

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1293 OF 2011

Sidhram Sambhaji Suryavanshi	...Appellant
Versus	
The State of Maharashtra	...Respondent

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Ms Nasreen Ayubi, appointed Advocate for the Appellant.
Mr. P.H. Gaikwad, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 7th DECEMBER, 2017.

JUDGMENT :-

The Appellant, who was an accused (hereinafter referred to as 'accused') in Sessions Case No.678 of 2010 has challenged the judgment dated 29th August, 2011 whereby the learned Additional Sessions Judge, Pune, held him guilty of offences punishable under Sections 376 and 506 of the IPC and sentenced him to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1,000/- i/d. to undergo rigorous imprisonment for three months in respect of offence under Section 376 of the IPC and rigorous imprisonment for two years with fine of Rs.500/- i/d. to undergo rigorous imprisonment for two months for offence under Section 506 of the IPC. Both the sentences were ordered to be run concurrently.

2. The accused is the step father of the victim girl. It is the case of the prosecution that the prosecutrix is the daughter of one Bhimabai. The husband of Bhimabai had deserted her and her daughter. Subsequently, said Bhimabai married the accused and started residing with him alongwith her minor daughter. It is the case of the prosecution that the accused had committed rape on prosecutrix being his step daughter. Bhimabai, mother of the prosecutrix lodged the FIR, pursuant to which Crime No.157 of 2010 under Sections 376 and 506 of the IPC came to be registered against the accused. The victim was examined by the Medical Officer at Sasoon Hospital. PW5 Rajendra Giri-PSI arrested the accused, recorded the statements of the witnesses and on completing the investigation, submitted the charge sheet.

3. The case being sessions triable, the same was committed to the Court of Sessions at Pune. The charge was explained to the accused. The accused pleaded not guilty and claimed to be tried. The prosecution examined five witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. The defence of the accused was that of total denial. The learned Additional Sessions Judge, Pune, after appreciating the evidence on record held the

accused guilty of the offences under Sections 376 and 506 of the IPC and sentenced him as stated above. Being aggrieved by the conviction and sentence, the accused has preferred this Appeal.

4. Heard Ms Nasreen Ayubi, learned counsel for the accused and Mr. P.H. Gaikwad, learned APP for the Respondent -State. Perused the records.

5. The evidence of PW1-Bhimabai, indicates that the prosecutrix is her daughter from her first marriage. Her husband- Sikander Kamble had deserted her and thereafter she married the accused- Sidharam Suryavanshi and started residing with him alongwith her minor daughter. She has stated that the prosecutrix was born on 27.11.2004 and at the relevant time she was about 6 years of age. She has stated that she used to sleep on cot with her younger daughter while prosecutrix used to sleep on floor alongwith the accused. She has stated that during the intervening night of 15th April, 2010 and 16th April, 2010 at about 2.00 a.m. she found that the accused was lying over her minor daughter. She has stated that the accused had removed his underwear as well as the underwear of the prosecutrix. When she questioned the accused he shouted at her and

intimidated her. In the next morning her daughter complained of abdominal pain. She informed about the incident to her neighbour Padmini, who examined the private part of prosecutrix, which appeared to be reddish in colour. Therefore, Bhimabai went to Dapodi Police Station and lodged the FIR, which is at Exh.-11.

6. PW4- Padmini who is neighbour of the first informant has confirmed that on 16.4.2010 at about 9.00 a.m. PW1-Bhimabai had informed her about the incident. She has stated that she had questioned the prosecutrix, who appeared to be frightened. She has stated that the prosecutrix had narrated that her father had pulled her nicker upto her knees and penetrated his penis in her private part and had sexual intercourse with her.

7. PW3-Dr. Milind Waghmare had examined the prosecutrix. He has deposed that the victim was about six years of age. He has stated that genital examination of the victim showed that hymen was completely torn with perihymonal inflammation with tenderness. The Doctor has opined that there was evidence of penetrative vaginal intercourse. He has produced medical examination report at Exh.-19.

8. The prosecutrix has also deposed that on the relevant night she was sleeping with the accused, who is her step father. She had confirmed that the accused had removed her underwear and had inserted his private part in her vagina.

9. The evidence on record proves beyond reasonable doubt that the accused had sexual intercourse with his step daughter, who at the relevant time was six years of age. The medical evidence also proves that the hymen of the victim was completely torn with perihymonal inflammation and thus corroborates the evidence of PW1 and the prosecutrix.

10. The evidence adduced by the prosecution therefore proves beyond reasonable doubt that the Appellant herein had committed rape on his minor step daughter, who at the relevant time was barely six years of age. The findings recorded by the learned Trial Judge are based on evidence on record. There is neither any illegality or perversity in the findings recorded by the learned Judge. The Appeal has no merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)