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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1539 OF 2011

Mahadev Kondiba Jagtap
Age: 60 Years, Occu: Labourer,
R/o Mhaisgaon, Tal- Madha,
District- Solapur.
(At present in Yerwada Central Prison).

..Appellant.
(Original Accused)

Versus

The State of Maharashtra

..Respondent.

Ms. Farhana Shah, Appointed Advocate for the Appellant.
Mr. H.J. Dedhia, APP for State.

CORAM: A.S. GADKARI, J.

10th July 2015.

JUDGMENT:-

1 The appellant has challenged the judgment and order dated 19th November 2011 passed by the 1st Adhoc Additional Sessions Judge, Solapur in Sessions Case No.306 of 2009 thereby convicting him for an offence punishable under Sections 376 and 506 (i) of the Indian Penal Code. The Trial Court i.e. Sessions Court, Solapur has convicted and

sentenced him to undergo rigorous imprisonment for 7 years and to pay fine of Rs.1000/- for the first offence and to undergo rigorous imprisonment for 6 months and to pay fine of Rs.100/- for the second offence. By the impugned judgment and order dated 19th November 2011, the appellant has been acquitted from an offence punishable under Sections 313 and 504 of the Indian Penal Code.

In the present judgment, I do not propose to mention the name of the victim girl in view of the provisions of Section 228-A of the Indian Penal Code and in pursuance of the observations made by the Supreme Court in para no.4 in the case of ***State of Himachal Pradesh Vs. Shree Kant Shekari [AIR 2004 SC 4404]*** and the prosecutrix hereinafter will be referred to as the victim.

2 The facts which are necessary to decide the present appeal can briefly be stated thus:-

(i) The first information report was registered on 7.9.2009 by the victim with Kurduwadi Police station. The incident of commission of rape on the victim by the accused took place from time to time within seven months prior to the registration of the first information report. The victim was educated upto 5th standard at Mhaisgao, Taluka- Madha, District-

Solapur. The appellant was well acquainted with the family of the victim and he used to come to her house as he was residing in her neighbourhood. About 7 to 8 months prior to the registration of the offence, the victim had been to her maternal uncle's field to graze her sheep. The said field was situated behind her house. That her parents had gone to the field for work. At that time the accused came there and made enquiry with the victim about her parents and after victim informing him that her parents had gone to the field for work, at the point of knife, he threatened her and by gagging her mouth forcibly took her to the adjoining sugarcane crop. The appellant thereafter under the threat made the victim to lie on the field of sugarcane crop and forcibly committed sexual intercourse with her. He then threatened her that if she dare to inform the incident to anyone, he would kill her. Because of the said threat, the victim did not disclose the said fact to her parents. Thereafter on various occasions under the threat the appellant committed rape on the victim.

(ii) The mother of the victim noticed that the menses of the victim did not occur and therefore she asked the victim about the reason. The mother of the victim took her to the doctor in their village who after examining the victim, informed her mother that the victim is pregnant. After returning home, the victim told the incident to her parents. Thereafter

the father of the victim took her to Dr. Bahubali Doshi who after conducting sonography came to the conclusion that the victim is pregnant for about six months. The victim informed her parents about forcible sexual assault committed by the accused with her, which was the reason for her conception.

(iii) It is the case of the prosecution that on the next day, the appellant came to her house and took the victim and her mother, at the point of knife to the hospital which was situated at Parali and forced the victim to undergo the process of abortion. Thereafter the appellant carried the victim and her mother to their house. The said incident took place on 9.9.2009. After the father of the victim came to their home, the victim informed the said fact to her father and thereafter he lodged the first information report with the police.

(iv) After recording the first information report, a crime bearing no.148 of 2009 under Sections 376, 313, 504 and 506 of the Indian Penal Code was registered. Police Sub-Inspector Shri Ramchandra Bhosale (PW-11) conducted the investigation of the said crime. During the course of the investigation, he recorded the statements of witnesses and also collected report pertaining to the age of the victim. He also collected the report from the doctor who examined the accused and after completion of the

investigation, he submitted the chargesheet in the Court of Judicial Magistrate First Class, Madha.

