

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 297 OF 2014

Shambhau @ Shambhudeo s/o
Nagorao Chavan,
Age : 20 years, Occu. Education,
R/o Par, Tq. Ahmedpur,
District Latur

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

Mr. V.D. Gunale, Advocate for the appellant
Mr. S.B. Pulkundwar, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.

[JUDGEMENT RESERVED ON : 18th November, 2015]

[JUDGEMENT PRONOUNCED ON : 26th November, 2015]

JUDGEMENT :

1. Aggrieved by the order of conviction, dated 29th May, 2013, recorded against the present appellant for the offence punishable under section 376 of the Indian Penal Code and consequential sentence to suffer rigorous imprisonment for seven years and to pay fine of Rs. 5000/-, by the learned Additional Sessions Judge, Ahmedpur in Sessions Case No. 21 of 2013, the present appeal is preferred.

2. The prosecution case, in short, is as under:-

That, PW4, the 14 years old minor girl, who is residing at the village of the present appellant, was educated upto 4th standard. Her father was serving at Palam as an annual agricultural contract labour. Her mother was disabled by one leg. The victim girl also suffers from speech articulation disorder (baby-talk). The mother earns wages and the victim was required to take cows for grazing all alone in their field.

. In this background, about 5-1/2 months of filing of the complaint dated 10th May, 2012, one day, as usual, she went to the field with the cow. The appellant's father's field is adjoining to the field of the victim's mother. The appellant was present in his field. He enticed the victim to his field by saying that more grass (fodder) was there in his field. Thereafter, he took her in a standing toor crop and thereafter, forcibly committed sexual intercourse with her. He also threatened that in case the victim would divulge the incident to anybody, he will kill her. After about 15 days, again the appellant, on two

occasions, forcibly raped her in the same field. Due to threats given by the appellant, the victim did not divulge these facts to anybody.

. However, about 5-6 days prior to the filing of the complaint, in the night time, the victim's mother casually caressed the stomach of the victim and was surprised. She, therefore, asked as to what was the matter. In the night, however, the victim kept mum. On the next day, the mother again took her in confidence and made enquiry. Upon that, the victim narrated all the above facts. Therefore, the mother took her to the Police Station, Kingaon and filed complaint at Exhibit 29 on 10th May, 2012.

. Upon registration of the crime, PW14 – API Nagorao Kapale conducted the investigation. The victim was sent to Primary Health Center, Andhori, whereat she was examined by PW1 – Dr. Baliram Nivrutti Sonwane, who found that the victim was carrying for 20 – 24 weeks and was raped. She was thereafter examined at Govt. Medical College and Hospital, Latur by PW2 – Dr. Swapnil Patil,

who, on the basis of X-ray plates supplied to him in regard to the victim, concluded that victim's age was between 14 -16 years. PW10 – Dr. Vidya Hake had also examined the victim on 11th May, 2012 and was of the same opinion. Sonography was carried by her. She caused to have x-ray photographs of right wrist joint, right elbow joint and right iliac bone for age determination of the victim, as has been done later-on by PW2 – Dr. Swapnil Patil, as detailed above.

. Panchanama of the spot of occurrence was prepared. The appellant was arrested. He was also referred to Primary Health Center, Andhori for his medical examination as well as for collection of blood sample for D.N.A. test. D.N.A. kit was already called by the Investigating Officer from Forensic Science Laboratory, Mumbai. He recorded the statements of various peripheral witnesses. The victim girl was sent to Women Reformation House, Latur. Thereafter, upon transfer of PW14, API Nagorao Kapale, next of the API – PW16 – Venkatrao Kendre carried the further investigation. He came to know that on 21st August,

2012, the victim had delivered a male child. Therefore, he called empty kit from Forensic Science Laboratory, Mumbai for collection of blood samples of newly born male child. Thereafter, the blood samples were collected by the Medical Officer of Govt. Medical College and Hospital, Latur as per the procedure and both the blood samples alongwith kits were sent to Forensic Science Laboratory for D.N.A. test report. PW17 – Dr. Shrikant Hanmant Lade of Forensic Science Laboratory, Mumbai has carried the D.N.A. test and found that the present appellant is the biological father of the newly born child of the victim. After carrying further investigation, the chargesheet was filed in the Court.

3. Before the learned Sessions Judge, in all 17 witnesses were examined. Those were the victim, her mother and the Police Constables, who had collected the D.N.A. kit from Forensic Science Laboratory, Mumbai or collected the blood sample, kit sample from the Medical Officers and carried to the Forensic Science Laboratory. The other witnesses were the Medical Officers and the witnesses, to whom the victim or her mother had

allegedly narrated the incident.

4. The defence of the appellant was that he as well as his father had strained relations with police patil of the village, namely, Dhondiram Chavan. The mother of the victim used to visit house of said Dhondiram Chavan. Said Dhondiram Chavan had earlier lodged a report against the father of the accused/appellant alleging that the theft was committed by the father of the appellant. In fact, the victim had illicit relations with Balaji, the son of said Dhondiram Chavan. However, due to pregnancy of the victim, a false allegation is made against the appellant. The police patil had even accompanied the victim and her mother to the police station. In fact, mother of the victim is the author of the report. The Medical Officers did not collect the blood samples of the present appellant and, therefore, the D.N.A. test cannot be relied upon.

