

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 491 OF 2001

Hanmant S/o Murlidharrao Suryavanshi,
aged 24 years, Occu. Agri.,
R/o Sanja, Tq. & Dist. Osmanabad

.. Appellant/
[Orig. Accused]

Vs.

The State of Maharashtra

.. Respondent

Mr. S.S. Choudhari, Advocate for the appellant
Mr. P.N. Muley, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 29/09/2015

ORAL JUDGMENT :

1. Heard both sides.

2. The present appellant was convicted by the learned Adhoc Additional Sessions Judge, Osmanabad in Sessions Case No. 2 of 1998 on 24/10/2001 for the offences punishable under section 376 r/w. 511 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs.2000/-.

. He was further convicted for the offence

punishable under section 506 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-. In fact, the charge against the appellant was of commission of rape and offence punishable under section 376 of the Indian Penal Code. Aggrieved by the said conviction and sentences, the present appeal is preferred.

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

. That on 14/7/1997 in noon, while the victim PW1, who is claimed to be 14 years old girl had proceeded to a well nearby her own field alongwith PW9 – Sandhya to bring water for drinking by her mother PW3, at that time, the present appellant came at the said well. Under the pretext that he wanted help from them to lift the firewood bundle, he made both these girls to accompany him further and, thereafter, he lifted Manisha and took her in a nearby sugarcane crop. Thereat, he started making sexual advances against her. He removed her clothes and made her to lie in the field. Thereafter, he inserted the penis in her private part. The victim however opposed the same and

started moving her legs. The appellant however gagged her mouth and put earth in the same. He also threatened that he would throw her in the well. In the meantime, PW9 went rushing to the mother of the victim. Therefore, the mother came running nearby the sugarcane crop. She started calling the victim. In the circumstances, the appellant fled away. The victim came out of the sugarcane crop and both of them returned to the house.

. PW4 — father of the victim was away at Osmanabad for his regular work as a mason. He came in the evening. The incident was narrated by the victim and her mother to him. Therefore, they approached the Police Station, Osmanabad and the FIR came to be scribed by PW11 — PSI Anjum Shaikh and the crime was registered at 10.30 pm.

. The victim was referred to the Civil Hospital, Osmanabad. PW2 Dr. Sunita Garad had examined the victim. She found marks of violence i.e. abrasion on right side of neck below right ear, admeasuring 2.5 cm X 1 mm and the injury, according to her, was within 24

hours. The hymen though was found intact, tenderness was present and it was red in colour. The victim was complaining of burning micturition and according to the opinion of the Medical Officer, the attempt of intercourse must have occurred with her.

. The Investigating Officer during investigation, conducted the spot verification and drawn the panchanama to that effect at Exhibit 40. The father of the victim - PW4 had produced the clothes of the victim those were seized. The present appellant while in custody, made statement leading to the recovery of his clothes. Those were also seized vide panchanama at Exhibit 30. Statements of relevant witnesses were recorded. Statement of PW9 - Sandhya was also recorded by PW12 - Mr. Sahebrao Nikam, the then Judicial Magistrate First Class, Osmanabad as per the provisions of section 164 of the Code of Criminal Procedure. The blood, semen, pubic hair and the clothes involving the offence were sent to the Chemical Analyzer and, thereafter, the chargesheet came to be filed.

4. Before the learned Additional Sessions Judge, Osmanabad, in all 12 witnesses were examined. Out of them, PW7 - Chandrakala and PW9 - Sandhya, who were claimed by the prosecution as accompanying the victim and her mother in the field, have turned hostile. The victim was examined as PW1. PW2 is the Medical Officer Dr. Sunita Garad. PW3 is the mother of the victim. PW4 is the father of the victim. Rest of the witnesses are either the carrier of the property or the panch witnesses to the panchanama of the spot of occurrence i.e. PW10 - Nayankumar as well as the panch to the alleged statement made by the appellant leading to the recovery of his clothes i.e. PW6 - Venkatesh however turned hostile.

5. The prosecutrix, her mother as well as the father generally deposed on the prosecution line. The defence of the appellant was that one Balasaheb, who had taken the field of the father of the victim on contract basis for cultivation, was on enmical terms with the present appellant and, therefore, on the instigation of said Balasaheb, he was falsely involved in the offence. PW7 - Chandrakala is the wife while

PW9 is the daughter of said Balasaheb, who later-on have turned hostile.

. The learned Additional Sessions Judge however found that the case is proved beyond reasonable doubt and, therefore, the conviction and the sentences, as detailed supra, came to be recorded.

6. Mr. S.S. Choudhari, learned counsel for the appellant made the following submissions before me :-

. That though the distance between village Sanja and Osmanabad is not more than 3 kilometers, the FIR came to be filed very belatedly from the alleged time of the incident, as detailed supra. He further submits that the FIR at Exhibit 24 would show that only three ladies were present in the field i.e. the victim, her mother and PW9 - Sandhya. The other evidence is doubtful involving the presence of PW7 - Chandrakala in the field. He further submit that even these two witnesses, who could have been branded as independent witnesses than the family members of the victim did not support the prosecution case. The injuries found on the neck of the prosecutrix are possible by entering

into the sugarcane crop and the injury on the private part does not show that any intercourse was there. He further points towards the statement of the mother of the victim that when she reached the sugarcane crop, the victim simply came out of the same. She did not depose that the victim came crying from the sugarcane crop, thus making the prosecution case unnatural. In the circumstances, he submits that that the learned Additional Sessions Judge ought to have extended reasonable benefit of doubt to the present appellant.