(v) As the offence punishable under Sections 376 and 313 of the Indian Penal Code was exclusively triable by the Court of Sessions, the Judicial Magistrate First Class, Madha, in view of the provision under Section 209 of the Cr. P.C., by its order dated 1.12.2009, committed the case to the Court of Sessions, Solapur for trial.

(vi) After committal of case to the Court of Sessions, the Trial Court framed charge below Exhibit 4 for the offences punishable under Sections 376, 313, 504 and 506 of Indian Penal Code. The said charge was read over to the accused in vernacular language to which he denied and claimed to be tried. The defence of the appellant was of total denial and further that as he belongs to the party of Sarpanch of the village Shri Ubale and he being a member of the Grampanchayat, Shri Balasaheb, the maternal uncle of the victim at the instance of one Shri Patil who belongs to opponent party forced the victim to lodge false complaint against the appellant.

(vii) The prosecution in support of its case examined in all 11 witnesses. The learned Trial Court after recording the evidence and hearing the parties to the said case, by its judgment and order dated 19th November 2011 convicted the appellant as stated hereinabove. The said judgment and

order dated 19th November 2011 is impugned in the present appeal.

3 Heard Ms. Farhana Shah, the learned Counsel appointed for the appellant from the Legal Aid Committee and Mr. Dedhia, the learned APP for the State at length.

4 The learned Counsel for the appellant submitted that in the present case the appellant has been falsely implicated by the victim girl at the instance of her maternal uncle Shri Balasaheb, who was from the opponent political party of the appellant. She submitted that the offence under Section 313 of the Indian Penal Code has not been proved against the appellant. She contended that there is inordinate delay of seven months in registering F.I.R., which falsifies the complaint of the victim. She contended that the report of Chemical Analyser demonstrates that there were no stains of any nature found on the clothes of either the victim or the appellant. She submitted that the pregnancy of the victim was terminated with the consent of her father. She further contended that the complainant has lodged false report due to political influence of the police patil to settle the political score against the appellant. She lastly contended that there is no corroboration to the evidence of the victim and evidence of the victim itself is not reliable. She therefore urged before the Court that the benefit of doubt may be given to the appellant and he may be acquitted from all the

charges levelled against him.

The learned APP on the other hand submitted that the statement of the victim is wholly reliable and it needs no corroboration while basing the conviction. He submitted that the medical evidence also supports the version of the complainant. He therefore prayed that the conviction of the appellant may be sustained and the present appeal may be dismissed.

5 As stated earlier, the prosecution in support of its case examined in all 11 witnesses. PW-5 Shri Balasaheb Jagtap is the panch witness of the spot which is at Exhibit 24. PW-6 Tanaji Patil is a panch witness to the seizure of clothes of the victim and the appellant. The said seizure panchanama is at Exhibit 26. The evidence of these two witnesses is formal in nature.

6 PW-9 Nitin Kadam is a panch witness to the discovery of knife at the instance of the appellant. The said knife which was used by the appellant for threatening the victim was seized in the presence of this witness by effecting a panchanama which is at Exhibit 48. PW-9 did not support the prosecution at all and during his cross-examination at the hands of the learned APP no material which is useful to the prosecution has been elicited from him.

7 PW-4 Smt. Vimal Sathe is the mother of victim. PW-4 in her testimony has stated that the victim is her daughter. That the victim was 15 years of age. She has deposed that the incident took place before one year. PW-4 suspected that the menses of her daughter i.e. victim are stopped and the victim appeared to be pregnant. PW-4 therefore took the victim to the hospital of Dr. Devkar in her village. Dr. Devkar after examining the victim, informed PW-4 that her daughter was pregnant for four months and advised her to perform a sonography test. Accordingly, PW-4 took her daughter i.e. victim at the hospital of Dr. Bahubali Doshi at Kurduwadi who in turn informed PW-4 that her daughter was pregnant for about 6 months. After coming to home, PW-4 enquired with her daughter about her pregnancy to which the victim told her that the appellant committed rape upon her under threats at the point of knife. PW-4 has further deposed that thereafter the appellant came to her house and threatened herself and her daughter at the point of knife and told them to accompany him for going to the hospital. The appellant took them to the hospital at village Parali. The appellant thereafter got aborted her daughter through doctor in the said hospital. Her daughter thereafter lodged a complaint against the appellant.

