

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 314 OF 2014

Samadhan alias Babalu Manohar Patil
Age 20 years, Occ. Labour,
R/o Saundane, Taluke & District Dhule.

.. Appellant
(Original Accused)

Vs.

1. The State of Maharashtra.

2. Vaishali Arun Patil,
Age 30 years, Occu. Agri.,
R/o. Saundane,
Taluke & Dist. Dhule.

.. Respondents

Mr. H. F. Pawar, Advocate for the appellant
Mr. P. N. Muley, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

Reserved on : 31/08/2015.
Pronounced on : 10/09/2015.

JUDGMENT:

. Heard both sides.

2. Aggrieved by the conviction recorded by Additional Sessions Judge, Dhule, vide judgment and order 29/07/2014 in Sessions Case No. 204 of 2012, of the present appellant for the offence punishable under Section 376(2)(f) of the Indian Penal Code and consequential sentences to suffer rigorous imprisonment

for a period of 10 years and to pay a fine of Rs. 10,000/-, the present appeal is preferred by the original accused.

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

That, on 29/7/2012, at about 3:30 to 3:45 pm, the mother of four years old victim was in her field along with the victim. While the victim was left at certain place in the field, the present appellant came there, he took her to a nearby stream and there he removed clothes of the victim and inserted his penis on applying his spit as lubricant, in the private part of the victim. At the relevant time, PW-7 namely; Dodha Patil @ Nimgulkar Baba had heard the noise of crying of the victim. He, therefore, went towards the Stream. He saw that the appellant was on the person of the victim. On seeing PW-7, the accused started running away by holding his pant in one hand. When he made inquiry with the victim, she told him the incident. Thereafter, he lifted the victim and brought her to her mother. The mother i.e. PW-4, in turn, narrated the said incident to her husband i.e. PW-2—complainant.

3. PW-2 had, therefore, taken his daughter along with his wife to the Hospital. Thereafter, he lodged a complaint with Mohadinagar Police Station, on the basis of which, the investigation was started.

4. PW-1 Dr. Bhushan Bhalchandra Rao, has examined the victim on the very same day at about 11:20 pm in Bhausahab Hire Medical College, Dhule. He recorded the history as told to him by the victim as well as her mother, as detailed supra. Since the victim was suffering pains, she was not allowing the examination of her private part. Therefore, PW-1 called a team of four Medical Officers of Anesthesia Department including PW-5 and PW-6. General anesthesia was given to the victim and, thereafter, her medical examination was carried. The medical examination showed that, there was bruising to the labia majora as well as labia minora of the victim. Inflammation on the private part of the victim was also found. Hymen, however, was found intact and the vagina appeared to be bigger in size in comparison to the age of the victim. According to the Medical Officer, the injuries were possible due to the inserting

of penis upto some extent to her private part though in the opinion of the Medical Officer, it was not a case of penetrative sexual assault. Accordingly, he proved the medico legal case record at Exh. 11 along with the examination.

5. PW-8 — the then PSI of Mohadi Nagar Police Station, Dhule, conducted the investigation. He collected the papers of medical examination. He visited the spot of occurrence. Drew the panchanama of the same. He also seized the clothes of the minor victim which were on her person at the time of occurrence, from her mother under a panchanama. The statement of the mother of victim and the eye-witness etc. was recorded. The appellant was arrested on the next day. The C.A. report was called and the charge-sheet was filed.

6. Before the learned Sessions Judge, in all, eight witnesses were examined, as detailed supra. The clothes of the victim did not give any clue regarding the incident. Similarly, the medical examination after two days of the incident also did not give any clue. The prosecution case therefore rested on the statement of

the victim as PW-3, corroborated by the parents and eye-witness coupled with the examination of the victim.

7. The learned Sessions Judge found that the case is proved beyond reasonable doubt. The defence of the present appellant that, two days prior to the alleged incident he was beaten by Sarpanch of the village and the present father of the victim i.e. complainant and later on, his false involvement in the offence was disbelieved. It was suggested to the PW-1 – Medical Officer that the injuries found by him on the private part are possible by inserting a finger. The Medical officer, however, denied any such probability. In view of all these facts, the conviction and sentence, as detailed supra, came to be recorded. Hence, the present Appeal.

8. Mr Pawar, the learned Counsel for the appellant submitted before me that, the evidence of the victim would show that she has identified the appellant in the Court only because on 4 or 5 occasions he was shown to her in the Court premises. Further, the alleged eye-witness i.e. PW-7 has, in cross-examination, admitted

that in fact, he was not the eye-witness. He further took me minutely through the oral evidence and submitted that the learned Sessions Judge ought to have extended reasonable benefit of doubt and ought to have acquitted the present appellant. In the alternative, he submitted that the medical evidence would show that it was a case of non-penetrative act and therefore, the conviction for the offences punishable under Section 376(2)(f) was wrong.

