

CASE COMMENT ON THE BOMBAY HIGH COURT JUDGEMENT IN THE CASE OF VITTHAL TUKARAM ATUGADE v. THE STATE OF MAHARASHTRA

Written by Srishti Mathur

3rd year BA.LLB (H) Student, Amity University, India

INTRODUCTION

In the case of *Vitthal Tukaram Atugade v. State of Maharashtra*ⁱ, that was relating to the murder and rape of a minor girl, the trial court initially awarded death sentence to the accused which was later commuted to Life Imprisonment along with a fine of Rs.2000 by the High Court. In addition to that the Life Imprisonment Sentence under Sec. 376(2)(f)ⁱⁱ of IPC was maintained. Furthermore, the conviction of accused under Sec 4 & 6 under Protection of Children from Sexual Offence Act was also maintained by the High Court.

FACTS AND ARGUMENTS

Facts:

On 6th Nov, 2013, the victim girl was playing in the courtyard of her house. The accused at the same time was passing by her house and saw her. He was going for hair-cut and asked the victim girl to accompany him to the shop to which victim's mother allowed. They did not returned till 1 PM which started concerning victim's mother. She tried to call the accused on his cellphone using victim's father's cell phone but the call was not connecting. By this time it was 3 PM and they did not return. Victim's mother informed her father as well as her relative and they started searching for the two in nearby areas but in vain. When by 9 PM they were not able to find the two, the victim's mother approached the Kokrud Police Station and logged a missing complaint that was recorded as missing complaint number 11 of 2013 at 10:30 PM.

On the other day, on 7th Nov, 2013, one person named Prathmesh who was also the accused friend, saw the accused and he was hungry and was in fear. He seemed to have not slept the whole night due to fear. Prathmesh saw the accused in a village named Ghogaon. He immediately informed Akaram Balasao Atugade who was the uncle of the Victim's mother. Akaram after getting this information, proceeded to that village to bring the accused back to Atugadewadi. When the accused was brought back to the Atugadewadi, the victim girl was not there with him.

At the same point, the Kokunad Police reached the house of victim and started enquiring with the accused. The accused stated in front of everyone present there that on 6th Nov, he took the victim minor girl to a hilly place named Enpe and then raped her. He also apprehended that she would inform her relatives about this and hence he murdered the victim by throttling. He also informed that he buried her body near the road leading Enpe to Kodaiwadi near a bush.

The victim's mother along with her husband and her uncle and police personnel went to the location when the accused buried the body. They took out the body out of the earth. After this, the victim's mother filled a FIR. The FIR was registered for crime under Sec 302ⁱⁱⁱ, 376^{iv}, 201^v, 363^{vi} and 366^{vii} of the Indian Penal Code as well as Sec 4 of the Protection of children from Sexual Offences Act. The FIR copy was also sent to the Court of Judicial Magistrate First Class, Shirala.

The investigation started and the evidences were collected by the investigating officer that were map of site/scene of offence, Postmortem notes, medical certificate and the reports from Chemical Analyser. He also recorded statements of the witnesses and also collected various documents and submitted a chargesheet against the accused in the JMFC Court, Shirala.

Arguments of the Counsels relating to the Evidence produced:

The counsel for the accused argued that in the present case, the accused took the victim along with her with the consent of the Victim's mother and hence the charges under Sec 363^{viii} and 366^{ix} does not hold any value and the same cannot be proved.

It was also submitted that, the victim's mother and Balabai Yadav last saw the victim along with the accused at 11:30 AM on 6th Nov, 2013 and the dead body was found at 2:30 PM on

7th Nov, 2013. Hence there was a substantial time gap and that the statement of last seen will not hold any importance.

It was also alleged that the extra judicial confession given to Akaram Balasao Atugade is a weak piece of evidence and that cannot be relied upon for deciding the conviction of the accused.

It was further argued that at the spot of the rape, there were no blood stains that were found on the land however, the blood stains were found on the thigh of the victim. The blood stains were not even found by the forensic team.

It was also stated further that there were no blood stains on the place where the body was buried. In addition to this, the examination of the body by the Medical Officer showed no injuries in the private parts of the victim and hence Rape was not proved. Lastly, it was stated that, there was no evidence that proved the source of procuring of instrument to dig the earth and to cover the dead body.

It was also contended later on in this case that on the way from the place of rape to the place where the dead body was buried, two Painjans of the victim girl was found and also there was a discovery of slack of the dead girl and the instrument which was used to dig the earth to bury the dead body.

