

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 407 OF 2015

Arun Gulabrao Ingole
Age 21 years, Occu.: Agril.,
R/o Jawala Bk. Tq. Sengaon,
Dist. Hingoli

.. Appellant
(Orig. Accused)

VERSUS

1] The State of Maharashtra
Through P.S. Narsi Namdeo
Tq. & Dist. Hingoli

2] Kausalyabai Baliram Hanwate,
Age : 66 years, Occu.: Household,
R/o Jawala Bk., Tq. Sengaon,
Dist. Hingoli

.. Respondents
(Orig. Complainant)

Mr. S.M. Godsay, Advocate for the appellant
Mr. R.B. Bagul, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

RESERVED ON : 07/01/2016
PRONOUNCED ON : 28/01/2016

JUDGMENT :

Heard both sides.

2. The present appellant was convicted by the

learned Additional Sessions Judge cum Special Judge, Hingoli in Special Child Case No. 09 of 2014 vide judgment and order dated 02/04/2015 for the offences punishable under section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short "**POCSO Act**") and section 325 of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for a period of 10 years and to pay a fine of Rs.20,000/- for the offence punishable under section 4 of POCSO Act. He was further sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.5000/- for the offence punishable under section 325 of the Indian Penal Code. It was directed that in case the fine amount is recovered, compensation of Rs.20,000/- be paid to the victim child.

3. Case of the prosecution is that on 23/3/2014 at village Jawala Bk., Tq. Sengaon, the appellant has committed rape i.e. penetrative sexual assault on a five years old minor victim girl, resident of his own

village. During the sexual assault, he caused grievous hurt to the said victim.

. The victim belonged to Matang caste. Therefore, the appellant was also charged of commission of rape on the member of a scheduled caste community i.e. the offence punishable under section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned Additional Sessions Judge though convicted the appellant for the said offence, did not record any separate sentence.

. Aggrieved by the conviction and sentences, as detailed supra, the present appeal is preferred.

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

. That PW1 – the grandmother of the victim resides at said village Jawala Bk. alongwith her son and daughter-in-law. The couple had 5 daughters and one infant male child. Eldest of the daughter was already married. Therefore, four of the daughters

and the son used to reside jointly with the complainant and their parents. Three of the remaining daughters were dumb and deaf while the victim was dumb since birth. Two of the daughters were admitted to a Deaf and Dumb school at Hingoli. The family is of agricultural labour class. The son of the complainant used to remain at his farm owner's land nearby the village. He used to visit the house in the village only for the purposes of bath and taking meals on two times. The daughter-in-law however used to reside in the house and used to go for the labour work.

. In the situation, on 23/3/2014, when the grandmother i.e. the complainant was looking after the grandchildren at about 2.00 to 2.20 pm in front of her house under a jamun tree, the present appellant, who belongs to Maratha community, came there. He said to the victim that he would give some oranges and, therefore, she should come with him. The complainant was busy in looking after the infant grandson in the house.

. After some time, when the complainant came outside the house, she found that the victim was missing. She therefore made enquiry with her cousin brother - PW5 as well as Sriram Hanwate - PW4 about the victim. They had seen the appellant taking away the victim by luring her for orange fruits. Ultimately, Sriram Hanwate told that he himself would make search for the victim.

. At about 6.00 pm, PW4 - Sriram Hanwate brought the victim to the house without any clothes on her person. She was seen sexually assaulted as blood was oozing from her private part. Sriram Hanwate told the complainant that when he was making search for the victim, he found her in nude condition in a canal in the field of one Chandrabhan Savkar.

. Thereupon, the victim was taken by the complainant and her relatives to the Medical Hospital at Narsi. However, the Medical Officer thereat has referred the victim to Hingoli and while in Civil

Hospital, Hingoli, treatment on the victim was going on, the complaint at Exhibit 14 came to be recorded and the crime was registered in the same night at about 12:45 am.

