

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.236 OF 2012

RAMESH BANSIRAM PAWAR)...APPELLANT
V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mrs.A.A.Mane, Advocate Appointed for the Appellant.

Ms.N.S.Jain, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 7th AUGUST 2017

ORAL JUDGMENT :

1 This is an appeal filed by the convict / accused challenging his conviction and sentence imposed upon him in Sessions Case No.154 of 2009 on 30th September 2011 by the learned Ad-hoc Assistant Sessions Judge, Nashik. The appellant / accused has been convicted of the offences punishable under Sections 376(2)(f), 377 and 506 of the Indian Penal Code (IPC),

by this impugned judgment and order. For the offence punishable under section 376(2)(f) of the IPC, he is sentenced to suffer rigorous imprisonment for 10 years apart from directions to pay fine of Rs.5,000/-, in default, to undergo further simple imprisonment for 3 months. For the offence punishable under section 377 of the IPC, the appellant / accused is sentenced to suffer rigorous imprisonment for 7 years apart from payment of fine of Rs.3,000/-, in default, he is directed to undergo further simple imprisonment for 2 months. For the offence punishable under section 506 of the IPC, the appellant / accused is sentenced to suffer rigorous imprisonment for 2 months. Substantive sentences were directed to run concurrently by the learned trial court.

2 Briefly stated, according to the prosecution case, informant Bhagabai Kalu Barde used to reside in Village Bhaitana, Kalwan Taluka in Nashik District, along with her husband, three sons and a daughter. On 21st May 2009, at about 7 p.m., her 11 years old daughter (the prosecutrix) along with niece of the

informant (another victim) were playing near a tank. The appellant / accused enticed both of them on the pretext of knowing from them the house of one Balu Pawar. On the way, when they were passing through a culvert, the appellant / accused dragged them to a nearby tree. On point of knife, he then committed rape on 11 years old daughter of the informant and sodomised the niece of the informant, who was reported to be of 7 years of age, at that time.

When both these minor female children did not report back to home by 8.15 p.m. of 21st May 2009, informant Bhagabai attempted to search them. At about 9.00 p.m., both minor female children returned home. At that time, minor daughter of the informant was weeping. She disclosed the incident to the informant. The informant noticed that her minor daughter was bleeding from the private part. By that time, it was late in the night, and husband of the informant was also not present in the house. The first informant then intimated the incident to her husband and on the next day, i.e. on 22nd May 2009, she along with her daughter and niece went to Police Station Abhona and

lodged report of the incident. Accordingly, Crime No.38 of 2009 for the offences punishable under Sections 376, 377 and 506 of the IPC came to be registered against the appellant / accused and wheels of investigation were set in motion.

3 During the course of investigation, minor female children were sent for medical examination. The spot came to be inspected. The appellant / accused came to be arrested. He was also sent for medical examination. Clothes of victims, so also of the appellant / accused came to be seized. On the basis of voluntary disclosure statement of the appellant / accused, a knife came to be seized. Statement of witnesses came to be recorded. Seized articles were sent for chemical analysis and on completion of investigation, the appellant / accused came to be charge-sheeted for the offences punishable under Sections 376, 377 and 506 of the IPC.

4 The learned Ad-hoc Assistant Sessions Judge framed and explained charges to the appellant / accused, who abjured his

guilt and claimed trial. In order to bring home the guilt to the appellant / accused, the prosecution has examined in all six witnesses. Informant Bhagabai is examined as PW1 and report lodged by her is at Exhibit 12. Her daughter - the victim of the crime in question, is examined as PW2. The panch witness to the spot cum seizure panchnama (Exhibit 15) namely Parshuram Choure is examined as PW3. Panch witness to seizure of clothes from the appellant / accused as well as the victim namely Somnath Choure is examined as PW4. Seizure panchnamas are at Exhibits 17 and 18. PW5 Lalaji Jadhav is a panch witness to the Memorandum statement and Recovery panchnama Exhibits 20 and 20A respectively. Investigating Officer A.P.I. Suhas Deshmukh is examined as PW6.

5 The appellant / accused has admitted some documents. Those are Medical Certificates of victim girls at Exhibits 25 and 26, so also, bonafide certificate of one of the victims / PW2 i.e. daughter of the first informant.

6 The defence of the appellant / accused is that of total denial. According to him, as he had lent Rs.7,000/- to informant PW1 Bhagabai, who refused to pay it back and therefore, he is falsely implicated in the crime in question.

