

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.41 OF 2016.

APPELLANT: Mangesh @ Nilesh s/o Ambadas Palaspagar,
aged about 26 years, Occu: Labour, R/o
Rel, Tahsil Akot, Distt.Akola.

: **VERSUS** :

RESPONDENT: The State of Maharashtra
through Police Station Officer,
Dahihanda, Distt.Akola.

Mr.D.A.Sonwane, Advocate (appointed) for the appellant.
Mr.Vishal Gangane, Addl.Public Prosecutor for the respondent/State.

CORAM: P.N.DESHMUKH, J.
DATED: 17th NOVEMBER, 2016.

ORAL JUDGMENT :

1. This appeal takes exception to judgment and order dated 27th of April, 2015, passed by the learned Additional Sessions Judge, Akot in Sessions Trial No.16 of 2014, by which learned Trial Judge having considering provisions of Section 42 of Protection of Children From Sexual Offences Act, 2012 which provides that the accused is liable to be punished only under such law which provides for punishment which is greater in degree and

thus convicted appellant for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.10,000/-, in default of payment of fine to suffer rigorous imprisonment for six months.

The appellant is also convicted for the offence punishable under Section 506 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1000/-, in default of payment of fine to undergo rigorous imprisonment for three months. Both the sentences are directed to run concurrently.

2. According to the case of the prosecution, victim girl is aged 13 years. On 5th of March, 2014 at about 3 p.m., she had been to nearby barren land situated near her house, to answer the nature's call. At that time, appellant came from behind and forcibly took her behind the bush and on threatening her to be killed, made her lie on the ground and committed sexual assault on her. On her raising shouts, PW-5 Mahadeo arrived on the spot

and caught hold of the appellant who, on enquiry, disclosed his name as Mangesh Ambadas Palaspagar. In the meantime, labours who were working on the adjoining brick kiln also arrived on the spot and they had brought the appellant to Police Out-post at Chohotta where the occurrence report (Exh-31) came to be recorded, on the basis of which the offence came to be registered vide Crime No.13/2004 at Police Station Dahihanda and was investigated by Rashmi Nandedkar, Sub Divisional Police Officer.

During the course of the investigation accused came to be arrested on 5th of March, 2014 and was sent for his medical examination. Similarly, prosecutrix was medically examined by PW-6 Dr. Atul Mundada on 6th of March, 2014. During the course of investigation, spot panchanama was drawn and statement of victim was recorded under Section 164 of the Criminal Procedure Code. Clothes of the accused as well as that of victim were seized and on recording statements of material witnesses and on completion of the investigation, charge-sheet came to be filed before the learned Judicial Magistrate, First Class.

3. In the course of time, the case came to be committed for trial before the learned Sessions Court. Charge was framed against the accused vide Exh.7 for the offence punishable under Sections 376 (2)(i), 506 of the Indian Penal Code and under Section 3 read with Section 4 of the the Protection of Children from Sexual Offences Act, 2012 to which appellant pleaded not guilty and claimed to be tried. The defence of the accused is that of total denial and of false implication. It is his case that at the time of incident, as the father of the victim was to pay amount to his father, which which remained to be unpaid, the relations between his father and father of the victim were strained and on this appellant appellant came to be falsely implicated by the victim on the say of her father.

4. To establish the Charge levelled against the appellant, the prosecution has in all examined seven witnesses and commenced its evidence by examining PW-1 the prosecutrix who has proved report at Exh.31, PW-2 Hemant Bhimrao Maturkar, PW-3 Manik Dongre both witnesses, on seizure of clothes of the

accused and on seizure of blood samples of the accused and the prosecutrix and the spot panchanama. However, they have not supported the case of the prosecution. PW-4 Ramesh Pundlik Sardar, the father of the prosecutrix, PW-5 Mahadeo Wasudeo Aalat, who had caught hold of the appellant on the spot, PW-6 Dr. Atul Radheshyam Mundada, who had medically examined the prosecutrix and concluded its evidence on examining PW-7 Haribhau Govindrao Budh, Assistant Sub Inspector, who had proved occurrence report Exh.31, recorded by him, on the strength of information by prosecutrix.