7. On the other hand, learned APP submits that the statement of the victim and her mother is fully corroborated by the medical evidence. The Medical Officer has not only found tenderness on the hymen, which was red in colour but even abrasion over the neck was found. He further points that the Medical Officer has denied that the said injury to the neck is possible, if a person passes through the sugarcane crop in a running condition. In the circumstances, he submits that though PW7 and PW9 have turned hostile, since there is sufficient corroboration to the statement of the victim, the conviction as recorded by

the learned Additional Sessions Judge needs no interference.

8. On the basis of this material, following points arise for my determination :-

I) Whether the prosecution has proved that on 14/7/1997 at about 3.00 pm in a field situated at village Sanja, the present appellant has committed rape with the victim/prosecutrix against her will and without her consent ?

II) Whether the prosecution has further proved that on the given date, time and place, the present appellant has caused criminal intimidation as regards the victim with an intention to cause alarm in her mind ?

My findings to both the points are in the affirmative. The Appeal is dismissed as regards the conviction. However, the Appeal is partly allowed as regards the sentences, for the reasons to follow.

R E A S O N S

9. PW1 - the victim and PW3 - her mother have deposed that while PW1 alongwith PW7 went to fetch the water from the adjoining field, the incident has occurred. PW1 gave the details of the incident, her mother narrated about her part upon receiving the message from PW7 that the victim was taken away in the sugarcane crop by the present appellant. According to her, when she gave call to the victim, she came out of the sugarcane crop with clothes in her hand. She thereafter narrated the incident to her and in the evening to her father and, thereafter the further course of action was taken in the evening.

10. As the father of the victim was away at Osmanabad city, the slight delay in filing of the FIR would not take us to disbelieve the prosecution case, particularly when the same is corroborated by the evidence of the Medical Officer, as detailed supra. The Medical Officer has found abrasion on the neck and redness to the hymen and as per her opinion, the same

was the result of the attempt of intercourse. The examination was carried in the same night i.e. on 15/7/1997 at 1.45 am.

11. It is no doubt true that PW7 – Chandrakala and PW9 – Sandhya had turned hostile to the prosecution case as regards the actual incident. They however have deposed that they were in the field on the fateful day alongwith the victim and her mother though they did not support the prosecution as regarding the actual incident. In the circumstances, the anomaly, if any, regarding the presence of PW7 – Chandrakala in the field, as detailed supra, loses its significance. The other evidence on the record is peripheral one. The panch to the spot of occurrence i.e. PW6 – Venkatesh turned hostile, though the panchanama as proved by I.O. would show that the scene of offence was found disturbed and certain sugarcane shoots were found broken at the place. Evidence regarding the chemical analysis is not material since neither any blood nor semen was detected on the cloth of the victim.

12. In that view of the matter, there is no reason to interfere in the finding of the learned Additional Sessions Judge, that it was an attempt to commit rape since as per the statement of the victim, she had thwarted the attempt to commit intercourse by moving her legs.

13. As regards the sentences, however, Mr. Choudhari submits that the appellant was only 24 years old at the time of commission of the offence. He further submits that the appellant was in custody for a period of two months i.e. prior to the filing of the chargesheet and after his conviction by the trial Court.

14. The learned A.P.P. however opposes the plea.

15. Considering all the facts on record and the age of the appellant at the time of commission of the offence, in my view, instead of directing him to suffer rigorous imprisonment for five (5) years, rigorous imprisonment for three (3) years would be just and reasonable. In the circumstances, the following

order:-

16. Criminal Appeal is hereby dismissed as regards the conviction. However, the Appeal is partly allowed as regards the sentences, as recorded by the learned Adhoc Additional Sessions Judge, Osmanabad vide the impugned judgment and order dated 24/10/2001 passed in Sessions Case No. 2 of 1998.

17. The impugned judgment and order of the learned Adhoc Additional Sessions Judge, Osmanabad, directing the appellant to suffer rigorous imprisonment for five (5) years and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for three months for the offences punishable under section 376 and 511 of the Indian Penal Code is hereby set aside.

. Instead, the appellant is directed to suffer rigorous imprisonment for three (3) years and to pay fine of Rs.2000/-, in default to suffer rigorous imprisonment for three months for the offences punishable under section 376 read with section 511 of the Indian Penal Code.

. The appellant is also sentenced to suffer rigorous imprisonment for six (6) months and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for two months for the offence punishable under section 506 of the Indian Penal Code.

18. Both the substantive sentences shall run concurrently.

19. The set off as directed by the learned Adhoc Additional Sessions Judge, Osmanabad be given.

20. The learned Sessions Judge to take action for bringing the appellant in the Court for serving rest of the sentences.

21. Criminal Appeal accordingly stands disposed of.

Sd/-
[M.T. JOSHI]
JUDGE

arp/