

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 346 OF 2002

Shravan @ Pintu Prabhakar Salunke,
age : 20 yrs,
R/o. Adavad, Tq. Chopda,
Dist. Jalgaon.

... APPELLANT
(Original Accused)

VERSUS

The State of Maharashtra,
(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay, Bench at Aurangabad.)

... RESPONDENT
(Original Complainant)

...
Mr. Dnyaneshwar Patil, Advocate h/f Mr. G. V. Wani, Advocate for
Appellant.

Mr. S. N. Morampalle, APP for Respondent / State.

...

CORAM : **INDIRA K. JAIN, J.**

DATE : 07th April, 2016.

ORAL JUDGMENT:

. This appeal takes an exception to the judgment and order
dated 7th May, 2002 passed by the learned Additional Sessions Judge,
Amalner in Sessions Case No.37 of 1997. By the said judgment and

order Appellant was convicted of the offence punishable under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and fine of Rs.1,000/- with a default clause.

2 Prosecution case in brief is as under :

- I. Incident occurred on 6th April, 1997 between 01:00 and 01:30 p.m. in the field of one Sharifabi Rauf situated at village Adavad, Taluka Chopda, District Jalgaon. Prosecutrix, a 12 year old girl was residing with her parents in the same village. She was studying in 5th standard. On the fateful day at around 10:00 a.m. prosecutrix alongwith her friend Guddi went to collect firewood. When they were returning home Accused who was on bullock cart met them on the way. Prosecutrix and her friend Guddi sat in the bullock cart of Accused. It is alleged that at some distance Accused untied the bullocks and asked prosecutrix and her friend to wait near mango

tree. Accused then left the place. After some time, he came back and took them to a field where Accused asked prosecutrix to allow him for sexual intercourse. Prosecutrix refused for the same. Accused then caught hold hands of prosecutrix, took her to banana garden, undressed her and committed sexual intercourse forcibly. Incident was witnessed by Guddi friend of prosecutrix.

- II. Report of the incident was lodged to Police Station at around 03:35 p.m. Clothes of prosecutrix were seized under seizure Panchanama. Accused was arrested. On the same day spot Panchanama was drawn in the evening. Prosecutrix had shown spot of incident. She was referred to Cottage Hospital. Accused was also sent for medical examination. Semen, blood and pubic hair samples were collected. Same were sent for analysis to the laboratory. Statements of witnesses were recorded. After

completing investigation charge-sheet was submitted to the Court of Judicial Magistrate First Class, Chopda who in turn committed the case for trial to the Court of Sessions.

3 Charge of the alleged offence was explained to the Accused. He pleaded not guilty and claimed to be tried. His defence was of total denial and false implication.

4 Prosecution examined 10 witnesses in support of its case. Considering the evidence of prosecution witnesses and particularly prosecutrix and medical officer Trial Court came to the conclusion that Accused was guilty of committing sexual assault on prosecutrix and in consequence thereof Accused was convicted. Being aggrieved by the judgment and order of conviction present appeal has been preferred by the original Accused.

5 Heard the learned counsel for parties. Perused reasonings recorded by Trial Court. On meticulous examination of evidence of prosecutrix and medical officer this Court finds that prosecution has proved the charge against Accused under Section

376 of the Indian Penal Code.

6 Needless to state that age of prosecutrix is an important factor which is to be considered at the threshold. Incident took place in 1997. Prosecutrix was examined in Court in February 2002. At the time of her examination before the Court she stated her age as 16 years. There is no effective cross-examination of prosecutrix on age. True, investigating agency has not collected school certificate or birth certificate of prosecutrix to prove her age. Investigating Officer has admitted that no document was collected regarding age of prosecutrix. But the question here is whether inaction on the part of investigating agency in not collecting evidence on age would be fatal to the prosecution case and in the given facts and circumstances of the case apparently answer would be in the negative.