5. The learned Additional Sessions Judge on considering the evidence of above witnesses and documents placed on record has found appellant guilty of offence punishable under Sections 376(2)(i), 506 of the Indian Penal Code and under Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 and awarded sentence to appellant as aforesaid. Hence, this appeal.

6. Heard learned Counsel for the appellant and the learned Additional Public Prosecutor for the State.

7. The only ground put-forth on behalf of the appellant is non-examination of the Investigating Officer as well as non-examination of material witnesses on spot panchanama and failure on the part of the prosecution to prove said document on record and has thus, contended that in the absence of spot panchanama as well as the medical report certifying that no external injuries were found on the person of the prosecutrix, it cannot be held that she was subjected to rape as alleged.

The learned Additional Public Prosecutor, on the other hand, supported the impugned judgment and has contended that from the evidence of prosecutrix as well as of her father Ramesh and independent witness Mahadeo prosecution has established its case, as there is nothing on record to doubt their evidence. It is, therefore, prayed that the appeal be dismissed.

8. With the assistance of the learned Counsel for the

parties, I have scrutinized the evidence and documents on record.

9. Prosecutrix has stated that she is educated up to 4th std. and residing with her parents at village Chohotta, who are working on a brick kiln. She further stated that on the day of incident, i.e. prior to one year, at about 3.30 p.m. she went to answer the nature's call, and while she was wearing her clothes appellant came from behind and on pressing her mouth forcibly made her to lie down on the ground and committed rape on her. She further stated that on her raising shouts PW 5 Mahadeo arrived and on his raising shouts her parents came there. In the meantime, other people also gathered on the spot and caught hold of appellant who was then brought to the police outpost where she learnt name of appellant. According to her evidence, on the basis of information given by her, occurrence report Exh.31, was reduced into writing at police out-post at Chohotta.

10. PW 1 Prosecutrix has further stated that during the course of investigation her report was recorded as per Exh.32 and

she was referred for medical examination at Government Hospital, Akola when she was accompanied by her father. She further stated about seizure of her clothes.

11. In the cross-examination of this witness, the date of incident has come on record as 5th of March, 2014 which tallies with the case of prosecution and has further come on record that labours working on the brick kiln used to go for easing out at around 3.30 p.m. It has further come in her evidence that after the incident, at about 5.30 p.m. she had visited police out-post at village Chohhota. She also stated that on the following day her statement was recorded by a lady police officer on the basis of which offence came to be registered. She has specifically denied that she is not aware of the contents of FIR and has admitted that she was not aware of name of the appellant who has committed rape upon her and learnt about his name on enquiry made to him in police out-post. Considering evidence of prosecutrix, as aforesaid, which has come on record in her cross-examination, case of prosecution, in fact, appears to have been substantiated.

Prosecutrix has also denied all the suggestions put to her with regards to alleged strained relations between her father and of the appellant, on the count of money to be paid by her father to the father of appellant, as is the case of appellant.

12. One of the grounds canvassed by learned counsel for the appellant is that in view of admission of prosecutrix in respect of presence of stones and thorns on the spot where she had gone for easing and the medical report, according to which no injuries are certified to have sustained by her, the prosecution has thus, failed to prove the charge against the accused, when considered, it is material to note that prosecution has admittedly not got proved on record the spot panchanama as Investigating Officer Rashmi Nandedkar could not be examined. Similarly, prosecution though had examined PW 3 Manik Dongre as a witness on spot panchanama, he has not supported the case of prosecution and does not appear to have examined second panch to prove spot panchanama. As such, fact remains that spot panchanama is not proved on record, in spite of that no attempt is made by defence to

get this document proved if at all it wanted to rely upon the same, for the above said purpose.

13. Moreover, such stones and thorns are stated by prosecutrix to be on the spot where she had gone for easing, while, according to her evidence, the incident of rape is found to have taken place at some other place as she has stated that after she answered the nature's call and was wearing her clothes, the appellant arrived from behind and caught hold her. On the Contrary, there appears no substance when it is suggested for appellant that, as there are no injuries found on the person of prosecutrix she was not subjected to rape as deposed by her.