9. On the other hand, learned APP submitted that the statement of the victim is corroborated by the medical evidence. Merely because the eye-witness had made certain somersault in the cross-examination would not show that the prosecution case is false, particularly in view of the specific opinion of the medical officer that the injuries found by him on the person of the victim are not possible by any accident or any insertion of finger in her private part. He further submits that victim or her parents should not have falsely implicated the present appellant in the sexual assault by letting free the actual perpetrator of the crime. He also points towards the immediate history

given to the Medical Officer by the victim and her mother and submits that the prosecution has proved the case beyond reasonable doubt. In the circumstances, he submits that the appeal be dismissed.

10. On the basis of this material, following point arise for my determination:

(I) Whether the prosecution has proved that on 29/07/2012, in the field of village Saundane, Taluka and District Dhule, in the noon time the present appellant has committed penetrative sexual assault by inserting his penis in the vagina of the minor prosecutrix?

Finding to the said point No. (I) is in the affirmative. The appeal is, therefore, dismissed for the reasons given below.

REASONS

11. The deposition of PW-1 Medical Officer of Dr. Bhausahab Hire Medical College, Dhule, would show that when this four years old victim was brought to this Hospital, she was not allowing to have the examination of the private part due to the severe pains. Therefore,

he called a team of anesthesiologist including PW-5 & PW-6. General anesthesia was given to the victim. Before that, the history of the injuries were taken from victim as well as her mother. The details of the examination are already reproduced supra.

12. The Medical Officer has ruled out any possibility of causing of injuries due to insertion of fingers. According to him, the said injuries were possible due to insertion of penis in the vagina to some extent.

13. The victim as PW-3 herself has deposed in the Court that the present appellant was the perpetrator of the crime. It was suggested to her that her parents had tutored her for making this statement. She denied the said suggestion. In the witness box, she pointed towards the present appellant and stated that he has committed the said act. During the cross-examination, she has admitted that she was earlier shown the present appellant in the Court premises on 4-5 occasions and, therefore, she has identified him in the Court hall.

14. It is however to be noted that she has denied the suggestion that in her village there are 4-5 persons having the similar first name as that of the present appellant. She was very specific in saying that the present appellant has committed the crime. It is to be noted that the victim as well as the appellant are from the same small village thereby ruling out any suspicion of mistaken identity. In the circumstances, when both of them were acquainted with each other, merely because on earlier 4-5 occasions she had seen the present appellant in the court premises, would not cast any doubt on the prosecution case.

15. The defence of the appellant was that, he had enmity with the father of the victim and the Sarpanch of the village. Even some days prior to the present incident, he was beaten by both of them and therefore, he was involved in a false case. It is to be noted that ordinarily a person would not make any false imputation involving the honour of the family against a person only due to enmity thereby leaving the real perpetrator of the crime free from the clutches of law.

16. PW-7 – the eye-witness of the incident has, in examination-in-chief, deposed that he has seen the present appellant committing the act. During cross-examination, after court recess, he however deposed that when he went at the spot at the relevant time the victim was all alone there and he had not seen anybody. It is to be noted that even in absence of any eye-witness, the statement of the victim as corroborated by her mother and father by filing of immediate FIR was further fortified by the medical evidence, as detailed supra, is sufficient to convict the appellant.

17. In the circumstances, merely because the eye-witness had made somersault, it would not affect the credibility of the overall prosecution evidence, as detailed supra.

18. Mr Pawar tried to find some of the lacunae in the prosecution case by pointing out that though there was a mobile with the father of the victim, the mother did not immediately report the same over the mobile. That, at the time of examination of the victim, she was found normal i.e. not frightened. It should, however,

be noted that these are merely the minor lacunae. The medical evidence would show that the victim was in such a severe pains that she was not even allowing the medical officer to examine the private part and, therefore, general anesthesia was imparted to her. In those circumstances, the conduct of the victim was found to be normal by the Medical Officer. There is nothing to cast any doubt in this regard.

19. Mr Pawar further argued that while the eye-witness deposed that there was a mud and the knicker was left at the spot, the seizure panchanama would show that clothes were seized from the mother without having any blood stains.

20. It should be noted that the clothes were seized after two days of the incident. It is possible that the mother may have taken the knicker with her in order to again place the same on the person of the victim. Therefore, for this minor lacuna, the entire prosecution case cannot be thrown away. The learned Sessions Judge has taken into consideration each and every aspect

of the matter including the above lacunae. In my view, no fault can be found with the reasoning.

As regards alternative proposition that it is the case of non-penetrative sexual assault, the same is required to be rejected for the reasons that though there was no complete sexual intercourse as the hymen was found intact, there was partial insertion of the penis as per the medical evidence. In the result, the following order is passed.

ORDER

The Appeal is hereby dismissed.

[M.T. JOSHI]
JUDGE

sgp