7 It is significant to note that in his written defence Accused has admitted in an unequivocal terms that prosecutrix was of tender age. He did not cross-examine prosecutrix when she stated her age in the year 2002 as 16 years. Since factum of age of prosecutrix is not seriously challenged this Court too finds that prosecutrix was under age at the time of incident.

8 In her further evidence prosecutrix stated that on 6th April, 1997 in the morning she left the house alongwith her friend Guddi. They went to collect firewood. On the way Accused met them. He was proceeding on bullock cart. Prosecutrix and her friend with the permission of Accused sat in bullock cart. At some distance, bullock cart was stopped by Accused. He asked them to wait near mango tree and left the place. After some time, he came and asked Complainant to allow him for sexual intercourse. She refused. Her evidence indicates that thereafter Accused took her to banana crop. He lifted her petticoat, removed her nicker and then committed sexual intercourse with her. It is stated by prosecutrix that seeing one S.T. bus proceeding through the road she was released by Accused. She stated that blood was oozing from her private part. She came to the house and narrated the incident to her parental aunt and father. Thereafter they went to Police Station and lodged report.

9 Prosecutrix was cross-examined at length. Nothing substantial could be elicited in her piercing cross-examination to disbelieve her testimony. Defence has raised a ground that prosecutrix was 12 years old at the relevant time and considering her

age it was not possible for her to give vivid account of incident which shows that she was a tutored witness. Prosecutrix was not put on a guard in her cross-examination and the statement made on behalf of defence that it is not possible for a 12 year old girl to give vivid account of incident, holds no water as nothing could be brought in the cross-examination of prosecutrix to show that she was a tutored witness.

10 Commenting upon the evidence of prosecutrix learned counsel for Appellant vehemently contended that her testimony is not corroborated by independent witness and it would be risky to rely upon sole testimony of Complainant. This is a case in which sexual assault at the hands of Accused is alleged. In such a case as law stands reliance can be placed on the sole testimony of prosecutrix if it inspires confidence. On the close scrutiny of evidence of prosecutrix it can be seen that she had no reason to grind an axe against the Accused. Her evidence is consistent throughout and there is no reason to discard her testimony.

11 This takes this Court further to the evidence of medical officer. PW-3 Dr. Deepak Chaudhary was attached to Cottage

Hospital as medical officer. On 10th April, 1997 he was on duty. He states that at 06:15 p.m. he examined prosecutrix brought by P.S.I. of Adavad Police Station. On examination doctor found multiple fine abrasions on the back of patient. Hymen was found in torn condition and blood was oozing through hymenal laceration. On examination medical officer issued certificate vide Exhibit 21. Doctor opined that injury at serial No.7 mentioned in the certificate can be possible by penetration. Evidence of medical officer supports the evidence of prosecutrix on sexual assault.

12 Appellant attempted to assail the evidence of medical officer on the ground that he examined prosecutrix at 06:15 pm in the hospital whereas spot Panchanama Exhibit 17 indicates that it was recorded between 17:30 and 18:30 hours. Learned counsel for Appellant submitted that one person cannot remain present at two different places at one point of time and this falsifies the evidence of medical officer that he examined the prosecutrix at 06:15 p.m. at the hospital.

13 If evidence of Investigating Officer PW-10 A.P.I. Sanjay Patil is looked into it is apparent that prosecutrix was not taken to

hospital at 06:15 p.m. Evidence of Investigating Officer shows that after drawing spot Panchanama he returned to Police Station within 15 – 20 minutes and thereafter prosecutrix was sent to hospital. This clarifies that medical officer committed an error in showing time 06:15 p.m. in the certificate and also stating the same in his evidence. The error is human and in view of evidence of investigating officer would not be fatal to prosecution case.

14 In the above background this Court is of the view that Trial Court has rightly come to the conclusion that prosecution has succeeded in proving the guilt of Accused beyond reasonable doubt. There is no substance and merits in appeal. Hence the following order –

ORDER

Criminal Appeal No.346 of 2002 stands dismissed.

[INDIRA K. JAIN, J.]