

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.115 OF 2016

Pralhad s/o Pundlik Nawade
Age : 24 years, Occu : Driver,
R/o. Manyarkheda, Tq. Bhusawal,
Dist. Jalgaon

.. Appellant

Versus

The State of Maharashtra,
Through Varangaon Police Station,
Tq. Bhusawal, Dist. Jalgaon,

.. Respondent

.....

Shri. Sunil Koli and Shri S.B. Surse, learned Counsel
for appellant

Mr. A.A. Jagatkar, APP for respondent – State.

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CORAM : PR. BORA, J.

RESERVED ON : 12.03.2018

PRONOUNCED ON : 22.03.2018

JUDGMENT :

1. The appellant has filed the present appeal against the judgment and order passed by the Additional Sessions Judge, Bhusawal in Sessions Case No.401 of 2014 decided on 30th September, 2015. Vide the impugned Judgment, the appellant has been convicted for the offences punishable under Sections 376 and 451 of Indian Penal Code (hereinafter referred to as the 'I.P.C.') and is sentenced to suffer rigorous

imprisonment for 7 years with fine of Rs.5,000/-, in default to suffer simple imprisonment for 6 months for the offence punishable under Section 376 of I.P.C. and to suffer rigorous imprisonment for 1 year with fine of Rs.1,000/-, in default to suffer simple imprisonment for 2 months for the offence punishable under Section 451 of I.P.C. Both the sentence are directed to run concurrently. Appellant is hereinafter referred to as the 'accused'.

2. Briefly stated, it was the case of the prosecution that, when the prosecutrix had been to village Manyarkheda at her parents house and resided there for the period of 5-6 months, on one day when the prosecutrix was alone, the accused entered into the house in the midnight and committed rape on the prosecutrix and threatened her not to disclose the said incident to anyone or else he will kill her. It was further alleged that, keeping the prosecutrix under threat the accused repeatedly had forcible sexual intercourse with her. The prosecutrix did not disclose about the alleged incident to her parents or anyone from her parental side till she was at village

Manyarkheda. The prosecutrix then returned to her matrimonial house. 8-10 days thereafter she started receiving some pain in her abdomen. She was therefore taken by her in-laws to the government hospital at Jalgaon and thereafter to one private hospital. On her medical examination, it was revealed that, the prosecutrix was pregnant and was carrying the pregnancy of around 4 months. The prosecutrix then disclosed that, the accused had committed rape on her and because of that, she has incurred the pregnancy. Thereafter the prosecutrix accompanied by her in-laws went to Police Station, Varangaon and lodged the report against the accused on 27.01.2014, whereupon the investigation was set in motion.

3. During the Course of the investigation, blood samples were taken of the prosecutrix, the fetus in the womb of the prosecutrix, the accused and the husband of the prosecutrix for the purpose of conducting the DNA test. In the said test, it was revealed that, the accused was the biological father of the fetus in the womb of the prosecutrix. Before receiving of the DNA test report the other investigation was completed and the

charge-sheet was also filed against the accused for the offences under Sections 376, 452 and 506 of I.P.C. in the Judicial Magistrate First Class Court at Bhusawal. Since the offences charged against the accused was exclusively triable by the Court of Sessions, the learned J.M.F.C. At Bhusawal committed the said case to the Sessions Court. After committal the Additional Sessions Judge at Bhusawal framed the charge against the accused on 24.07.2014. The accused did not plead guilty and claimed to be tried.

4. In order to prove the guilt of the accused, as many as 8 witnesses were examined by the prosecution. The defence of the accused was of total denial. The accused did not enter into the witness box nor examined any witness in his support. The learned Additional Sessions Judge on his assessment of the oral as well as documentary evidence brought before him held the accused guilty for the offences punishable under Sections 376 and 451 of I.P.C. and sentenced him to suffer imprisonment as noted herein above.

