

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 188 OF 2015**

Dhumlya @ Siddarth Manoj Siraswal,
C/16595, age 25 years, occu: convict,
pesently lodged at Yerwada Central Prison,
Pune – 411 006

...Appellant

Versus

The State of Maharashtra
(At the instance of Wanorie Police Station,
Pune in respect of C.R. No. 10/2011
U/S. 376, 504, 506(2) of IPC in
Sessions Case No. 524 of 2011)

...Respondent

Ms. Gazala Shaikh, appointed Advocate for the Appellant

Ms. A. A. Takalkar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
DATE : 23rd DECEMBER, 2016

ORAL JUDGMENT :

1. This appeal is directed against the judgment and order dated 7th February, 2013 passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 524 of 2011, convicting and sentencing the appellant as under :

- for the offence punishable under Section 376 of the Indian Penal Code ('IPC'), to suffer RI for 7 years and to pay fine of Rs. 10,000/-, in default, to suffer RI for 6 months;
- for the offence punishable under Section 377 of the IPC, to suffer RI for 5 years and to pay fine of Rs. 10,000/-, in default, to suffer RI for 6 months;
- for the offence punishable under Section 451 of the IPC, to suffer RI for 6 months and to pay fine of Rs. 1,000/-, in default, to suffer RI for 1 month;
- for the offence punishable under Section 506(2) of the IPC, to suffer RI for 2 years and to pay fine of Rs. 2,000/-, in default, to suffer RI for 2 months;

The said sentences are directed to run concurrently.

The appellant was, however, acquitted of the offence punishable under Section 504 of the IPC.

Out of the realised fine amount of Rs. 15,000/-, the learned Judge directed that the said amount be given to the prosecutrix as compensation amount.

2. Brief facts are as under :

The prosecutrix (PW 1) was residing in Defence Colony, Pune, with her parents, sister and grandmother. The prosecutrix's brother was working in Gujarat, whereas, her father was serving in the AFMC, mother was working as a maid servant, and grandmother as a sweeper. In March, 2010, the prosecutrix met with an accident, in which she had fractured her leg, on account of which, she was constrained to remain at home.

On 25th April, 2011, when the prosecutrix was alone at home, the appellant, a friend of her brother's friend, entered the house, locked the door and committed forcible sexual intercourse with her. The appellant is also alleged to have committed an offence punishable under Section 377; and thereafter threatened to kill the prosecutrix, if she disclosed the said incident to anyone. On 27th April, 2011, the appellant again came to the prosecutrix's house when she was alone and again raped her and thereafter threatened her, not to disclose the said incident to any person. The prosecutrix disclosed both the incidents to her parents on the very day, however, no complaint was lodged. After the said incidents, the family

members of the prosecutrix took her to her relatives at Miraj. It is alleged that on 13th May, 2011, the appellant went to Miraj, where the prosecutrix was residing and threatened the prosecutrix and her relatives. Pursuant thereto, the prosecutrix lodged a complaint, with the Miraj Police Station, Sangli, as against the appellant. The appellant was arrested and the case was transferred to Wanorie Police Station, Pune. On 14th May, 2011, the ASI, who was attached to the Miraj Police Station, came to Wanorie Police Station alongwith the prosecutrix, the appellant and the complaint lodged by the prosecutrix with the Miraj Police Station, on the basis of which, the complaint/FIR was registered i.e. C.R. No. 10 of 2011 alleging offences punishable under Sections 376, 504 and 506(2) of the IPC. During the course of investigation, the clothes of the appellant and the prosecutrix were seized under a panchnama; spot panchnama was drawn and the prosecutrix was referred to the Sassoon Hospital for medical examination, where she was examined by Dr. Vijayalaxmi. After completion of investigation, PSI A.K. Patil sent the seized muddemal to the Chemical Analyzer and thereafter, filed the charge-sheet as against the appellant before the learned Magistrate. Since the offences alleged were sessions triable, the case was committed to the Court of Sessions.

The accused pleaded not guilty and claimed to be tried. The defence of the appellant was of total denial and false implication. According to the appellant, he had proposed marriage to the prosecutrix, which was refused by her, pursuant to which, he was falsely implicated.

3. The prosecution in support of its case, examined five witnesses. PW 1-the prosecutrix, aged 20 years at the relevant time; PW 2-the mother of the prosecutrix; PW 3-Dr. Vijayalaxmi, who examined the prosecutrix; PW 4-Prakash Khude, panch to the spot panchnama and PW 5-Dattatraya Mane, PSI, Wanorie Police Station. The learned Judge, after hearing the parties, was pleased to convict and sentence the appellant as aforesaid, in para 1 above.