In the cross-examination, this witness has admitted that her husband was serving with police pail of the said village and the said police

patil is an influential person from their village. However, PW-4 denied the suggestion that her daughter might have got pregnant from one shepherd. She has further denied that her husband had obtained hand loan from the appellant and with a view to avoid the repayment and also at the instance of police patil, the appellant has been falsely implicated in the present crime.

8 PW-3 is the victim girl. In her testimony, she has stated that she was educated upto 5th standard at village Mhaigao, Taluka-Madha, District-Solapur. That her age was 15 years. She knew the appellant before the Court. That the appellant used to come to her house as he was residing in her neighbourhood. The appellant used to come to her house for drinking water. That the incident took place about one half/two years ago. She had been to the field of her maternal uncle which was situated behind her house along with her sheep. At that time the appellant at the point of knife dragged her in the field. The appellant threatened to kill her by the said knife if she raises hue and cry. By gagging her month, the appellant took her to the sugar cane crop and committed rape upon her.

It will be inappropriate to reproduce in verbatim the statement of the prosecutrix. However, it can be stated that the victim in unequivocal words has stated that her conception was due to rape

committed from time to time by the appellant. She has further stated that due to threats administered by the appellant, she did not tell the said incident to anybody. PW-3 further deposed that for 6 months her menses were missed and therefore her mother asked her about its reason. Her mother carried her to Dr. Devkar who after examining her told her mother that the victim was pregnant. After returning home, the victim narrated the incident to her mother and informed that her conception was due to rape committed by the appellant. She further deposed that thereafter the appellant again came to her house and threatened her (PW-3) and her mother (PW-4) and forced them to accompany him at the point of knife, to a doctor at Parali. Doctor of the village Parali did the abortion as per the say of the appellant. After returning home, she filed a complaint against the appellant in the police station.

In the lengthy cross-examination, PW-3 has flatly refused the suggestion that due to hand loan which was taken by her father from the appellant, the police patil of the village asked her to file false case against the appellant. She has also denied the suggestion that the police patil has enmity against the appellant and therefore police patil forced victim to file present case against the appellant. This witness has specifically denied the suggestion that she was having love affair with one shepherd from village

and because of which she became pregnant.

9 PW-2 is Dr. Bahubali Doshi, who at the first instance examined the victim (PW-3) and informed her mother (PW-4) that victim was pregnant of 25 weeks and 6 days.

10 PW-1 Dr. Sudha Munde is the witness who has conducted abortion of the victim (PW-3). This witness has stated that the victim had been to her hospital on 9.9.2009. She medically examined the victim and found that victim was pregnant of five and five half months. She has further deposed that along with the victim two persons were there out of which one was her father. That upon a request made by the victim and her father, she aborted the victim on 10.9.2009 and issued a certificate to that effect.

11 PW-7 is Dr. Gurudev Thengil, the Medical Officer. PW-7 in his testimony has stated that he was a resident doctor and he is M.S. in Obstetric and Gynecology. He has further stated that on 13.9.2009 when he was attached to Civil Hospital, Solapur, he examined the victim who was brought by the police and noted positive finding of the said patient i.e. her hymen was torn, uterus size was bulky and there was minimal per vaginal bleeding present. PW-7 has further stated that as per history given by the victim, she was raped by the appellant repeatedly and the appellant

thereafter aborted her. This witness has further stated that he also conducted radiology test and as per report of the expert it was found that uterus size was bulky, increase of endomaterial thickness upto 13 mm. He has further deposed that the report indicated that victim's pregnancy was terminated. That it indicated that there was pregnancy of the victim.

12 In the cryptic cross-examination, these witnesses namely PW-2 Dr. Bahubali Doshi, PW-1 Dr. Sudha Munde and PW-7 Dr. Gurudev Thangil, no material has been extracted which would help of the appellant.

13 PW-8 is Smt. Amruta Tikur. PW-8 in her testimony has stated that she was attached to Civil Hospital, Solapur as a Medical Officer. That the police had referred her for medical examination, the appellant, who was an accused in the present crime. She collected the necessary samples from the person of the appellant. For the examination of potency of the appellant, she referred him to surgery department. That as per report of the surgery department, the person examined i.e. the appellant was potent.