. PW11 – the then Deputy Superintendent of Police – Mr. Nilesh More had conducted the investigation. He visited the spot of occurrence. The spot was found disturbed. Clothes of the victim girl were found at the spot. Blood stains were there on the soil. The cloth as well as the sample of the soil was collected in presence of the panch witness including PW6 – Ramji Hanwate. The medical evidence was collected. The victim was referred to the Child Psychologist and Expert. It was however found that the victim was unable to give any detail of the incident. Medical papers were collected.

. The appellant was arrested on 24/3/2014 at 9:30 pm. Some injuries were found on his person. He was also therefore referred for medical examination. His clothes found in the house were

also seized. All the relevant property was sent for chemical examination. The medical certificates were collected and ultimately the chargesheet was filed in the Court.

5. Before the learned Special Judge, Hingoli, in all 11 witnesses were examined. PW1 is the complainant. PW2 is the victim, who could not depose anything in the Court. PW3 – Ratnamala Gaikwad, who was working as a Special Teacher in Khaki Baba Matimand School, Hingoli was examined to show that she was called by the Investigating Officer for recording statement of the victim girl but the victim was not responding to any question though a child friendly atmosphere was created at the time of recording of the statement.

. PW4 – Sriram Hanwate was examined to show that he had made search for the victim and had brought her from the canal to the house of the complainant in injured condition.

. PW5 - Narayan Hanwate was examined to prove that he had seen the appellant taking away the victim.

. PW6 - Ramji Hanwate was the witness to the inspection of the spot, who had proved the spot inspection panchanama at Exhibit 22 as well as the house search panahanama of the appellant on 24/03/2014, whereunder, the clothes of the accused were said to have been seized in his presence.

. PW7 - Dr. Syed Meena had examined the victim at Civil Hospital, Hingoli. PW8 - Dr. Pandurang Phopse has also examined the victim in the same night and, thereafter, examined the appellant when he was produced by the Investigating Officer before him on 24/03/2014.

. PW9 - Dr. Manjeet Santre, who was working as the Assistant Professor at Medical College, Nanded being M.D. in Psychiatric had also examined the victim and found that she was not able to speak or to give any account even by signs though he attempted to

communicate with her. She was noted to be irritated and was bed-ridden at that time.

. PW10 – Ashok Jadhav had recorded the FIR of the complainant PW1 at Exhibit 24 and handed over the investigation to PW11 – Deputy Superintendent of Police Mr. Nilesh More.

6. Defence of the appellant was that the complainant and all other witnesses except the Medical Officer and the Investigating Officer belongs to same community. The victim was in-fact residing in the farmhouse of the farm owner alongwith the parents and not in the house in the village. He is falsely implicated on suspicion by these relatives, though the victim might have suffered injuries due to falling on a stump of the jawar crop, however on the suspicion of sexual assault is committed against her by the appellant, he is falsely roped in the case.

7. Learned Special Judge however found that the prosecution case is proved beyond reasonable doubt.

8. Mr. Godsay, learned counsel for the appellant submitted before me that there is vast contradiction between the statement of the complainant and her neighbours, as detailed supra. Both the neighbours have admitted in the cross-examination that they are the near relatives of the complainant. Evidence of the complainant would show that the house of PW4 – Sriram is ten houses away from the house of the complainant and in the circumstances, his statement that he was able to hear the conversation between the appellant and the victim is false. He submits that only near relatives are examined to show that the victim was in the company of the appellant. The chemical analysis report is not conclusive since the blood samples of the victim as well as the appellant would show that both of them have a similar blood of 'A' group. The seizure of the cloth from his house is not proved by the prosecution. Even otherwise, the learned Special Judge did not put any question to the appellant

regarding the circumstance of finding blood on his cloth. He further submits that the medical evidence would show that the complainant might have suffered injury in an accident while he himself suffered injuries due to the assault by the prosecution witnesses and their relatives on the false suspicion that he had sexually assaulted the victim. He further submits that the observation of the learned Special Judge of the victim would show that she was completely blank without showing any emotions and thus, the prosecution case ought not have been believed by the learned Special Judge.

