

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.205 OF 2014

SONU RAMBABU VARMA)
Prisoner Convict No.6006)
Kolhapur Central Prison.)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Rohini Dandekar, Advocate Appointed for the Appellant.

Mr.Arfa Sait, APP for the Respondent - State.

**CORAM : VK.TAHILRAMANI &
A. M. BADAR, JJ.**

DATE : 5th DECEMBER 2016.

ORAL JUDGMENT : (PER VK.TAHILRAMANI, J.)

1 The appellant / convicted accused has preferred this appeal against the judgment and order dated 19th July 2013 passed by the learned Sessions Judge in Sessions Case No.708 of 2012. By this judgment and order, the

learned Sessions Judge convicted the appellant under Sections 376(2)(f), 363 and 323 of the IPC. For the offence under Section 376(2)(f) of the IPC, the appellant was sentenced to rigorous imprisonment for life and fine of Rs.5,000/-, in default, rigorous imprisonment for 1 year. For the offence under Section 363 of the IPC, the appellant was sentenced to rigorous imprisonment for 7 years and to pay fine of Rs.1,000/-, in default, rigorous imprisonment for 3 months. For the offence under Section 323 of the IPC, the appellant was sentenced to rigorous imprisonment for 1 year and to pay fine of Rs.500/-, in default, rigorous imprisonment for 1 month. The learned Sessions Judge directed all the substantive sentences to run concurrently.

2 The prosecution case briefly stated is as under :

The victim girl (PW1) was the daughter of PW2 Pappu and PW3 Shashi. The victim girl was about 4 years old at the time of the incident. The parents of the victim girl i.e. PW2 Pappu and PW3 Shashi were residing at Versova, Andheri. The father of the victim girl was working as a mason.

The incident occurred on 4th July 2012. On that day, at about 5 p.m., PW3 Shashi went to fill water. At that time, PW2 Pappu was sleeping. The victim girl and her two sisters and brother, who were all minors, were breaking almonds outside the house. When Shashi came back from filling water at about 7 p.m., she did not see her daughter i.e. the victim girl. She then woke up her husband i.e. PW2 Pappu who was sleeping. They all searched for the victim girl, but they did not find her. PW2 Pappu returned home at about 8 p.m. Then some people advised Pappu to search near seashore, which was at a distance of 1 km from his house. Hence, he along with one Raju (PW4) and Pawankumar (PW5) went to the seashore. There was one creek and one nallah at the seashore. They saw one person in lying position with face downwards. They saw him getting up. Then they saw the man throwing a child in the nallah. There was water in the nallah below knee. They noticed that the child was the victim girl. She was unconscious. Then PW4 Raju and PW5 Pawankumar caught hold of that person and handed him over to the police at the Chowki. PW2 Pappu and his wife took their daughter to the

hospital. She was examined in the hospital. It was noticed that it was a case of rape. PW2 Pappu then lodged FIR Exhibit 13. Thereafter, investigation commenced. After completion of investigation, charge-sheet came to be filed.

3 Charge came to be framed against the appellant under Section 363, 376(2)(f) and 323 of the IPC. The appellant pleaded not guilty of the said Charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph 1 above. Hence, this appeal.

4 The conviction of the appellant is mainly based on evidence of PW1 the victim girl, PW2 Pappu and PW5 Pawankumar. PW2 Pappu has stated that he along with his four minor children and wife was residing at Sagar Kutir, Versova Road, 7 Bungalows. His daughter i.e. the victim girl was four years old at the time of incident. He has stated that the incident occurred

on 4th July 2012. At about 2 p.m., he went to sleep. At 5 p.m. his wife went to fill water as water supply comes at 5 p.m. The children were breaking almonds outside the house. After filling water, his wife came home and asked him about the victim girl. They then started searching for the victim girl in the neighbourhood. PW2 Pappu searched for the victim girl in their locality as well as in the nearby slums. However, he could not find her. Hence, he came back to his house at about 8 p.m. Then some people advised him to search near the seashore, which is at a distance of 1 km from his house. Hence, he along with one Raju (PW4) and Pawankumar (PW5) went to the seashore. There was creek and one nallah near the seashore. PW2 Pappu has stated that from a distance they saw one person in lying position with face downwards. They saw him getting up. Then he threw the child in the nallah. There was water in the nallah. The child was his daughter. She was unconscious. Raju and Pawankumar caught that person and handed him over to the police chowki. He and his wife took their daughter to Cooper hospital. He then lodged FIR.

5 PW3 Shashi, who is the mother of the victim girl, has stated that her daughter (victim girl) was 4 years of age at the time of the incident. The time of the incident is at about 7 p.m. She did not see her daughter for sometime, hence, she woke up her husband. They searched for their daughter. However, they did not find her. Thereafter, her daughter was brought by her husband, PW4 Raju and PW5 Pawankumar. The condition of her daughter was very bad. She was almost unconscious. They then took their daughter to hospital.

6 PW5 Pawankumar has stated that he knew PW2 Pappu. He also knew the victim girl. PW5 Pawankumar has stated that he is residing at a distance of 50 feet from the house of PW5 Pappu. He has further stated that the incident occurred on 4th July 2012. On that day, he came home at about 8.30 p.m. Pappu and his wife enquired with him about their daughter. Then, he, Pappu and Raju started searching for her. They also went towards the seashore to search for the victim girl. PW5 Pawankumar has stated that they saw one stranger lying and the

victim girl was below the said person. That person then threw the girl in the nallah. That man started running away. He and Raju caught hold of that person and handed him over to the police at chowky. Pappu and his wife took their daughter to the hospital. Both PW2 Pappu and PW5 Pawankumar have identified the appellant as the very same person. PW5 Pawankumar has further stated that the condition of the victim girl was very bad and had they not reached the spot, she would have died.

7 The victim girl has also been examined. She was about 5 years old at the time of giving her evidence. She has stated that one person beat her and bit her. He took her near the nallah. He removed her nicker. The victim girl identified that person as the appellant. Her evidence shows that she was not tutored. Though the victim girl has not specifically stated about rape, it is understandable because she was hardly 4 years of age when the incident occurred and 5 years of age when she was giving evidence. However, the medical evidence clearly shows that the victim girl was raped. PW6 Dr.Gandhi examined the victim girl.

He noticed that there was trauma to the face, ear, eyes, lips and bleeding was seen at vulva. On genital examination, he noticed that there was bleeding seen on fourchette and introitus. Hymen was found to be ruptured and torn. Dr.Gandhi has stated that after examining the victim girl, in view of genital injuries, there were signs of forceful penetration of vagina. Thus, the medical evidence clearly shows that rape was committed on the victim girl. The clothes of the victim girl were seized and the underwear of the victim girl shows presence of semen which is seen from Chemical Analysis Report Exhibit 22, which further supports the prosecution case.

8 On going through the evidence, we are of the opinion that the prosecution has proved beyond reasonable doubt that the appellant kidnapped the victim girl, committed rape on her as well as caused hurt to her.

Thus, we find no merit in the appeal.

The appeal is dismissed.

(A. M. BADAR, J.)

(V.K.TAHILRAMANI, J.)