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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO.422 OF 2012.**

|                                   |   |                      |
|-----------------------------------|---|----------------------|
| Santosh Rajendra Jagtap           | ] |                      |
| age: 25 years, Indian Inhabitant  | ] | ... <u>Appellant</u> |
| residing at: 38/2, D.A.D. Complex | ] | Orig. accused        |
| Bibvewadi, Kondhwa Road, Pune.    | ] |                      |

V/s.

|                             |   |                 |
|-----------------------------|---|-----------------|
| The State of Maharashtra    | ] |                 |
| At the instance of Swargate | ] | .... Respondent |
| Police Station, Pune        | ] |                 |

Mr. Arjun Rajput i/by Ms. Anjali Patil, for Appellant.

Ms. R. M. Gadhvi, A.P.P., for the Respondent-State.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 29<sup>th</sup> JUNE, 2015.**

**ORAL JUDGMENT :**

1. This appeal takes an exception to the judgment and order dated 14<sup>th</sup> March 2012, in Sessions Case No.132 of 2011, of the learned Additional Sessions Judge, Pune, thereby

convicting the appellant, for the offence punishable under Section 376 (2) (f) of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for six months. By the said judgment, the appellant is also convicted for the offence punishable under Section 506 (II) of the IPC and sentenced to suffer rigorous imprisonment for one year, with direction that both the sentences to run concurrently.

2. The facts, as are necessary, for deciding this appeal may be stated as follows :-

P.W.1 Rupali is the mother of the prosecutrix a young girl of 10 to 12 years (her name is withheld in order to protect her identity). At the time of incident, the prosecutrix was studying in fifth Standard. On the day of incident i.e. on 18<sup>th</sup> September, 2010, it was Ganapati festival and the mother of prosecutrix had been to attend the same. At about 9.30 p.m. while prosecutrix was stepping down the stair case, the appellant herein, who was residing on the ground floor of the building in which the prosecutrix was residing, dragged the

prosecutrix towards backside of CGHS building, laid on the ground and had forcible sexual intercourse with her. Then he threatened her that if she discloses the incident to anybody, he will kill her younger sister. Due to threatening the prosecutrix did not disclose about the incident to anyone on that night. However, on the next day when her mother made enquiry with her, she informed initially that the appellant had kissed her forcibly. Complaint to that effect was lodged by her mother at police station. Subsequent thereto, on 24<sup>th</sup> September 2010, her mother again found her daughter crying, she made detailed enquiry with her and the entire incident was revealed by the prosecutrix to her mother. The prosecutrix was again taken to police station. From there, she was referred for her medical examination and the medical examination revealed vaginal intercourse with her. In view, thereof, the clothes of prosecutrix came to be seized under panchanama. The appellant also came to be arrested on 24.09.2010 and after completion of investigation, chargesheet came to be filed in the Court.

3. On committal of the case to the Sessions Court, trial Court framed charge against the appellant vide exh.2.

The appellant pleaded not guilty and claimed trial raising defence of false implication on account of inimical relations between the two families.

4. In support of its case, prosecution examination in all 10 witnesses including P.W.7 the prosecutrix, P.W.1 her mother Rupali and P.W.5 Dr. Rupanjal Arora, who has examined the prosecutrix. On appreciation of their evidence, the trial Court held the guilt of the appellant to be proved for both the offences, beyond reasonable doubt and convicted and sentenced him as aforesaid.

5. This judgment of the trial Court is being challenged in this appeal by learned counsel for the appellant Smt. Anjali Patil, by submitting that the trial Court has not properly appreciated the evidence on record, especially the fact that there is inordinate delay in disclosing the incident and in lodging the F.I.R. Initial complaint Exh.8 is only in respect of offence under Section 354 of IPC whereas subsequently case is developed for involving the appellant in such a serious offence. According to her, the medical evidence is also not proving the sexual intercourse, but keeping open the

possibility that the prosecutrix might have inserted her finger in her private part and hence hymen was torn. According to learned counsel for the appellant, therefore, in this case, the benefit of doubt is definitely required to be extended to the appellant.

6. Per contra, learned APP has supported the judgment of the trial Court by submitting that the medical evidence is categorical which establishes the finding of vaginal intercourse taken place just few days before the incident. Moreover, according to learned APP there is absolutely no reason for the prosecutrix or her mother to implicate the appellant falsely, that too by staking the honour of her own daughter.

7. This being a case of sexual offence, the evidence of prosecutrix is of vital importance. Needless to say that, as sexual offence takes place in a privacy and in secrecy, there can hardly be evidence of any other eye witness on record. Hence if the evidence of prosecutrix, which is of paramount significance, inspires confidence in judicial mind, then, as per settled position of law, the conviction can rest on the sole

testimony of the prosecutrix also. There is no need to seek corroboration to her testimony as doing so is like adding insult to her injury.

8. In the instant case, the prosecutrix is a young girl of 10 to 12 years. At the time of incident, she was studying in V Std. and her birth date as stated by her is 21.6.1999. There is also evidence relating to her age. The prosecution has examined P.W.6 Dr. Ajay Taware, who has conducted radiological examination and Ossification test and on the basis thereof, has opined that the age of prosecutrix at the time of examination i.e. on 28<sup>th</sup> September, 2010, was about 10 to 12 years, including margin of error. The certificate to that effect is at Exh.18. The learned counsel for the appellant has also not disputed the fact that at the time of incident the prosecutrix was below the age of 12 years.

