsel appearing for the State was not in a position to justify the evidence of Kazi PW 3, particularly, that he did not see happiness on the face of the bride when he performed the nikaah.

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12. Mr. Karanjkar argued that the High Court has rightly concluded that from the solitary statement of PW3 that he did not see happiness on the face of bride, no inference can be drawn that it was a forced nikaah. It is also stated that the father and the brother of the prosecutrix acted as vakils of the prosecutrix and also gave consent for the marriage and in consideration, Mehar of Rs. 25,0000/- was given. There is also a valid nikaahnama on record.

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13. We have gone through the impugned judgment very carefully. We find that the impugned judgment cannot be faulted with. The findings given by the High Court are perfectly justifiable. The High Court has not erred in coming to the conclusion that the whole prosecution story was a myth. Undoubtedly, the whole matter is unfortunate. However, this is an appeal against the acquittal. The burden was on the prosecution to prove and justify its contention that the findings of the High Court were perverse and were not justifiable and in this case, the High Court has miserably failed to do justice and the findings and inferences drawn by it are not possible

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A view or could not not have been drawn in law. The prosecution has failed to convince us.

B 14. Once the appeal fails against the main accused, there remains nothing against the other accused. Mr. Dube, did not seriously challenge their acquittal. The evidence also does not suggest any criminal activity on their part. The appeal against their acquittal has to necessarily fail.

C 15. This being the position, we are not inclined to interfere with the well-considered judgment of the High Court. The impugned judgment of the High Court, acquitting the accused persons, is confirmed. The appeals are, accordingly, dismissed.

R.P.

Appeals dismissed.