14 PW-10 is Dr. Vivekanand Choudhari, the professor, Civil Hospital, Solapur. PW-10 in his testimony has stated that on 13.9.2009, the victim was referred for determination of her age in the radiological department. That the x-rays were taken and he found the radiological bone age of the victim was 17 years, plus minus one year. He accordingly issued

a certificate which is at Exhibit 52.

15 PW-11 Shri Ramchandra Bhosale is the Investigating Officer who has in detailed mentioned about the facts of the present case and the steps taken by him during the course of investigation upto filing of a chargesheet before the competent court having jurisdiction. In his cross-examination, no material has been extracted at the behest of the appellant which would come to his help.

16 Before I proceed to analyse the evidence available on record, a useful reference can be made to the celebrated judgment of the Supreme court in the case of ***State of Himachal Pradesh Vs. Shree Kant Shekari [AIR 2004 SC 4404]***. In para-21 of the said judgment the Supreme Court has observed as under:

“21- It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the Court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony.

Assurance, short of corroboration as understood in the context of an accomplice would suffice.”

17 After taking into consideration the entire evidence available on record, it is clear that the victim has categorically stated that she was raped by the appellant repeatedly during the span of about six months at the point of knife. The appellant threatened her that if she discloses the said fact to anybody, he would kill her by the knife. It is the reason that the victim did not disclose the said fact to anybody. The evidence of PW-10 Dr. Vivekanand Choudhari, Radiologist specifically discloses the age of the victim girl on the date of examination as 17 years plus minus one year. PW-4 i.e. mother of victim initially got suspicious about the change in the appearance of the victim and also got suspicious of missing of the menses of the victim and therefore victim was examined by doctor at the village who informed that the victim was pregnant for about four months.

18 As stated above, after the enquiry by PW-4 i.e. mother of victim, the victim disclosed that her conception was due to rape committed from time to time by the appellant. PW-2 Dr. Bahubali Doshi, PW-1 Dr. Sudha Munde and PW-7 Dr. Gurudev Thangil have stated about the stages of sonography test, termination of pregnancy and post pregnancy symptoms of the victim girl. As stated above, the victim has categorically stated that

the appellant at the point of knife, from time to time threatened her to kill if she discloses the fact of rape to anybody and therefore the victim had no other option but to keep silent about the said fact.

It is to be noted here that the first information report in the present crime has been registered on 12.9.2009 that means immediately after two days from 10.9.2009 i.e. the date on which the victim undergone the abortion at Parali. The contention of the appellant that the first information report was lodged after a gap of seven months is therefore not sustainable as after the abortion effected at the instance of the appellant, the victim has lodged the first information report immediately and in my considered opinion there is no delay in lodging the first information report and even if there is some delay occurred at the instance of victim, the same has been satisfactorily explained. As has been held by the Supreme Court in the case of ***State of Himachal Pradesh Vs. Shree Kant Shekari (supra)*** that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. In the present case, I find that the testimony of the victim PW-3 is wholly trustworthy and reliable and it need not require any corroboration in support thereof. Apart from the said fact, PW-2, PW-1 and PW-7 have supported the version of the victim girl which lends further credence to her testimony. Though PW-9, a panch witness to

the discovery of knife at the instance of the appellant has turned hostile, in the present case it makes no difference, as the offence under Section 376 of Indian Penal Code has been proved beyond reasonable doubt against the appellant. As the appellant has threatened the victim girl at the point of knife while committing the said act, the offence under Section 506(i) of the Indian Penal Code has also been proved from the testimony of the victim.

19 In the circumstances, I am of the considered opinion that the learned Trial Court has rightly and correctly convicted and sentenced the appellant under Section 376 and 506(i) of Indian Penal Code and the impugned judgment and order dated 19th November 2011 does not suffer from any infirmity either legal or on facts to interfere with it. The appeal being sans of any merits, is accordingly dismissed.

20 Fees payable to the learned Counsel appointed by the Legal Aid Committee to espouse the cause of the appellant is quantified at Rs.3500/-.

(A.S. GADKARI,J.)