4. The learned Counsel for the appellant submitted that the appellant was falsely implicated in the said case. She submitted that as the appellant had proposed marriage to the prosecutrix, which was refused by her, the prosecutrix had falsely implicated the appellant. She submitted that there is an unexplained delay of 18 days in lodging the FIR, inasmuch as, the incident had taken place on 25th April, 2011/27th April, 2011, whereas,

the FIR was lodged on 13th May, 2011. She submitted that the Chemical Analyzer's report was inconclusive. According to the learned Counsel, apart from the aforesaid, there are several discrepancies in the evidence of PW 1 i.e. the prosecutrix and the evidence of PW 2, the mother of the prosecutrix, with regard to the clothes worn by the prosecutrix and the timings when the alleged incidents took place.

5. Learned A.P.P supported the impugned judgment and order. She submitted that the evidence of PW 1 (prosecutrix) is truthful and reliable and is corroborated by the evidence of PW 2 (mother) and that the said evidence is corroborated by the medical evidence of PW 3. She submitted that the delay in filing the FIR was not fatal, inasmuch as, the same has been explained by the prosecutrix. She further submitted that no interference was warranted in the impugned judgment and order of conviction and sentence and as such, the appeal being sans merit, be dismissed.

6. Perused the papers. The evidence of PW 5-Dattatraya Mane, PSI, who was attached to the Wanorie Police Station, at the relevant time,

shows that on 14th May, 2011, one PSI attached to Miraj Police Station, had come to the Wanorie Police Station alongwith the prosecutrix, the appellant and the complaint lodged by the prosecutrix with the Miraj Police Station. He has stated that the Miraj Police had registered the offences as '0' number and had handed over the complaint to Wanorie Police Station, as the offence was committed within the jurisdiction of Wanorie Police Station. He as stated that on the basis of the complaint, he registered an offence vide C.R. No. 105 of 2011 for the offences punishable under Sections 376, 504 and 506(2) of the IPC and thereafter, carried out the investigation into the said case himself. He has stated that the appellant was produced at the Miraj Police Station and hence, he arrested the appellant; seized his clothes in the presence of panchas under a panchnama (Exhibit 18); and also seized the clothes of the prosecutrix under a panchnama (Exhibit 19). He has stated that the prosecutrix had shown the spot of the incident, pursuant to which, a panchnama was drawn, which is at Exhibit 17. He has identified all the aforesaid panchnamas and his signatures as it appears on the said panchnamas. He has further stated that he referred the prosecutrix and the appellant to the Sassoon Hospital for medical examination. He has stated that thereafter, he recorded the statements of the witnesses and after receipt

of the Chemical Analyzer's report, submitted the charge-sheet. There is hardly any cross-examination of the said witness. A suggestion made to the said witness, that he had not made any inquiry into the complaint, was denied by him. P.W. 5 has admitted that he had not recorded the supplementary statement of the prosecutrix, but nothing much turns on the same. Apart from the same, there is no cross-examination.

7. PW 1 is the prosecutrix, who, at the relevant time, was aged 20 years. She has stated in her evidence that she was living in Defence Colony, Pune, alongwith her parents, sister and grandmother. She has stated that she had met with an accident in April, 2010, and that, a rod was surgically implanted in her left leg. She has stated that at the relevant time, her brother was residing at Gujarat. She has further stated that she knew the appellant, as he was his brother's friend's friend.

She has stated that on 25th April, 2011, when she was alone at home, at about 2:00 to 2:30 p.m., the appellant came to her house; that at that time, she was asleep; that when the appellant knocked the door, she

opened the door and saw the appellant standing outside; that the appellant asked her for water, pursuant to which, she went into the kitchen to bring water; that the accused entered the house, came from behind and held her. She has stated that she started shouting, pursuant to which, the appellant took her to the hall, made her lay on the floor, gagged her mouth with one hand, lifted her gown, removed her clothes; as well as his clothes and committed forcible intercourse with her. She has stated that due to the said intercourse, she started bleeding. She has stated that after the intercourse, the appellant sat on her chest and inserted his private part in her mouth and threatened to kill her, if she disclosed the incident to anyone. She has stated that thereafter, the appellant left home and just then, her mother and grandmother arrived and that they saw the appellant leaving the house. According to the prosecutrix, she immediately disclosed the incident to her mother and grandmother and that after the arrival of the father from his duty, her mother disclosed the incident to him. She has stated that her father stated that complaint should not be lodged immediately and hence, they did not lodge the complaint.

