

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 101 OF 2014
IN
SESSIONS CASE NO. 21 OF 2011**

Mr. Kamlesh Kedarnath Prajapati]
Age 25 years, Hindu, Indian Inhabitant]
Residing at C/o Shri. Dayaram's chawl]
Adarsh Nagar, Birwadi, Taluka Mahad,]
Dist. Raigad]
(At present in Kolhapur Central Prison)] .. Appellant
[Ori. Accused]

Vs.

The State of Maharashtra]
(through Mahad MIDC Police Station]
Vide CR No. 39 of 2010)] .. Respondent

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Ms. Rohini M. Dandekar Advocate appointed for Appellant
Mr. Arfan Sait A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
M.S.KARNIK, JJ.
DATED : OCTOBER 11 / 12, 2017**

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :-

1 This appeal is preferred by the appellant - original accused against the judgment and order dated 4.9.2013 passed by the learned Additional Sessions Judge, Mangaon, Dist. Raigad in Sessions Case No. 21 of 2011. By the said judgment and order, the learned Sessions Judge convicted the appellant

under Sections 376, 302 and 323 of IPC. For the offence under Section 376(2)(f) of IPC, the appellant has been sentenced to life imprisonment and fine of Rs. 1000/- in default R.I. for one year, for the offence under Section 302 of IPC, the appellant has been sentenced to R.I. for life and fine of Rs.1000/- in default R.I. for one year and for the offence under Section 323 of IPC, the appellant has been sentenced to R.I. for one year. All the sentences were directed to run concurrently.

2 The prosecution case, briefly stated, is as under:

(i) The victim girl was the daughter of PW 6 Ramji and PW 7 Renu. At the time of the incident, the victim girl was about 3 years old. At the relevant time, PW 6 Ramji was working in Anjaniya Company at Mahad MIDC. He along with his wife, daughter and the appellant were residing in a chawl at Mahad. The appellant was the nephew of PW 6 Ramji i.e. he was the son of his brother. Just prior to one month of the incident, the appellant started residing in the house of PW 6 Ramji. The appellant came to reside in the house of Ramji in order to secure some employment at Mahad.

(ii) Incident occurred on 14.11.2010 at about 9.30 p.m.

At about 9.30 p.m. PW 1 Snehlata and PW 2 Sita heard shouts, hence, they rushed to the spot. They saw that PW 7 Renu i.e. the mother of the victim girl was standing outside her room and she was shouting. Renu told PW 2 Sita to call her husband (Renu's husband) on cell phone. Sita telephoned Renu's husband and within 10 to 15 minutes, husband of Renu i.e. PW 6 Ramji came home. Appellant came out of the house of Renu and he assaulted PW 6 Ramji who is the father of the victim girl. Thereafter the appellant ran away. Thereafter PW 6 Ramji entered into the house and he saw his daughter i.e. victim girl lying unconscious. Then Ramji and his wife Renu wrapped the victim girl in a piece of cloth and took her to Doctor. Doctor informed them that she has expired. Injuries were found on the private parts of the victim girl and they were bleeding. PW 6 Ramji then lodged F.I.R. Thereafter investigation commenced. The dead body of the victim girl was sent for post-mortem. PW 10 Dr. Patil conducted post-mortem on the dead body of the victim girl. He found extensive injuries to the private parts of the victim girl. The appellant was arrested. His clothes were seized. The appellant was sent for medical examination. PW 11 Dr. Rathod examined the appellant on 18.11.2010. On examination, he found prepuce swelling and painful penis on

palpation which are signs of recent sexual intercourse. According to Dr. Rathod, prepuce swelling and skin retracted are the signs of first sexual intercourse on the part of the appellant. After completion of investigation, the charge-sheet came to be filed.