5. The learned Sessions Judge, however, found that the prosecution case is proved beyond reasonable doubt.

Hence, the present appeal.

6. Mr. V.D. Gunale, learned counsel for the appellant made the following submissions before this Court :

. That, though the victim is said to have studied upto 4th standard, neither any birth certificate regarding her birth nor any school record is placed on record by the prosecution and only on defective medical opinion evidence, the prosecution wants to believe that the victim was 14 years old at the time of alleged occurrence. Further, the FIR is filed after about 5-1/2 months of the alleged incident on lame excuse that the threats were issued to the victim by the present appellant. According to him, the enmity is probabalized. There is variance in the story given by the victim and her mother. The panchanama of the spot of occurrence does not lay any credence to the prosecution case that the lands of the appellant and the victim are in the neighbourhood. It has become an admitted fact that the victim is not the author of the complaint, though signed

by her.

. As regards the exercise of D.N.A. test, Mr. Gunale submitted that there is no satisfactory evidence that the blood sample of the present appellant was obtained by the Medical Officer or that PW17 – Shrikant Lade had correctly carried the test. In these circumstances, learned counsel submitted that the appeal be allowed and the appellant be acquitted.

7. On the other hand, Mr. S.B. Pulkundwar, learned A.P.P. submitted that the D.N.A. test, which is carried according to the due procedure, conclusively proved that the present appellant is the biological father of the baby boy born to the victim. The evidence on record would show the helpless and somewhat disabled victim was sexually ravished by the present appellant as her parents are also from poor strata of the society. PW5, the mother of the victim is also lame. In the circumstances, delay in filing the FIR would not be fatal. The enmity is suggested merely for the sake of defence. Learned A.P.P. therefore wanted that the

appeal be dismissed.

8. On the basis of the above material on record and the submissions made by both the sides, the following point arises for my determination :-

. Whether the prosecution has proved that the present appellant has committed forcible sexual intercourse with the victim about 4 – 5 months prior to 10th May, 2012 and, thereafter, within 15 days at village Par, Tq. Ahmedpur, Dist. Latur ?

My finding to the above point is in the affirmative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

9. The evidence on record would show that PW4, the victim is partially disabled as she is unable to speak properly. Her mother is lame and her father did not use to reside at their native place being an annual contract

labour at other place. In that view of the matter, the statement of the victim that she kept mum even after forcible sexual intercourse committed by the appellant with her on three occasions due to the threats issued by him, is believable.

10. There is certain variance regarding the details preceding the incident of rape. However, those details are not fatal to the prosecution case. PW5 – Anusaya, the mother of the victim has admitted that she visits the house of police patil and the police patil had once complained of theft by the father of the present appellant.

. Had the victim any illicit relations with the son of the police patil, the mother of the victim would not have even admitted that she used to visit the house of village police patil. It is to be noted that she is agricultural labour cum maid servant and, therefore, her visit to the house of police patil cannot be doubted as she would be required to visit the house of well-to-do person/s in the village to earn her wages.

11. The case of the appellant that the son of the village police patil is in-fact biological father of the baby boy born to the victim, is belied by the voluminous evidence in the nature of the D.N.A. profile test. All the relevant Medical Officers, the Police Head Constables and the concerned Investigating Officers have deposed regarding the calling of the D.N.A. kits, sending the same to the concerned Medical Officers, taking the blood samples of the appellant and the newly born baby boy, returning of those kits to the Forensic Science Laboratory at Mumbai, examination of the blood samples and the conclusion thereof.

12. Mr. Gunale, learned counsel for the appellant submitted that PW11 – Dr. Sachin Waghmare Resident Medical Officer, Govt. Medical College and Hospital, Latur had, in-fact, not collected the blood samples of the appellant as deposed by him. The photograph and form of identification, as required to be filled in at the time of collecting the blood sample, at Exhibit 58

and Exhibit 59, would show that he has not attested the photograph of the appellant. This statement, however, is against the record as though the copy annexed in the paperbook does not show such attestation, the original record would show the said attestation. Further, merely because this Medical Officer has put the seal of the police station on the bottle of the sample of the blood as seal of the hospital was not available, would not make his deposition unreliable. There was no reason for the Medical Officer not to put the seal of the hospital, if at all he wanted to do favour to any person.

13. PW17 – Dr. Shrikant Lade from Forensic Science Laboratory, Mumbai had carried the necessary test of D.N.A. profile. He deposed that upon carrying the necessary procedure and testing of the blood samples, he concluded that D.N.A. profile of the baby boy matches with the D.N.A. profile of the appellant.

. During cross-examination, PW17 – Dr. Lade admitted that though the containers were sealed, the said seals were not visible (legible). On the date of examination in the Court, he had not brought the

register in which the entry about test was taken. He was unable to tell the date on which the empty kits were taken by the police station in order to collect the blood sample. All these facts, however, would not make any dent in the prosecution case, being insignificant.

14. It is true that the Investigating Officer has not taken any effort to collect documentary evidence regarding the birth of the victim i.e. either the entry in the birth register or the school record. However, only for this shortcoming, the prosecution case cannot be disbelieved, as we have already come to the conclusion that the testimony of the victim that the appellant has committed forcible sexual intercourse against her wish, in the facts of the case, is believable. In the circumstances, the appeal fails. Hence, the following order :-

15. The Appeal is hereby dismissed.

[M.T. JOSHI]
JUDGE