9. Her evidence clearly goes to reveal that on the date of incident there was festival of installation of idol of Lord Ganesha in their colony. Hence at about 9 to 9.30 p.m. she took her meal. She was residing on the first floor of the building. When she was stepping down, the lights in the stair

case were off, one person, whom she has identified as appellant herein and to whom she was calling as 'Santosh Mama', was hiding himself in the stair case. He forcibly dragged her towards the backside of CGHS Building. He fell her down on the ground, then he took out his plant as well as her underwear and committed sexual intercourse with her. Then he threatened her that if she discloses the incident to anyone, he will kill her younger sister.

10. As per her further evidence, being afraid and ashamed on that night, she did not disclose the incident to anyone. However, on 23<sup>rd</sup> September, her mother saw her crying and asked her the reason for the same, then initially she told her mother that the appellant has taken her away and kissed her. Then on the next day, when she was having pain in her abdomen and there was bleeding from her private part, she narrated the entire incident to her mother that of appellant committing sexual intercourse with her. Thereafter her mother took her to the police station and lodged complaint.

11. In her cross-examination, it is brought on record

that her family was on visiting terms with the family of the appellant. It is also brought on record that prior to this incident no such incident of similar nature has taken place with her. Further it is brought on record that the appellant had taken her directly behind CGHS building. The spot where she was taken by the appellant was not visible from the place where Ganpati festival programme was going on. It is also elicited in her cross-examination that there was a distance of 100 feet from the stair case to the spot where she was taken.

12. The details as to how she was dragged to the spot are also brought on record. In her cross-examination she has stated that the appellant caught hold of her hands and dragged her on her legs. The clothes, which she was wearing at the time of incident are also described by her. The manner in which sexual intercourse is committed by the appellant is also deposed by her in her cross-examination, like the appellant had put his body weight upon her, as a result of which she has received bleeding injury from her private part. At the time of incident, she was having her menstrual cycle also. The suggestion put to her that due to fall on the ground she was hit by a stone on her private part, is denied by her. It

is also denied that while she was riding bicycle, she has fallen from the bicycle and hence she has sustained injury to her private part.

13. Thus the cross-examination of the prosecutrix reveals that her evidence has remained completely unshattered on record even after exhaustive cross-examination and no material is brought on record to disbelieve her. Especially, it becomes difficult to accept that a young teen aged girl of 10 to 12 years will concoct such imaginary or false case against the appellant.

14. Her evidence is also getting complete support and corroboration from the medical evidence of P.W.5 Dr. Arora, who has examined her at Sasson Hospital on 25.09.2010 when the prosecutrix was brought there with a history that on 18.9.2010, the appellant has committed rape on her. On external examination of the prosecutrix, P.W.5 Dr. Arora, has found that her hymen was torn and there was bleeding on external part. One finger per vaginal examination was possible. In view thereof, she has opined that clinical findings were suggestive of vaginal sexual intercourse. She has issued

medical certificate accordingly vide Exh.16.

15. In her cross-examination it is elicited that hymen must have been torn within one week prior to the examination. It clearly co-incides with the date of incident which was 18.9.2010. She has also opined that her finding as to vaginal intercourse is not suggestive of habitual sexual intercourse, but it was a single instance of sexual intercourse. Further she has opined that hymen was torn and it was fresh tear. In her opinion, the bleeding could have taken place due to menstruation or due to forcible sexual intercourse. She has denied suggestion that hymen can be torn due to jerk or even due to fall. The only suggestion accepted by her is that she cannot completely rule out the possibility of a girl forcibly inserting her finger or some object inside her private part which can result into tear of hymen. In my considered opinion, if possibilities are to be looked into, there can be umpteen, but absolutely there is no admission elicited from prosecutrix that she has inserted her finger or any object in her private part, hence hymen was torn. In the considered opinion of this Court, the medical evidence fortifies the testimony of prosecutrix and goes to prove the incident, as deposed by the

prosecutrix.

16. Though the prosecution has also relied upon the evidence of P.W.1 her mother and the evidence relating to panchnamas of the clothes of the prosecutrix, the said evidence is merely of corroborating nature. The evidence of her mother goes to prove that the prosecutrix has initially disclosed her that the appellant has kissed her and hence complaint to that effect vide Exh.8 was lodged. Thereafter on further enquiry, the prosecutrix has disclosed about the appellant having committed sexual intercourse with her. It becomes difficult to accept that when both families were on visiting terms with each other, either mother or the prosecutrix will go to the extent of implicating the appellant falsely in such a grave and serious offence, that too putting at a stake the honour of prosecutrix herself.

17. As regards submission that there is inordinate delay in lodging F.I.R., needless to say that in such offences, the delay is bound to occur. The evidence of prosecutrix herself goes to reveal that due to threatening and she being a young girl of tender age. Initially she has not disclosed about the

incident to her mother. First she has told only about the appellant kissing her and on further enquiry, she has disclosed about the entire incident. Hence the delay is explained properly from the attending circumstances and evidence on record.

18. On account of delayed disclosure and the consequent delay in medical examination, during which period prosecutrix has changed clothes, taken bath, there was no possibly of presence of any blood stains or semen stains on vaginal smear or vaginal swab or on the clothes of the prosecutrix, therefore, absence of that evidence will not vitiate the prosecution case.

19. In the instant case, evidence of prosecutrix inspires confidence in the judicial mind. She has proved herself to be a witness of truth. Moreover, as her evidence is completely and totally supported and corroborated by the medical evidence, it has to be held that the prosecution has succeeded in proving its case against the appellant beyond reasonable doubt. Hence the trial Court has rightly convicted the appellant for offence punishable under Section 376 (2) (f) of

IPC. Having regard to the gravity of the offence, the minimum punishment imposed by the trial Court also does not call for any interference. Hence the appeal holds no merit, therefore, stands dismissed.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**