7 I have heard Ms.A.A.Mane, the learned advocate appearing for the appellant / accused. She vehemently argued that evidence of the first informant so also that of PW2 - one of the victim girls, suffers from contradictions and omissions. In her First Information Report (FIR) the first informant has failed to disclose material facts such as banging one of the victims on a tree or dragging the another victim towards the tree. The learned advocate further argued that previous statement of the first informant does not disclose that victims were unable to walk properly when they returned to their home. In the wake of these omissions, possibility of false implication of the appellant / accused in the crime in question, in submission of the learned advocate for the appellant / accused, cannot be ruled out.

8 I have also heard the learned APP who supported the impugned judgment and order of conviction.

9 I have carefully perused the record and proceedings including the depositions of witnesses as well as the documentary evidence placed on record. According to the case of prosecution, the appellant / accused had committed rape on one of the minor female victims whereas sodomised another minor female victim of the crime in question. The law regarding appreciation of evidence in the matter of sexual offence is crystallized by catena of judgments rendered by the Hon'ble Apex Court. In the matter of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarath**¹ it is held that in the Indian setting refusal to act on the testimony of a victim of sexual assault in absence of corroboration as a rule is adding insult to injury. In the matter of **Radhu vs. State of Madhya Pradesh**² it is held by the Hon'ble Apex Court that it is well settled that a finding of the guilt in the case of rape can be

1 AIR 1983 Supreme Court 753

2 2007 Cri.L.J. 4704

based on uncorroborated testimony of the prosecutrix and the court should not sway away on the basis of minor discrepancies and contradictions in version of the prosecution. Let us examine the case in hand in the light of this law laid down by the Hon'ble Apex Court.

10 Though the prosecution has not examined one of the victims of the crime in question, the another victim of this crime is examined as PW2 by the prosecution. This PW2 is an eye witness to the entire episode. Her testimony carries great weight as that of an injured witness. She has deposed that on 21st May 2009, at about 7.00 p.m., she along with her cousin, was playing near a village tank and the appellant / accused came there and asked them to show house of Balu Pawar. Hence, they both accompanied the appellant / accused and while passing through a culvert, the appellant / accused caught hold of both of them and dragged them near a tree. As per version of the PW2, the appellant / accused then committed rape on her by making her to lie on the ground and because of this act of the appellant /

accused, she started bleeding from her private part. The PW2 further deposed that, thereafter, the appellant / accused denuded her cousin and tried to sodomise her by committing carnal intercourse on her against the order of the nature. Thereafter, the appellant / accused ran away and they managed to reach at their home at about 10.00 p.m. The PW2 further deposed about her medical examination, so also identified her clothes while in the dock. She identified the appellant / accused in the court.

11 The evidence of this victim of the crime in question is criticized with a reason that she had disclosed the name of the appellant / accused as Ramesh Gangurde after the incident. However, once the victim of the crime identifies the accused as a perpetrator of the crime while in the dock, mentioning incorrect surname pales into insignificance. Apart from this, the PW2 has categorically denied the suggestion that accused Ramesh Pawar and a person named Ramesh Gangurde are two different persons. The evidence of PW2, as such, points out that the appellant / accused did commit rape on her and attempted to sodomise her

cousin in her presence, soon after raping her. However, without concluding the matter at this stage, let us examine whether evidence of the prosecutrix is gaining corroboration from other evidence adduced by the prosecution.

12 PW1 Bhagabai is mother of the PW2. Bhagabai has categorically deposed that at the time of the incident, her daughter i.e. PW2 was eleven years old. This witness further testified that her daughter i.e. PW2 along with her niece were playing near a tank at about 7.00p.m., on the day of the incident, but they did not return to the house. Subsequently, her daughter and niece returned to the house at about 10.00 p.m. On enquiry, her daughter i.e. PW2 reported the entire incident to her. This witness further deposed that she noticed that her daughter i.e. PW2 was bleeding from her private part and was unable to walk due to pain. She telephonically reported the matter to her husband, as he was not present in the home, and as deposed by her, on the very next day she took her daughter and niece to Abhona Police Station and lodged report Exhibit 11. In chief-

examination PW1 Bhagabai has disclosed narrations made by her to her daughter i.e. PW2. This witness has identified the appellant / accused while in the dock.