5. The learned Counsel appearing for the appellant assailed the impugned Judgment on various grounds. Learned Counsel submitted that, from the evidence which has come on record, though it was quite evident that, the prosecutrix was a consenting party, learned Additional Sessions Judge has erroneously held the accused guilty for an offence under Section 376 of I.P.C. Learned Counsel submitted that, inordinate delay committed by the prosecutrix in making the complaint against the accused has raised serious doubts about the allegation made by the prosecutrix that, accused had forcible sexual intercourse with her. Learned Counsel further submitted that, the prosecution has utterly failed in proving that, the prosecutrix was threatened by the accused and she therefore could not lodge the report immediately. Learned Counsel submitted that, the evidence on record sufficiently demonstrates that, before lodging the report against the accused there were certain opportunities for the prosecutrix when she could have very well disclosed that, the accused had forcible sexual intercourse with her but she did not make any grievance and remained silent. Learned Counsel submitted that, silence on part of the

prosecutrix leads to an inference that, the prosecutrix had willingly submitted herself for sexual intercourse with the accused. The learned Counsel further submitted that, the trial Court has drawn some unwarranted inferences though there was no evidence in that regard. Learned Counsel, therefore prayed for setting aside the impugned Judgment and order and consequently to acquit the accused of the charges levelled against him.

6. Shri A.A. Jagatkar, learned APP appearing for the State supported the impugned Judgment and order. Learned APP submitted that, DNA report has conclusively proved that, the accused did have forcible sexual intercourse with the prosecutrix. Learned APP submitted that, the prosecutrix has given a complete account of the alleged misdeeds committed by the accused. He further submitted that, nothing has been brought on record to disbelieve the testimony of the prosecutrix. The learned APP further submitted that, because of the report of DNA test, the guilt of the accused has been fully proved and learned trial Judge has therefore rightly held the accused guilty

for the offence under Section 376 and 451 of I.P.C. Learned APP, therefore, prayed for dismissal of the appeal.

7. I have carefully considered the submissions made by the learned Counsel appearing for the appellant and the learned APP. I have also perused the impugned Judgment and the evidence on record. Perusal of the impugned Judgment reveals that, the learned Additional Sessions Judge has fully relied upon and believed the testimony of the prosecutrix in holding the accused guilty for the offences punishable under Sections 376 and 451 of I.P.C. It further appears that, the DNA test report had also much weighed in the mind of the learned additional Sessions Judge while holding the accused guilty for the aforesaid offences.

8. On 27.01.2014 when the prosecutrix lodged the report against the accused in the Police Station at Varangaon, she was carrying pregnancy of around 4 months. As was alleged by the prosecutrix, she had incurred the pregnancy because of the rape committed by the accused on her. The question

therefore arises why the prosecutrix did not lodge the report against the accused for the period of about 4 months. As per the version of the prosecutrix, she did not lodge the report because of the threat given to her by the accused that, he will kill her if she makes any complaint against him. The accused had denied that, he had sexual intercourse with the prosecutrix without her consent. The accused had also denied that, any such threat was given by him to the prosecutrix at any point of time.

9. In a case of rape the most important witness is always the prosecutrix and if her testimony inspires confidence and appears fully believable the conviction of the accused can be based on the sole testimony of the prosecutrix without seeking any corroboration to her version. It is also a well settled principle of law that, the occurrence of any offence is to be reported as early as possible. The delay in lodging the FIR provides a legitimate basis to suspect the truthfulness in the allegations made. It is further true that, delay in filing the FIR in cases of rape is not to be viewed with the same sensitiveness as in other cases and delay in lodging the FIR itself may not be

sufficient to discard the prosecution case if it relates to offence of rape.

10. In the instant case admittedly the delay of about 4 months has occurred in lodging the FIR. The only reason which has been assigned by the prosecution to justify the said delay is that, the accused had threatened the prosecutrix that, he would kill her if she discloses the alleged occurrence or makes any complaint against him.

11. It has to be therefore ascertained from the evidence on record whether the threat which the prosecutrix had complained of was in fact given by the accused and whether it was such intimidation which prevented the prosecutrix from making any disclosure of the occurrence for more than 4 months.