SUPREME COURT ON DISCOVERY OF EVIDENCE

In the case of *Prabho v. State of U.P.*^x, the Supreme Court stated:

“main difficulty in the case is that the evidence regarding the recovery of blood stained axe and blood stained shirt and dhoti is not very satisfactory and the courts below were wrong in admitting certain statements alleged to have been made by the appellant in connection with that recovery.”

In the court’s decisions in the Prabho case^{xi} & Niranjan Panja^{xiii} case, the question did not arise for deliberation as to whether failure to record the information provided by the accused would

make the evidence related to discovery inadmissible. It can be seen in the judgement of case decided by the Supreme Court that reads as:

“Now coming to the second argument of failure to record the information, it must be held that it is not always necessary.

What is really important is the credibility of the evidence of the investigating agency about getting information/statement regarding the information from the accused. If the evidence of the investigating officer is found to be credible then even in the absence of a recorded statement, the evidence can be accepted and it could be held that it was the accused who provided the information on the basis of which a subsequent discovery was made. The question is that of credibility and not the formality of recording the statement. The essence of the proof of a discovery under Section 27 of the Evidence Act is only that it should be credibly proved that the discovery made was a relevant and material discovery which proceeded in pursuance of the information supplied by the accused in the custody. How the prosecution proved it, is to be judged by the Court but if the Court finds the fact of such information having been given by the accused in custody is credible and acceptable even in the absence of the recorded statement and in pursuance of that information some material discovery has been effected then the aspect of discovery will not suffer from any vice and can be acted upon.”

Accordingly, when the discovery of the place of rape, the place of burial of the body and also the ornaments discovered and the tool for digging the earth, the accused was handcuffed and therefore the said discovery cannot be trusted upon legally.

CASE COMMENT & CONCLUSION

These statements of recovery in the present case made to a police officer are affected by Sec 25^{xiii} & 26^{xiv} of the Indian Evidence Act. The statement that the instrument found was one that was used to dig the earth to bury and the cloth found is not a statement which leads to any kind of discovery under the ambit of Sec 25 of Indian Evidence Act. Section 27^{xv} provides that when any fact is discovered as a consequence of any information received from accused who is in the police custody, so much of such information whether it amounts to a confession or not is

related distinctively to the fact. Furthermore, in the case of *Niranjan Panja v. State of West Bengal*^{xvi}, the Supreme Court stated:

“for effecting a discovery, a statement has to be recorded on the part of the accused showing his readiness to produce the material object and it is only that part of the statement which is not incriminating and leads to discovery which becomes admissible. In the said case, the recovery was not relied upon because the weapon which was allegedly produced by the accused was never produced before the Court and the prosecution has also not given any explanation whatsoever about the disappearance of this weapon. On carefully going through this decision, we find that again it deals with the aspect as to what part of statement made by the accused is admissible and the ratio in this decision is that only the part of the statement which is not incriminating and leads to discovery becomes admissible.”

The ratio of the above decision is not appearing to mean that if the statement made by the accused is not recorded then the evidence relating to the discovery becomes inadmissible.

Furthermore, the decision of the court by relieving the accused of the rape charge on not finding him guilty of rape is proper and the judgment to reduce the punishment from death sentence to life imprisonment for murder is as per the merit of the case.

ENDNOTES

ⁱ Criminal Appeal No.923 of 2015, Bombay High Court

ⁱⁱ Sec. 376 of IPC: Punishment for rape.—

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(f) - commits rape on a woman when she is under twelve years of age;

ⁱⁱⁱ Punishment for murder.—Whoever commits murder shall be punished with death, or 1[imprisonment for life], and shall also be liable to fine.

^{iv} *Supra* note 2

^v Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false; if a

capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life.—and if the offence is punishable with 1[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both. Illustration A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

^{vi} *Infra* note 8

^{vii} *Infra* note 9

^{viii} Punishment for kidnapping.—Whoever kidnaps any person from 1[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

^{ix} Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 1[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].

^x *Prabho Vs. State of U.P.*, AIR 1963 SC 1113

^{xi} *Ibid*

^{xii} *Niranjan Panja Vs. State of West Bengal* (2010) 6 SCC 525

^{xiii} Confession to police officer not to be proved.—No confession made to a police officer¹, shall be proved as against a person accused of any offence.—No confession made to a police officer¹, shall be proved as against a person accused of any offence."

^{xiv} Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate¹, shall be proved as against such person.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate², shall be proved as against such person." 2[Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George 3[***] or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882) 4].

^{xv} How much of information received from accused may be proved.—Provided that, when any fact is proved as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

^{xvi} *Supra* note 7