3 Charge came to be framed against the appellant under section 376 of IPC for committing rape on the minor victim girl, under Section 302 of IPC for committing the murder of victim girl and under Section 323 of IPC for voluntarily causing hurt to the complainant and his wife Renu. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in this case, the learned Additional Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the Appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Sessions Judge and the

evidence on record, for the below mentioned reasons, we are of the opinion that the appellant committed rape on the victim girl due to which, she sustained extensive injuries and died. The appellant also committed an offence under Section 323 by assaulting Ramji & Renu.

5 PW 1 Snehlata was the neighbour of the victim girl and her family. She has stated that she knew PW 7 Renu who resided in Room No.1 in the chawl where Snehlata was residing. At the time of the incident, Renu, her husband, their three years old daughter and the appellant were residing in the house of Renu, hence, Snehlata knew the appellant. She also knew PW 2 Sita who was residing in the room next to the room of Renu. Snehlata has stated that on 14.11.2010 at about 9.30 p.m. she heard shouts of Renu, hence, she rushed to the spot. She saw Renu was standing outside her house and she was shouting. Sita was also at the spot. Renu told Sita to call Renu's husband on cell phone. Sita talked to Renu's husband Ramji and within 10 to 15 minutes, husband of Renu came to his house. After Ramji arrived at his house, the appellant came out of the house and assaulted Ramji and the appellant ran away. Thereafter Ramji brought his daughter out of the room. Snehlata has stated that when she saw the victim girl, blood was oozing from

the vagina of the victim girl. She was unconscious. Then Ramji and Renu took the victim girl to the hospital of PW 5 Dr. More. After sometime, they returned back. Ramji informed Snehlata that Doctor told them to take their daughter to hospital at Mahad. After sometime, Renu and Ramji came back and told her that their daughter had expired.

6 PW 2 Sita was the neighbour of Renu and Ramji. She has stated that on 14.11.2010 at about 9.30 p.m. to 10.00 p.m. she heard shouts of Renu, hence, she went to the house of Renu. Sita's husband was working in Anjaniya Biotech Company at Mahad MIDC where Ramji was also working. Renu told Sita to call her husband. Sita then telephoned husband of Renu in Anjaniya Company and informed him that his wife was calling him. Within 10 to 15 minutes, Ramji came home. After Ramji arrived home, the appellant came out of the house of Ramji. The appellant assaulted Ramji by giving slaps. The appellant then ran away. Ramji went in his house and brought his daughter i.e. victim girl outside. Sita saw that the victim girl was unconscious and blood was oozing from her private parts. Renu and Ramji took their daughter to the Doctor. The Doctor advised them to take her to the hospital at Mahad. Accordingly, they took her to Mahad. Thereafter, they returned home and

informed Sita that their daughter had expired.

7 PW 7 Renu was the mother of the victim girl. She has stated that her husband was working in Anjaniya Company at Mahad MIDC. At the time of the incident, her husband had gone for work in the company. At that time, she, her daughter and the appellant were in the house. They all took meal. After the meal, she and her daughter were sleeping in one room whereas the appellant was sleeping in another room. When she woke up, she saw that her daughter was not in the room. She questioned the appellant, whereupon, the appellant abused her and pushed her, hence, Renu went outside the room as she got frightened. She called the neighbours and asked one of them to call her husband on phone. Within a period of 30 minutes, her husband came to the house. After hearing the voice of her husband Ramji, the appellant came out of the room. The appellant assaulted her husband and ran away. Renu and her husband Ramji went in the room. She saw that their daughter was in a critical condition. They took their daughter to the hospital. They were informed that their daughter has expired. Renu has identified Article-2 as the knicker of her daughter.

8 PW 6 Ramji was the father of the victim girl and husband of PW 7 Renu. He has stated that he was residing along with his wife, daughter and the appellant who was his nephew. He was working in Anjaniya Company Ltd. at Mahad. Prior to one month of the incident, the appellant has started residing in his house. On 14.11.2010 at about 10.15 p.m. he received a phone call from his wife. His wife was weeping. After taking permission, he went home by about 10.30 p.m. When he went home he saw his wife was weeping outside the house and other neighbours i.e. 2 to 3 ladies were also standing outside the house. He asked his wife Renu why she was weeping and where was the appellant ? On hearing his voice, the appellant came out of the room. Ramji asked the appellant why Ramji's wife was weeping, the appellant did not give any response and he assaulted Ramji and ran away from there. Thereafter immediately Ramji and his wife Renu entered into the room. They saw that their daughter was lying in an unconscious state. Ramji has further stated that they wrapped their daughter in a piece of cloth and took her to the hospital. Doctor informed them that their daughter had expired.