According to the prosecutrix, on 27th April, 2011, again when she was sleeping in the house and her parents and grandmother were away at work, the appellant came home with a weapon like sickle in his hand. She has stated that the appellant entered the house, latched the door from inside, lay her on the floor, lifted her gown, removed her clothes and committed forcible sexual intercourse with her. She has stated that after the intercourse, the appellant threatened her by saying “*Agar kisi ko kuch bataya to jaan se mar dalunga.*” She has stated that when her parents and grandmother returned home, she disclosed the incident to them, however, as her brother was in Gujarat, they did not lodge the complaint immediately. She has further stated that after the said incident, her parents and grandmother took her to the house of a relative at Miraj, where she stayed there for 4 to 5. On 13th May, 2011, the appellant came to the relative's house, where the prosecutrix was staying and started misbehaving, pursuant to which, a complaint was lodged at Miraj. She has identified the complaint and the contents therein. The same is marked at Exhibit 10. She has further stated that the Miraj Police transferred the complaint to Wanorie Police Station, who, after registering the CR,

conducted the investigation. She has stated that she showed the spot of incident to the police, produced her clothes i.e. salwar of blue colour, white blue colour kurta and underclothes, before the police. She has stated that she was referred to the Sassoon Hospital for examination. She has also identified the appellant in the Court.

The prosecutrix was cross-examined at length. She has stated in her cross-examination that while giving history to the doctor, she has stated that the appellant had proposed marriage to her on 20th April, 2011, but she had refused his proposal. She has denied the suggestion that she had falsely lodged a complaint, as the appellant had proposed marriage to her. She has admitted that at the time of the incident, she had worn a gown. She has also admitted that the gown which was worn by her on 25th April, 2011, which was stained with blood, was thrown by her mother in the dustbin. Infact, a suggestion put to the prosecutrix, that she could not resist the appellant at the time of incident, as her leg was fractured, goes to show the appellant's presence. Suggestion was also put to the said witness, that she had visited the appellant at Yerwada Jail on a couple of occasions, however, the same was denied by her. No document has been placed on

record to substantiate the said claim. A suggestion was also put in the cross-examination to the prosecutrix, wherein, she has stated that, *“It is true to say that to save our reputation and prestige, we had not disclosed incident to anybody”*, which indeed appears to be the reason for the delay in lodging the FIR. She has also denied the suggestion that there is a love affair between her and the appellant and as the family members were against the love affair and due to pressure from the family members, she had lodged a false complaint.

8. A perusal of the prosecutrix's evidence shows that she is a reliable and trustworthy witness. The reason for delay cannot be said to be fatal, in the peculiar facts and circumstances of this case, more particularly, when she has disclosed the reason for not lodging a complaint earlier, soon after the incidents. The delay has not only been explained by the prosecution, but has also come in her cross-examination. She has admitted that to save the family's reputation and prestige, they had not disclosed the incident to any person. There is nothing in the cross-examination which dents the credibility of the said witness. The evidence of the prosecutrix clearly shows that the appellant had entered the house and had committed

forcible sexual intercourse with her on two occasions and an offence under Section 377 on one occasion. She has given the details of how both the incidents have taken place. There is nothing in the evidence to show that it was a case of love affair or a case of love affair which had gone sour or a case of consensual relationship or a case where, the family members were against the love affair, as a result of which, the appellant has been falsely implicated. The evidence of the prosecutrix inspires confidence and by itself, is sufficient to convict the appellant for the offences.

9. Nevertheless, the said evidence of the prosecutrix is corroborated by the evidence of her mother (PW 2). She has stated that when she returned home alongwith her mother-in-law, on 25th May, 2011, after work, she found that her daughter (prosecutrix) was weeping and when questioned, the prosecutrix disclosed the incident and the manner in which the appellant had committed forcible sexual intercourse. She has stated that she had seen the appellant coming down from the staircase of the building. She has further stated that after two days, the appellant had again come and raped her daughter. She has stated that they did not lodge a complaint, as they feared harm to their reputation and on account of the

threats given by the appellant. She has further stated that the prosecutrix was taken to Miraj to reside there with the relatives, where again, the appellant came and started threatening them, pursuant to which, a complaint was lodged with the Miraj Police Station.

The said witness in her cross-examination has admitted that she had thrown the clothes worn by the prosecutrix, when the first incident occurred, in a dustbin. Minor contradictions between the prosecutrix and the said witness were brought on record, but the said contradictions are so minor that they do not affect the material evidence which has come on record. The said minor contradictions do not discredit either the testimony of the prosecutrix or the said witness. Infact, a perusal of the cross-examination of PW 2 shows that no suggestion was even made to the said witness that there was any love affair between the prosecutrix and the appellant and that the parents of the prosecutrix were against the same.