12. It has to be stated that, the charge of criminal intimidation was also framed against the accused and in that regard a specific point was framed by the learned trial Judge

while delivering the Judgment in the matter. The said point no.3 reads thus :

“3. Whether prosecution proves that at above time, place and date, accused committed criminal intimidation by threatening prosecutrix to kill her, caused alarm to her and thereby committed offence punishable u/s 506 of IPC?”

13. The learned trial Judge has answered the said point 'in negative'. In para-33 the discussion is made by the learned trial Judge as to why he has answered the said point in negative, which reads thus :

“33. It is said that prosecutrix is slow in understanding. She said that accused gave threat that if she tells anyone, he would kill her. She did not tell about the incident to anyone. Except her words, there is no other evidence. I come to the conclusion that offence punishable u/s 506 IPC is not proved against the accused. I answer point No.3 in negative.”

14. Surprisingly the learned trial Judge while deciding point no.1 relating to offence under Section 376 of I.P.C. had made a one line observation that, '*there is explanation for delay in lodging the FIR and not complaining to the relatives immediately*'. I reiterate that, threat given by the accused was

the only reason given by the prosecution for occurrence of delay in lodging the FIR. The learned trial Judge has in clear terms held that, the prosecution has failed in proving that, there was any criminal intimidation from the side of the accused. As such, the one line finding as above recorded by the trial Court that, there is explanation for delay in lodging FIR cannot be sustained. There is no basis for recording such conclusion by the learned trial Judge.

15. Delay occurred in lodging the FIR was liable to be explained by the prosecutrix. In her testimony before the Court, the prosecutrix has deposed about only one instance that occurred in the midnight, however, on which day it occurred has not been stated by the prosecutrix. The prosecutrix has testified that, on that day after having committed rape on her the accused gave threat to her not to disclose the said incident to anybody otherwise he will kill her. In her entire further testimony there is no even iota of evidence that, at any time after the alleged occurrence the accused ever met her, threatened or intimidated her. The prosecution has not brought

on record any evidence to show that, there was a continuous threat by the accused, which prevented the prosecutrix from making any disclosure of the alleged occurrence or making any complaint against the accused.

16. For a moment even if it is accepted that, the prosecutrix was really under the threat when she was residing at Manyarkheda, nothing has been brought on record by the prosecutrix as to what prevented her from lodging report against the accused immediately after she returned to her husbands house. It further appears improbable and unconscionable that, the prosecutrix could not have disclosed the said fact even to her husband and that even at that time the threat of the accused was persisting. As has come on record, the prosecutrix started suffering pains in her abdomen few days after she returned to her matrimonial house. At that time the prosecutrix was in 4th month of her pregnancy. It cannot be digested that, the prosecutrix could not have realized that, the pains in her abdomen were having nexus with her pregnancy. However, it is the matter of record that, even at that time the

prosecutrix did not disclose to her husband or her in-laws that, she was sexually abused by the accused.

17. The evidence on record further shows that, after prosecutrix complained about pains in her abdomen, she was taken to Civil Hospital at Jalgaon for her medical examination on 25.01.2014. It is not in dispute that, even at that time the prosecutrix did not unveil that, she was subjected to rape by the accused while she was at her parental house. It has come on record that, VPT test was done at Civil Hospital, Jalgaon and the said test came positive. The concerned Medical Officer at that time opined that, the prosecutrix was pregnant. Surprisingly even at that time also the prosecutrix did not utter a single word that, she was sexually abused by the accused.

18. It is the further matter of the record that, the prosecutrix was then taken to the sonography centre of Dr. Manali Chaudhari at Aayush Hospital, Jalgaon and the sonography test was done. Dr. Manali Chaudhari then certified that, the prosecutrix was carrying pregnancy of 15 weeks and 1 day. It is undisputed that, before conduction of the sonography

test also the prosecutrix did not tell to her husband or her in-laws about the rape committed on her by the accused. The evidence on record shows that, only after it was diagnosed by Dr. Manali Chaudhari after conduction of the sonography test that the prosecutrix was carrying pregnancy of 15 weeks, for the first time the prosecutrix disclosed that, the accused, who was the friend of her brother had committed rape on her and that the foetus in her womb was the “sin” of the accused.