9 Thus, the evidence of PW 1 Snehlata, PW 2 Sita, PW 6

Ramji and PW 7 Renu shows that the appellant was residing with Ramji, his wife Renu and the victim girl at the time of the incident. On 14.11.2010 at 10.30 p.m. Renu heard shouts. At that time, the appellant and the victim girl were in the house. After sometime the appellant came out of the house. The appellant assaulted Ramji. Thereafter, the appellant ran away. Ramji and Renu entered into the house and they saw the victim girl was lying unconscious and she had injuries on her private parts. Thus, it is seen that at the relevant time, only the appellant and the victim girl were in the house. There was no one else in the house who could have committed the act of rape on the victim girl. Except the appellant, there was no one in the house.

10 The evidence of PW 1 Snehlata, PW 2 Sita and PW 7 Renu shows that when they entered the room, victim girl was brought out of the house and injuries were noticed on her private parts. It is the case of the prosecution that the appellant committed rape on the victim girl due to which, she died. PW 10 Dr. Patil conducted the post-mortem on the dead body of the victim girl. On external examination, he found irregular rupture of hymen. The vagina easily admitted three

fingers. Vertical tear to perineum to anus was found. Perineum muscle tear around 2.50 cm. was found. Posterior vaginal valve was found ruptured extending from vaginal opening to intra abdomen i.e. pouch of douglas rupture. In the internal examination, Dr. Patil found that intestine was ruptured. In the opinion of Dr. Patil, the death was caused due to neurogenic shock or probably due to rupture of hymen and perineum due to forceful intercourse (rape). Dr. Patil has opined that the injury to intestine is corresponding to the rupture of vagina and perineum. The said injury is sufficient to cause death in the ordinary course. Thus, the medical evidence clearly shows that rape was committed on the victim girl. Vaginal swab was taken from the dead body of the victim girl which, alongwith semen and blood sample of the appellant were sent for chemical analysis. As per the result of analysis (Exh.82 / C), DNA on the vaginal swab and the DNA of the blood sample of the appellant, matched with each other. In addition, the DNA found on the half-pant of the deceased girl, jeans of the appellant and on the 'shawl' i.e. piece of cloth in which the victim girl was wrapped and was taken to the Doctor, tally with each other. Thus, this further corroborates the case of the prosecution that the appellant committed rape on the victim

girl.

11 In addition, the prosecution has relied on the evidence of PW 11 Dr. Rathod to point out the complicity of the appellant in this crime. Dr. Rathod examined the patient. On examination, he found that the appellant was able to perform sexual intercourse. On examination of the appellant, Dr. Rathod found prepuce swelling and painful penis on palpation which are signs of recent sexual intercourse. According to Dr. Rathod, prepuce swelling and skin retracted are the signs of first sexual intercourse on the part of the appellant. Dr. Rathod has further stated that if a person has sexual intercourse with a female less than three years, the above signs of prepuce swelling and painful penis on palpation, can occur.

12 Learned counsel for the appellant submitted that the evidence of PW 7 Renu and the neighbours PW 1 Snehlata and PW 2 Sita cannot be relied upon because their conduct is highly unnatural. She submitted that this creates a doubt about their testimony. She pointed out that Renu as well as two neighbours PW 1 and PW 2 continued to stand outside the house of Renu and made no attempts to save the victim girl. As

far as this aspect is concerned, it is seen that when Renu and two ladies were standing outside the house of Renu, they did not imagine at all, that at that time the appellant was committing rape on the victim girl inside the house. All of them are simple and illiterate persons residing in a chawl. They would not have envisaged that the appellant who was like a family member of Renu and Ramji, would commit rape on their daughter. According to the learned A.P.P. what Renu did is the natural thing by sending a message to her husband to come immediately and pursuant to which, her husband PW 6 Ramji immediately came home. As stated earlier, when Renu and Ramji entered the house, they saw that their three years old daughter was unconscious and had injuries on her private parts and the appellant was the only person inside the house at that time.