13 Evidence of PW1 Bhagabai is again criticized by pointing out that victim girls have told her that the offence was committed by one Ramesh Gangurde. However, as held earlier, mentioning of incorrect surname is of no consequence because of dock identification. Similarly, minor and insignificant omissions such as non-disclosure of banging of one of victims against a tree, non-disclosing the fact that the victim was unable to walk properly and dragging of the victims does not touch to the core of the prosecution case nor those are sufficient to jettison the version of the victim as well as her mother. Evidence of PW1 Bhagabai in respect of the disclosure made to her by her daughter / PW2, who is the victim of the crime in question, fully corroborates the version of PW2 in view of provisions of Section 157 of the Evidence Act.

14 As per version of the victim of the crime in question, the incident took place near the tree when she and her cousin were accompanying the appellant / accused. Evidence of the victim i.e. PW2 shows that she started bleeding after commission of rape by the appellant / accused. The spot of the incident came to be inspected immediately on 22nd May 2009 by PW6 A.P.I. Suhas Deshmukh along with PW3 Parshuram Choure, a panch witness. Their evidence, along with contemporaneous spot panchnama Exhibit 15, goes to show that blood stained branch of a tree and dried leaves were lying on the spot. Other articles such as broken necklace, comb etc. were also lying on the spot. Evidence of panch witness PW3 Parshuram Choure shows that articles found lying on the spot came to be seized vide spot panchnama Exhibit 15 by sealing them.

15 Evidence of PW4 Somnath Choure, another panch witness, shows that clothes of the appellant / accused, so also that of one of the victims i.e. PW2 came to be seized vide seizure panchnama Exhibits 17 and 18. This evidence is gaining

corroboration from the evidence of Investigating Officer PW6 Suhas Deshmukh. Evidence of panch witness Somnath Choure goes to show that seized clothes were having stains of blood on them. Seizure panchnamas at Exhibits 17 and 18 also reveal the same fact. As seen from the evidence of the Investigating Officer, seized articles were sent for chemical analysis and reports of the Chemical Analyser are at Exhibits 34 to 37. Perusal of this Chemical Analyser's report shows that blood group of PW2 was "AB" whereas the blood group of the another victim was "B". Blood group of the appellant / accused is also "B". The Chemical Analyser's report at Exhibit 37 shows that kurta, salwar and nicker of PW2 was stained with blood of "AB" group. Pant of the appellant / accused was found to be stained with blood of "B" group. His underwear was found to be having blood of "AB" and "B" origin. At this juncture, it is apposite to note that after his arrest, the appellant / accused came to be examined medically and his report of medical examination is an admitted document. The same is at Exhibit 24. It does not show that the appellant / accused was having any injury on his person. Thus, finding of

blood of the blood group of victims of the crime in question on clothes of the appellant / accused, so also finding of blood on clothes of the PW2 corroborates the version of PW2, regarding rape on her by the appellant / accused and sodomising her cousin by him.

16 Both victim girls were subjected to medical examination soon after the incident. Report of their medical examination are admitted by the appellant / accused. Those are at Exhibits 25 and 26. Medical report of the PW2 shows that upon her medical examination, she was found to be having a contused lacerated wound at the fourchette. Perineal injury of about 2 cm was also noticed at her fourchette towards anal region. The Medical Officer also noticed that vagina of the PW2 was admitting one finger and ultimately the Medical Officer opined that there is evidence of sexual assault / rape, so far as the PW2 is concerned. Similarly, report of medical examination of another victim i.e. niece of PW1 Bhagabai is at Exhibit 26. It shows that she had suffered an injury from fourchette to anal admeasuring 2 cm x 2 cm.

17 Thus, evidence of PW2 – daughter of PW1 Bhagabai, regarding rape on her and sodomising her cousin by the appellant / accused is fully corroborated even by reports of medical examination of victim minor girls. As eye witness account of the incident of sodomising niece of PW1 Bhagabai given by her daughter i.e. the PW2 is found to be trustworthy and corroborated by the medical evidence as well as the evidence found on the spot of the incident, non-examination of the niece of the PW1 Bhagabai is of no consequence.

18 Apart from this, there is evidence regarding recovery of a knife at the instance of the appellant / accused, which is proved by PW5 Lalaji Jadhav. This evidence corroborates the version of the prosecutrix that she and her cousin were threatened at the point of knife by the appellant / accused prior to molesting them sexually.

19 In the light of foregoing discussion, it needs to be held that the prosecution has established charges leveled against the

appellant / accused and no infirmity can be found with the impugned judgment and order of conviction and sentence recorded by the learned trial court.

20 In the result, the appeal is dismissed.

21 Mrs.A.A.Mane, the advocate appointed to represent the appellant / accused is entitled for fees at the rate paid to the advocates on the panel of the legal aid and she be paid accordingly.

(A. M. BADAR, J.)