

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1127 OF 2013

DILIPKUMAR BAKILAL GUPTA

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Shri T.K.Sinha, Advocate for the Appellant.

Smt.A.T.Javeri, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 16th NOVEMBER 2015.

ORAL JUDGMENT :

1 This appeal is directed against the judgment and order dated 6th April 2013 passed by the 3rd Additional Sessions Judge, Thane, convicting the appellant of the offence punishable under Section 376 of the Indian Penal Code (IPC) read with Section 511 of the IPC, and sentencing him to suffer Rigorous Imprisonment for 5 years, and to pay a fine of Rs.5,000/-, in default, to suffer Rigorous Imprisonment for 3 months.

2 When the appeal came up for hearing, it transpired that the appellant had already been released from prison on 25th July 2015, after having undergone the entire sentence imposed upon him. This has been stated by the learned counsel for the appellant, who appeared before this court, pursuant to a communication made to him by the Registry of this court. The learned counsel for the appellant submits that he has instructions to state that the appellant does not wish to advance any arguments in support of the appeal, and that, the court may decide the matter after going through the record of the case and the impugned judgment.

3 Though the appellant has undergone the sentence, the appeal having been admitted, needs to be decided on merits. In the circumstances, it is being decided, after going through the entire evidence adduced during the trial, after going through the impugned judgment, and after hearing Smt.A.T.Javeri, the learned APP for the State.

4 The prosecution case, as put before the trial court, in brief, was as follows :

The First Informant Reshma, a housewife, used to reside in the neighbourhood of the appellant. Reshma was residing with her husband and two daughters, one aged 3 years and the other aged 1 year. On 18th April 2011, at about 7.00 p.m., Reshma went to see where her daughter of 3 years (hereinafter referred to as the victim) had gone and why she had not come back. She learnt from another child that the victim had gone to the house of Dilip uncle, i.e., the appellant, for playing. Reshma went to the house of the appellant. The door of his house was closed. Reshma knocked the same. The appellant opened the door. He was naked at that time. When Reshma peeped inside from the door, she saw that the victim was lying on the cot in a naked condition. Reshma went inside and picked up her child. The child started crying. Reshma concluded, from what she had seen, that the appellant intended and had attempted to commit rape on her child of 3 years. The appellant ran away after the incident. He was caught by some members of public, was assaulted, and was handed over

to the police.

5 The prosecution examined totally six witnesses during the trial. The case, however, rests mainly on the evidence of Reshma (PW1) herself.

6 I have carefully gone through her evidence. She did speak about the incident. In her cross-examination, nothing which would render her testimony doubtful has been brought on record.

7 Sudam Pise (PW4), a Police Constable, who was on duty at Kasar Vadavali Police Station, is the one who had apprehended the appellant, after the matter had been reported by Reshma to the police station.

8 The fifth witness Bashidali Sayyad Ali Sayyad, A.P.I., is the one, who had registered the First Information Report (FIR), on the basis of what Reshma told him. He had carried out further

investigation in the matter and had filed charge-sheet.

9 Usha Mehta (PW6), a Social Worker and a Special Executive Magistrate, is the one, who had recorded the statement of the victim, and that of her friend Roshni. Though this witness was extensively cross-examined, it is not necessary to consider her evidence, as the victim having not been examined as a witness, there is no evidential value that can be given to the statement of the victim, said to have been recorded by this witness.

10 As aforesaid, the case rests solely on the testimony of Reshma, which is unshaken in my opinion, inspite of cross-examination. The matter was immediately reported to the police by Reshma. The police also immediately took action on the report. There is no reason to disbelieve the evidence of Reshma, which has been found acceptable and reliable by the learned Additional Sessions Judge.

11 In his examination under Section 313 of the Code of

Criminal Procedure, though the appellant denied having committed the alleged offence, did not offer any explanation as to why Reshma was deposing falsely against him.

12 As aforesaid, no oral arguments in support of the appeal have been advanced.

13 After going through the impugned judgment, I find that the reliance placed by the Additional Sessions Judge on the evidence of Reshma, is proper. The conclusion drawn by the learned Additional Sessions Judge that the appellant had made an attempt to commit rape on the victim also appears to be proper and legal.

14 No interference is warranted.

15 The appeal is dismissed.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment /Order.**