13 Learned counsel for the appellant further submitted that even assuming that the appellant committed rape on the victim girl, the appellant has to be given the benefit of Section 84 of Indian Penal Code. She submitted that the appellant was suffering from mental illness at the time of the incident and during a bout of mental illness, the appellant committed rape

on the victim girl. To support her contention, she has placed reliance on the evidence of DW 1 Dr. Nehulkar who is a retired Civil Surgeon. Dr. Nehulkar has stated that on 21.11.2010 he examined the appellant in the civil hospital. On the basis of his examination, he issued certificate that the appellant was suffering from Schizophrenia. To get the benefit of Section 84 of Indian Penal Code, what is necessary is that at the time of the incident, the person should be suffering from a bout of insanity. Suffering from insanity either prior to the incident or after the incident, would not be enough. Insanity has to be at the time of the incident and to such an extent that the person does not know the nature of his act i.e. it is either wrong or contrary to law. In this connection, we would like to advert to the cross-examination of DW 1 Dr. Nehulkar. DW 1 Dr. Nehulkar has admitted that the appellant was kept under observation for only one day. He has further stated that it is true that a patient cannot be declared as having disease of Schizophrenia only by observing for one day. He has further admitted that there was no history of Schizophrenia of the patient when he issued the certificate.

examined the patient on 21.11.2010. Thus, he examined the patient one week after the incident. To determine whether the appellant at the time of the incident, was suffering from insanity, we would like to refer to the evidence of PW 1, PW 6, PW 7, PW 9 and PW 11. PW 1 Snehlata has specifically stated that it is not true that the appellant was behaving like an insane person. She has further stated that it is not true that during an alleged bout of lunacy, the appellant was beating boys in their colony. PW 6 Ramji who is the paternal uncle of the appellant, has denied the suggestion that since last four months prior to the incident, the appellant was behaving in an abnormal manner. He has also denied that the behaviour of the appellant in the night time was abnormal. He has stated that behaviour of the appellant prior to the incident was not violent. PW 7 Renu has categorically stated that it is not true to say that the appellant was insane and was suffering from insanity intermittently. PW 9 Wadkar was the panch witness to the arrest panchnama of the appellant. At the time of the arrest, Jeans and T-shirt on the person of the appellant were seized and they came to be packed and sealed. This witness does not make any mention about the appellant behaving abnormally or exhibiting any signs of insanity. In fact, he has denied the

suggestion that at the time of arrest, the appellant was talking in an irrelevant manner. This witness was the first independent witness who came in contact with the appellant immediately after the incident i.e. on the very next day of the incident. Thus, his evidence also shows that the appellant was not suffering from any bout of insanity at the relevant time. PW 11 Dr. Rathod had examined the appellant on 18.11.2010. He has stated that when the appellant was produced before him on 18.11.2010, he found the appellant to be clinically sane. Thus, the evidence of PW 1, PW 6, PW 7, PW 9 and PW 11 shows that at the time of the incident, the appellant was sane and was not suffering from any attack of insanity. In such case, the benefit of Section 84 of IPC cannot be given to the appellant.

15 On going through the evidence on record especially the evidence of PW 1, PW 2, PW 6, PW 7, PW 9 and PW 11 and the medical evidence as well as C.A. Reports, we are of the opinion that the prosecution has proved its case against the appellant beyond reasonable doubt, hence, we find no merit in the appeal. Appeal is dismissed.

[M.S.KARNIK, J.]

[SMT.V.K.TAHILRAMANI, J.]