14. The learned counsel has also contended that there is delay in lodging FIR, however, there appears also no substance in this contention as the incident occurred on 5th of March, 2014 at 3.30 p.m. and the occurrence report based on information received from prosecutrix is recorded on the same day at 9.05 p.m. while FIR is registered on the same day at 9.15 p.m. In that

view of the matter, there appears no inordinate delay in lodging the report.

15. Evidence of prosecutrix is materially corroborated from the evidence of her father PW 4, Ramesh Sardar when he has deposed that on the day of incident, on hearing shouts of PW 5 Mahadeo, he rushed to the spot with his wife and found Mahadeo having caught hold of one person. He had identified the appellant to be the same person, who is present in the Court, along with prosecutrix who is stated to be raising shouts. As per his evidence, on his arriving on the spot prosecutrix has informed him that the appellant has committed rape on her who was accordingly brought to the police outpost where occurrence report came to be recorded.

16. Nothing material is elicited in his cross-examination to doubt his version. On the contrary, it has come in the cross-examination that occurrence report is registered on the basis of information given by prosecutrix and the FIR came to be

registered by Nandedkar madam at Akot.

17. PW 3 Ramesh, father of the prosecutrix, has specifically denied that he has not reached the spot on hearing the shouts of PW 5 Mahadeo. In that view of the matter, evidence of her father fully corroborates the version of prosecutrix whose evidence is further found corroborated by evidence of PW 5 Mahadeo, who has deposed that on 5th of March, 2014 at about 3.30 p.m. while he too, was away from the brick kiln for answering the nature's call, he heard shouts of prosecutrix from towards barren land and therefore, rushed towards said area and had witnessed appellant committing rape on the prosecutrix. It has come in his evidence that the clothes of prosecutrix i.e. salwar and knicker were lying beside her and he raised shouts and caught hold of appellant, however, appellant made an attempt to run away but was caught hold by other persons, who in the meantime arrived on the spot, and was brought to police outpost.

18. In the cross-examination PW 5 Mahadeo for want of

knowledge has denied if relations between the father of appellant and of victim were strained on the count of monitory issue, and to a specific question put to him in the cross-examination as to who was the person who was caught hold by him on the spot, has deposed that it is the appellant to whom he had caught hold of. Evidence of this witness as such established the presence of appellant on the scene of offence. In fact, appellant though was found on the spot and brought to the Police Station, no explanation is put forth on his behalf as to under what circumstances the appellant had visited the spot which, from the evidence of prosecutrix, is the barren land commonly used by the females of their village to answer the nature's call.

19. Evidence of prosecutrix having been corroborated by her father and independent witness PW 5 Mahadeo, is further found corroborated by the evidence of PW 6 Dr.Atul who has examined the prosecutrix on the following day at Government Medical College and Hospital, Akola and has stated that he did not notice any injuries on the person of the prosecutrix who was minor aged

14 years, however, had certified that her hymen was ruptured and there was tear and presence of collected blood. He has deposed that there was possibility of sexual assault on her and has proved medical Certificate on record at Exh.56.

20. Having considering evidence of above witnesses collectively, it is thus established by prosecution that on 5th of March, 2014 at around 3.30 p.m appellant had committed rape on minor girl aged 13 years when she had visited the barren land to answer nature's call and was apprehended on the spot by PW 5 Mahadeo, an independent witness and was brought to the police out-post. Having considering the nature of evidence against the appellant, there is nothing to doubt the case of prosecution though Chemical Analyzer's report on record is in negative.

21. Evidence of PW 7 Haribhau Govindrao Budh, ASI, B.No.1849 further establish the case of prosecutrix of prosecutrix attending police out-post at Chohhota when he has stated that when he was on duty at said out post on 5th of March, 2014,

prosecutrix visited and narrated complaint of she being subjected to rape, upon which he reduced into writing occurrence report at Exh.31 and forwarded same along with NPCB No.1117 to Police Station for registration of offence.

22. In the backdrop of above discussed evidence, prosecution is found to have proved charge levelled against accused, beyond reasonable doubt. Appeal is, thus liable to be dismissed. Hence, the following order.

-ORDER-

The appeal stands dismissed.

Fees to be paid to the learned counsel appointed for the appellant by the High Court, Legal Aid Services Sub-Committee, Nagpur is quantified to Rs.5000/- (Rupees Five thousand only).

JUDGE.

Chute