9. On the other hand, learned A.P.P. submits that the Medical Officers PW7 – Dr. Syed Meena had clearly ruled out the possibility of any accidental injuries to the victim. Even otherwise the very nature of the injuries found on the private part of the victim would clearly rule out any such possibility. In the circumstances, he submits that the relatives of the victim would not make false

allegations against the appellant for no reason, thereby saving the real culprit of the crime. In the circumstances, he submits that the prosecution case is proved beyond reasonable doubt.

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

I) Whether the prosecution has proved that on 23/03/2014 at village Jawala Bk., Tq. Sengaon, Dist. Hingoli, the present appellant, between 2:30 pm to 6:00 pm, had committed penetrative sexual assault / rape on the minor victim, who belongs to Matang community ?

II) Whether the prosecution has further proved that during the given date, time and place, the present appellant has caused grievous hurt to the victim ?

My findings to both the points are in the affirmative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

11. While PW8 – Dr. Pandurang Phopse had examined the victim regarding the injuries as well as appellant. PW7 Smt. Dr. Syed Meena had examined the victim and her private part.

12. Dr. Syed Meena found that the victim was weighing 15 kg, secondary sexual character were absent. She found the following injuries over the body of the victim, which are as under:-

Injury No.1 - Multiple linear abrasions over right cheek admeasuring 1 X 2 cms.

2 - Multiple contused abrasion over left cheek approximately 2 X 3 cms.

3 - Linear abrasion over nose and below left ear admeasuring 1 X 2 cms.

4 - Scratches over inner aspects of Right elbow approximately 2 to 3 cms.

5 - Multiple linear abrasion over right forearm approximately 3 to 4 cms.

6 - Multiple superficial scratches with contusion over Right upper thigh, (fracture right femur.)

7 - Multiple linear abrasion over upper and middle left thigh upto left leg. Approximately 3 to 4 cms.

8 - Abrased contusion with scratches over back.

9- Wounds present over buttock contaminated with mud.

10 - Stains present over left thigh.

. The nature of injury Nos.1 to 5 and 7 to 10 are simple in nature. Injury No.6 is grievous in nature.

On genital examination, she noticed following injuries on the person of the victim :

1 - Swelling present over labia majora along with contusion over its inner aspects.

2 - Both labia minora lacerated tear approximately 3 X 2 X 1 cm.

3 - Lacerated tear over posterior vaginal wall.

4 - Tear extending posteriorly up to anterior anal margin.

5 - Injury over para urethral region.

6 - Hymen totally ruptured.

7 - Fourchette Teared, vestibule swollen and contused.

8 – Wounds contaminated with mud.

All internal injuries are grievous in nature.

All internal and external injuries caused probably within 6 to 12 hours and were fresh.

13. In the opinion of Dr. Syed Meena, there was a forceful sexual assault on the victim with severe genital injury. Accordingly, she passed her examination report at Exhibit 26.

14. During cross-examination, it was suggested that if a child fall on a standing stub, in a field, the injuries as noted on the genital organ of the victim are possible. The witness denied the said suggestion.

15. PW8 – Dr. Pandurang Phopse, besides noting the injuries on the body of the victim had also examined the appellant on 25/3/2014. He noticed the following injuries on the person of the appellant :-

1 - Multiple abrasion over nose approximately 5 to 3 cm.

2 - Abrasion over back of Right shoulder approximately 2 cm. X 1 cm.

3 - Multiple abrasion over left buttock approximately 5 X 3 cm.

4 - Abrasion over both knee due to friction of sand approximately 3 X 2 cm.

5 - Abrasion over back of Right hand.

All injuries were simple in nature, probably caused within 36 to 48 hours.

According to this witness, the probable age of the injuries was within 36 to 48 hours. During cross-examination, he deposed that the injuries noticed by him on the person of the accused are possible if any assault is made.

16. This medical evidence makes it clear that there was forceful sexual assault against the child, who was yet to develop her secondary sexual character, while there is a possibility that the appellant might have received the injuries due to the assault by the relatives of the victim.

17. PW6 — Ramji Hanwate had deposed in his presence the Investigating Officer had inspected the spot of occurrence and accordingly the panchanama at Exhibit 22 was drawn. The evidence as well as the panchanama would show that the clothes of the victim found at the spot which were blood stained. Some soil was also smeared with blood. The ground was disturbed and even a small of tree of subabhul was also seen broken. It would be thus clear that signs of violence were present at the spot of occurrence.

