

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1119 OF 2013

Sandip Subhash Dhaigude.	]	
Age – 28 years, Occupation – Labour,	]	
R/o. - Presently at Sanjaynagar, Behind Kheradkar	]	
Petrol Pump, (Subhashnagar), Sangli.	]	
Permanent resident of Medshingi, Tal. Sangola,	]	
Dist. Solapur.	]	
(Presently lodged in Kolhapur Central Prison.)	]	... Appellant
		(Orig. Accused)

Versus

The State of Maharashtra	]	
(through Vishrambag Police Station, Sangli,	]	
C.R.No.234/2011).	]	... Respondents
		(Orig. Complainant)

Smt. Nasreen S. K. Ayubi Advocate appointed for Appellant.
Smt. A. S. Pai, APP for State.

CORAM :- SMT. V. K. TAHILRAMANI AND
SMT. I. K. JAIN, JJ.
DATE :- JANUARY 06, 2015

ORAL JUDGMENT (PER SMT. V. K. TAHILRAMANI, J.) :-

1. The Appellant/original accused has preferred this Appeal against the Judgment and Order dated 20/02/2013 passed by the learned Additional Sessions Judge, Sangli, in Sessions Case No.67 of 2012. By the said Judgment and Order, the learned Sessions Judge convicted the Appellant under Section 376 (2) (f) of the Indian Penal Code (IPC) and sentenced him to suffer life imprisonment and fine of Rs.2,000/- (Rupees Two Thousand Only); in default R.I. for six months.

2. The prosecution case briefly stated is as under :

The victim girl is the daughter of Nita Dadasaheb Waghmode (PW 1). At the time of the incident, the age of the victim girl was 4 years. The Appellant was residing behind the house of the victim girl. On 22/11/2011 at around 5.00 p.m., Nita was cutting wood in front of her house. At that time, her 3 children i.e. 2 daughters and 1 son were playing near the house. After some time, Nita realized that her daughter i.e. victim girl was not there. Hence she searched for her daughter. While searching, she went in front of the house of the Appellant. At that time, she saw that the Appellant had left her daughter i.e. victim girl outside his house and her daughter was crying. Nita saw that her daughter had bloodstains on her dress and underwear. Nita inquired with her daughter about what had happened when her daughter, while crying, indicated to Nita that the Appellant had undressed her and had sexual intercourse with her. Her daughter told this to Nita in her own language and with the help of gestures. Then Nita took out her daughter's underwear and inspected her private part. Nita found that blood was coming out from the private part of her daughter. Then Nita entered into the house of the Appellant and started shouting. People gathered at the spot. The Appellant then started to run away. However, he was caught hold by some of the persons and taken to the police station. As Nita's daughter was bleeding, she took her to the hospital of Dr. Suhas Vasantrao Patil (PW 5). Dr. Patil applied some ointment to the private part of the victim girl and told Nita that they should inform the police. Nita then called her husband and thereafter they went to the police station. She lodged F.I.R. (Ex.11). Thereafter investigation commenced. The victim girl was sent for examination. Dr. Reshma Rahul Jadhav (PW 6) examined the victim girl. She found that the girl's private part showed evidence of tear of hymen at 6 O'Clock position. X-rays of the victim girl were taken and it was found

that the victim girl's approximate age was between 4 to 6 years. The Appellant was also sent for medical examination and it was found that he was potent. The clothes of the Appellant also came to be seized during investigation. The clothes of the victim girl and the Appellant were sent to C.A. for analysis. After completion of investigation, charge-sheet came to be filed.

3. Charge came to be framed against the Appellant under Section 376 (2) (f) of IPC as well as under Section 323 of IPC. The Appellant pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Additional Sessions Judge convicted and sentenced the Appellant as stated in para 1 above. Hence this appeal.

4. We heard the learned Advocate for the Appellant and the learned APP for the State. We have carefully considered their submissions, Judgment and Order passed by the learned Additional Sessions Judge and the evidence in this case. After carefully considering the same, for the below-mentioned reasons, we are of the opinion that there is no merit in the appeal.