19. From the prosecution material on record, it does not appear that, the prosecutrix was noticed to be under great fear while unveiling the fact that the accused had committed rape on her. It is also not the case that prosecutrix was reluctant to disclose the name of the accused as a culprit. In the circumstances, the question arises that the fact which the prosecutrix did disclose after it was exposed that, she was pregnant, why was not disclosed by her at the earlier occasions. Even if it is accepted that, immediately after the occurrence it could not have become possible for the prosecutrix to disclose about the alleged occurrence to her parents or to her brother, in no case it can be accepted that, the said threat was persisting

even after she returned to her matrimonial house. After returning to her matrimonial house the prosecutrix could have certainly disclosed about the alleged occurrence when she started pain in her abdomen. She could have also disclosed the said fact before her medical examination while giving the history of pain. It was also possible for her to disclose the said fact before going for the sonography test. The evidence on record shows that, the prosecutrix all the while kept silence and disclosed about the occurrence for the first time when doctor Manali diagnosed that, she was pregnant and was carrying pregnancy of 15 weeks.

20. In absence of any evidence to show that, the alleged threat by the accused which the prosecutrix complained of, continued to have its influence on her even when she found herself pregnant and that such state of influence continued so much that, she could not disclose the occurrence to anyone, even within her family, for long 4 months until time she could no longer keep the event a secret, because of her 4 months pregnancy, the possibility of the accused having sexual

intercourse with the prosecutrix with her consent is difficult to be ruled out. As was argued by the learned Counsel for the accused, from such conduct of the prosecutrix, it can be reasonably inferred that, the prosecutrix had willingly submitted herself for sexual intercourse with the accused. When such was the nature of evidence, the learned trial Judge ought to have given the benefit of doubt to the accused and in no case could have convicted the accused either for the offence under Section 376 of I.P.C. or under Section 451 of I.P.C.

21. There appears substance in the argument advanced by the learned Counsel for the accused that, some untenable inferences are drawn by the learned trial Judge. It is not understood as to on what basis learned trial Judge has observed that, the inference can be drawn that, the prosecutrix was not of normal understanding and that is why she did not immediately complain to anyone. It is nowhere the case of the prosecution that, the prosecutrix was not having normal understanding. On the contrary, her brother has candidly deposed that, the prosecutrix was quite normal. From the evidence on record also,

no such inference is liable to be drawn. In her testimony before the Court, the prosecutrix appears to have correctly answered the questions put to her in the examination-in-chief as well as in her cross-examination. It is nowhere observed by the trial Judge that, the prosecutrix did not understand any question put to her either in her examination-in-chief or in cross-examination or that she was taking more time in understanding the questions put to her or that, there was a general impression formed after having observed the demeanor of the witness that, she may not be of normal understanding. It is thus evident that, the inference as has been drawn by the learned trial Judge that, the prosecutrix is not of normal understanding and that was the reason that she did not immediately make the complain against the accused is without any basis and in fact contrary to the evidence on record.

22. After having considered the entire material on record, it is revealed that, the prosecution has failed in bringing on record any unimpeachable evidence proving the guilt of the accused. The evidence which has been brought on record is not free from doubt. It would be unsafe to confirm the order of

conviction which is based on such doubtful evidence. Hence, the following order.

ORDER

i) The Judgment and order passed by Additional Sessions Judge, Bhusawal on 30th September, 2015 in Sessions Case No.401 of 2014 is quashed and set aside.

ii) The appellant – accused namely Pralhad s/o. Pundlik Nawade is acquitted of the offences under Section 376 and 451 of Indian Penal Code charged against him. He be released forthwith, if not required in any other case or crime.

iii) The fine amount paid, if any, by the appellant – accused shall be refunded to him.

. The appeal thus stands allowed in the aforesaid terms.

(P.R. BORA)
JUDGE