. During cross-examination, this witness has accepted that he is the relative of the complainant. However, the injury on the person of the victim would make it clear that she was subjected to severe physical violence before subjecting her to the forcible sexual assault.

. In that circumstances, the deposition of this witness regarding sport of occurrence cannot be doubted.

18. As regards the recovery of clothes from the house of the appellant on 24/03/2014, the witness initially did not recollect this incident. Later-on, in the examination-in-chief itself, he deposed that he recollected that he was again called for recovery of the clothes and deposed that panchanama regarding the same at Exhibit - 23 was prepared. This fact would again show that the witness is not an interested witness.

19. Thus, though this witness has deposed about the recovery of the clothes from the house of the appellant and though the chemical analysis report would show that some of the clothes had blood stains, the learned Additional Sessions Judge unfortunately failed to confront this circumstance to the appellant at the time of recording of the statement of the appellant.

20. However besides this evidence, we have the deposition of the complainant PW1 and her neighbours PW4 - Sriram, PW5 - Narayan. Joint reading of their evidence would show that, in the noon of the fateful day, the appellant came to the victim while she was playing under a jamun tree near the house of the complainant. At that time, he asked the victim to accompany him as he would give her some oranges.

21. During cross-examination, PW4 - Sriram and PW5 - Narayan admitted that they are relatives of the complainant. It is however to be noted that they are from the same community and from the same locality. In the circumstances, it is but natural that they would be the relatives of the complainant but also would be natural witnesses.

22. Mr. Godsay, learned counsel for the appellant took me through the cross-examination of all these witnesses to show that the witnesses reside at some distance away from the each others.

He therefore submitted that the prosecution case that all of them were therefore able to watch the meeting of the appellant with the victim and to even hear the conversation, cannot be believed.

23. We have also found that that complaint at Exhibit - 14 was registered by the Investigating Officer in the midnight between 23/03/2014 and 24/03/2014 at 00=45 hours. The incident has occurred in the noon time in the village. The victim was initially taken to Government Hospital at Narsi and therefrom, she was referred to Civil Hospital at Hingoli. In the Civil Hospital itself, the complaint was recorded.

. Taking into consideration, the fact that in the said immediately filed FIR, the incident of meeting of the appellant with the victim and luring her for oranges is referred by naming both these witnesses would rule out any afterthought to involve the appellant in the case.

24. Thus, not only the names of these witnesses are recorded in the immediately filed FIR, their statements would also show about their presence and their participation, as detailed above. No doubt, there are certain variations in the statements of these witnesses.

. The complainant had deposed beyond the FIR that PW5 – Narayan was seen working in front of his house when complainant enquired him about the victim. During cross-examination of PW4 – Sriram, it has come on record that his house is only about 15 (fifteen) feet away from the house of the complainant.

25. Statement of PW5 – Narayan would show that the house of PW4 – Sriram is 50 (fifty) feet away from the house of the complainant. The witnesses however are illiterate.

26. Taking into consideration all these overall circumstances, in my view, merely for certain

variations, the prosecution case that the present appellant was seen talking with the victim and, thereafter, taking away her, cannot be disbelieved.

27. The prosecution has thus clearly proved beyond reasonable doubt that the present appellant has taken away the victim on the fateful day.

28. So far as the victim herself is concerned, the evidence of PW3 – Ratnamala Gaikwad, Special Teacher of Mentally Challenged School, PW9 – Dr. Manjit Santre, Assistant Professor of Medical College, Nanded, who is M.D. in Psychiatric would show that the victim was unable to give any account of the event, even by gestures.

. Similar are the observations of the learned Additional Sessions Judge, when he made an attempt to examine the victim as PW2. In that view of the matter, merely because, the expression of the victim was blank when she has faced the learned Additional Sessions Judge, would not mean that no incident of

sexual assault has occurred against her, particularly in view of the clinching medical evidence.

29. In that view of the matter, there is no force in the appeal. Criminal Appeal is therefore dismissed.

[M.T. JOSHI]
JUDGE

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