5. The conviction is mainly based on the evidence of Nita (PW 1) who is the mother of the victim girl. The victim girl was hardly 4 years old at the time of the incident. Nita had stated that on 22/11/2011 at around 5.00 p.m., she was cutting wood in front of her house. At that time, her 3 children i.e. 2 daughters and 1 son were playing near the house. After some time, Nita realized that her daughter i.e. victim girl was not there. Hence she searched for her daughter. While searching, she went in front of the house of the Appellant. At that time, she saw that the Appellant had left her daughter i.e.

victim girl outside his house and her daughter was crying. Nita saw that her daughter had bloodstains on her dress and underwear. Nita inquired with her daughter about what had happened when her daughter, while crying, indicated to Nita that the Appellant had undressed her and had sexual intercourse with her. Her daughter told this to Nita in her own language and with the help of gestures. Then Nita took out her daughter's underwear and inspected her private part. Nita found that blood was coming out from the private part of her daughter. Then Nita entered into the house of the Appellant and started shouting. People gathered at the spot. The Appellant then started to run away. However, he was caught hold by some of the persons and taken to the police station. As Nita's daughter was bleeding, she took her to the hospital of Dr. Suhas Vasantrao Patil (PW 5). Dr. Patil applied some ointment to the private part of the victim girl and told Nita that they should inform the police. Nita then called her husband and thereafter they went to the police station. She lodged F.I.R. (Ex.11).

6. Nita has further stated that thereafter the police gave a lady constable along with her who took them to the Civil Hospital, Sangli where the victim girl was examined. Dr. Reshma Jadhav (PW 6) is the doctor who was attached to the Civil Hospital at Sangli. She has stated that on 22/11/2011 at about 8.40 p.m. the victim girl was referred to her by the police. The victim girl came along with her mother and a lady constable. The history was given of rape. On examination, Dr. Reshma Jadhav found abrasion on right forearm around 3 cms and on examination of the girl's private part, she saw tear of hymen at 6 O'Clock position. On examination, approximate age of the victim girl was found to be between 4 to 6 years. The girl was admitted for one day and discharged on the next day. Dr. Reshma Jadhav has specifically denied the suggestion that injury to the private part of

the victim girl was caused on account of fall from cycle. One more incriminating circumstance against the Appellant is his conduct at the time of the incident. The Appellant was seen by Nita (PW 1) putting the victim girl outside his house. At that time, the victim girl was crying. Nita started shouting after seeing that her daughter was raped, whereupon the Appellant started running away. The conduct of the Appellant of running away is stated by Nita (PW 1) as well as by Jayashri Ashok Shendge (PW 7) and Biradar Shankar Budhawale (PW 8). Jayashri (PW 7) has stated that on 22/11/2011 at about 6.00 p.m. she heard chaos. When she went to the spot, she saw bloodstains on the skirt and knicker of the victim girl. She saw that at that time, the Appellant was trying to run away. However, he was caught by the persons who had gathered there and he was taken to the police station. Biradar (PW 8) has stated that he heard chaos. Hence he went towards the spot. He saw that Nita was crying. The victim girl was also crying. There was blood on the frock of the victim girl and the Appellant started running away. Hence Biradar (PW 8) caught hold of the Appellant with the help of one more person. Then they took him to the police station.

7. There is one more circumstance which connects the Appellant to the crime. This is the C.A. report (Ex.20). The skirt and underwear of the victim girl were sent to the C.A. The shirt and the underwear of the Appellant were also sent to the C.A. Panch witness Laxmi Baliram Kokare (PW 3) had disclosed about seizure of clothes of the victim girl. Panch witness Amol Suresh Ghodke (PW 4) has deposed about seizure of clothes of the Appellant which were on his person at the time of arrest. As stated earlier, these clothes were sent to the C.A. The C.A. report (Ex.20) shows that the skirt of victim girl was stained with the blood of 'B' group and her underwear was stained with human blood. The fact that blood of 'B' group was found on the skirt

of the victim girl shows that her blood group was 'B'. The same blood group i.e. 'B' group was found on the underwear and the shirt of the Appellant. This is a highly incriminating circumstance which goes against the Appellant.

8. The Appellant has been convicted under Section 376 (2) (f) of IPC as it stood before amendment. Thus, the Appellant is charged with an offence of committing rape on a girl who is below 12 years of age. The evidence of Nita (PW 1) shows that her daughter was 4 years old. The evidence of Dr. Reshma Jadhav (PW 6) also shows that the age of the victim girl was between 4 to 6 years. Thus, Section 376 (2) (f) would be attracted in the present case. It is pertinent to note that the Appellant has not disputed that the victim girl was below 12 years of age.

9. On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the Appellant committed an offence punishable under Section 376 (2) (f) of IPC. Thus we find no merit in the Appeal. The Appeal is dismissed.

10. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Smt. Nasreen S. K. Ayubi at Rs.5,000/-.

(SMT. I. K. JAIN, J.)

(SMT. V. K. TAHILRAMANI, J)