10. The aforesaid evidence of the prosecutrix and PW 2-mother of the prosecutrix is corroborated by PW 3-Dr. Vijayalaxmi. According to PW 3-Dr. Vijayalaxmi, she was a resident Doctor at the relevant time, at the

Sassoon General Hospital. She has stated that on 16th May, 2011, the prosecutrix was brought for medical examination by S.B. Kunjir, attached to Wanorie Police Station; that before conducting the medical examination, she obtained the prosecutrix's consent. According to PW 3-Dr. Vijayalaxmi, the prosecutrix disclosed her age as 20 years and gave history as under :

“Victim named Pooja Raju Ghalot knows the accused since 2 months, the accused being victim's brother's friend. He comes often to victim home. On 20/4/11 accused proposed victim & victim refused him, so accused hit the victim. On 25/4/11, when no one were present at victim's house, accused threatened victim & had forceful penetrative sexual vaginal intercourse with victim at her home, & had repeated the same on 27/4/11. On 11th May, 11, accused threatened victim. So victim went to Miraj to her aunt's home. On the same day victim's father went to give police complaint against accused. Accused saw this, went to Miraj and started threatening victim's family members. So they lodged complaint against accused.”

She has stated that on examination, she found surface injury at lateral canthus of right eye and old healed nail scratch mark present over left lateral part of neck size 1.5 cm x 2 mm and 0.5 cm x 1 mm. She has stated that she also found injury on the gentile of victim, her hymen was torn at 6 O'clock and 9 O'clock. The opinion given by her suggested

penetrative sexual vaginal intercourse. She has produced the medical certificate, being Exhibit 13. In the cross-examination, PW 3 has denied the suggestion that due to no evidence of perihymenal inflammation, there was no forceful sexual intercourse.

11. The Investigating Officer i.e. PW 5-Dattatraya Mane has proved the documents i.e. spot panchnama, etc. As far as clothes of the prosecutrix are concerned, admittedly, the prosecutrix was wearing a gown at the relevant time, whereas, the clothes which were seized were salwar-kurta. As far as underclothes of the prosecutrix are concerned, the Chemical Analyzer's report shows that human blood was found, however, the same could not be determined as the results were inconclusive. It appears that no semen was detected on the said underclothes.

12. Merely because the Chemical Analyzer's report does not show any semen stains on the clothes, would not make the prosecution case doubtful, more particularly, when the clothes that were produced were not the clothes that were worn by the prosecutrix at the relevant time. As noted earlier, the evidence of the prosecutrix inspires confidence and is found to

be trustworthy. In addition, there is corroboration to the said evidence. The corroboration being the evidence of PW 2 - prosecutrix's mother and PW 3 – Dr. Vijayalaxmi.

13. It is also pertinent to note, that the appellant in his statement recorded under Section 313 Cr. P. C, has answered Question Nos. 28 and 30 as under :

*“Q28. Why the witnesses are deposing against you ?
Ans. I do not know.*

*Q 30. Do you want to say anything more about this case ?
Ans. Nothing.”*

14. Considering the material on record, no infirmity can be found in the conviction and sentence recorded by the trial Court.

15. As far as the fine amount imposed by the trial Court, for each of the offence is concerned, the fine amount of Rs. 10,000/- is maintained for the offence punishable under Section 376 of the IPC. For the offence under Section 377 of the IPC, the fine amount is modified from

Rs. 10,000/- to Rs. 3,000/-; for the offence under Section 451 of the IPC, the fine amount is maintained and for the offence punishable under Section 506(2) of the IPC, the fine amount is reduced from Rs. 2,000/- to Rs. 1,000/-.

The appellant to deposit the amount of Rs. 15,000/- realised from the fine amount in the trial Court, if not already paid to the prosecutrix, as per clause (6) of the order dated 7th February, 2013. If the said amount is deposited in the trial Court, the appellant to produce the receipt thereof, before the Jailor of the Yerwada Central Prison, Pune.

In case, the appellant deposits the said amount in the trial Court, the trial Court to ensure that the said amount is paid to the prosecutrix, as compensation, as per clause (6) of the order dated 7th February, 2013.

In case of any default in payment/deposit of the amount as aforesaid, the appellant to undergo the imprisonment as awarded by the trial Court.

16. The appeal is accordingly partly allowed. The order of conviction and sentence is maintained. The fine amount is modified to the extent as mentioned in para 15 hereinabove.

17. The Court expresses a word of gratitude for the able assistance rendered and efforts taken by the learned appointed Advocate.

18. The High Court Legal Services Committee to pay a sum of Rs. 10,000/- to the learned appointed Advocate, towards her legal fees.

19. Registry to forward a copy of this Judgment to the appellant/accused, who is presently lodged in Yerwada Central Prison, Pune.

20. All concerned to act on the authenticated copy of this Judgment.

REVATI MOHITE DERE, J.