

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO. 12 OF 2015**

State of Goa,
Through Margao Town Police Station,
Margao, Goa.

.... Appellant.

V e r s u s

Rajneesh Kumar Singh,
Major, s/o Jairam Singh,
aged 29 years,
R/o Opp. OPD Health Centre,
Real Group, St. Cruz, Panaji,
N/o Kanthavli Village,
Baliya District,
Uttar Pradesh.

..... Respondent.

(All above are registered addresses of the parties)

Shri S. R. Rivankar, Public Prosecutor for the Appellant/State.

Shri Sangram D. Desai, Shri A. Chikhalikav, Shri Rohan P. Desai and Shri
Vidyanand P. Sangelkar, Advocates for the Respondent.

**CORAM: C. V. BHADANG &
PRITHVIRAJ K. CHAVAN, J J.**
Reserved on: 21/9/2017.
Pronounced on: 08/1/2018.

ORAL JUDGMENT (PER C. V. BHADANG, J.):

This is an appeal against acquittal. The respondent was tried for
the offence punishable under section 342, 376 and 506 (ii) of Indian Penal

Code (I.P.C, for short).

2. The case of the prosecution is that on 19/12/2012 between 15.30 hours to 16.15 hours at the office of Real Group, First floor, Pancharatna Complex Building, Margao, the respondent wrongfully confined the complainant (victim) and had forcible sexual intercourse with her. The respondent also threatened the complainant with life, if she disclosed the incident to anybody.

3. The learned Sessions Judge framed the charge to which the respondent pleaded not guilty and claimed to be tried.

4. At the trial the prosecution examined in all thirteen witnesses and produced the record of the investigation. The statement of the respondent came to be recorded under section 313 of the Code of Criminal Procedure (Code, for short). The respondent gave a written explanation (Exhibit C-44), however, did not lead any evidence in defence.

5. The learned Additional Sessions Judge at Margao found that the prosecution has failed to establish the charge against the respondent and proceeded to acquit the respondent vide Judgment and Order dated 4/8/2014.

Feeling aggrieved the Appellant/State is before this Court.

6. We have heard Shri Rivankar, the learned Public Prosecutor for the appellant and Shri Desai, the learned counsel for the respondent. With the assistance of the learned counsel for the parties, we have gone through the evidence and the impugned judgment.

7. It is submitted by the learned Public Prosecutor that the Sessions Judge ought to have relied upon the evidence of the prosecutrix Jackline D'Silva (P.W.11). It is submitted that the learned Sessions Judge erred in discarding the evidence of (P.W.11) for reasons and grounds which are not germane while appreciating the evidence of any such witness. It is submitted that there are circumstances which corroborate the version of P.W.11 including the report of the chemical analyzer as to the clothes of P.W.1.

On behalf of the appellant reliance is placed on the decision of the Supreme Court in the case of **Sudhansu Sekar Sahoo Vs. State of Orissa (2002) 10 SCC 743** and **State of M.P. Vs. Dayal Sahu (2005) 8 SCC 122**, in order to submit that conviction can be based on the solitary testimony of the victim if the evidence is found to be reliable and worthy of credence. It is submitted that there is no rule of law or prudence which requires that the

evidence of the prosecutrix has to be corroborated before it can be acted upon. The learned Public Prosecutor submits that the view taken by the learned Sessions Judge is an impossible view and is against the weight of evidence on record which requires interference.

8. On the contrary it is submitted by the learned counsel for the respondent, that although the Court can proceed on the basis of the uncorroborated testimony of the prosecutrix, provided it is cogent and acceptable, it is submitted that the evidence of P.W.11 in this case is not one which inspires confidence. The learned counsel was at pains to point out that there are inherent improbabilities and incongruities in the evidence of P.W.11, which require the said evidence to be discarded. The learned counsel has taken us through the evidence of P.W.11 in the context of the spot of occurrence in order to show that there are no circumstances which would corroborate the version of P.W.11. It is submitted that the act alleged could not be perpetuated in the office where it is alleged to be done. The learned counsel pointed out that the conduct of P.W.11 subsequent to the alleged act is also indicative of the fact that, no such incident had happened. The learned counsel points out that the view taken by the learned Sessions Judge is a plausible view not requiring interference by this Court in an appeal against acquittal.

9. On behalf of the respondent reliance is placed on several decisions, namely:

- (i) Raju and Others Vs. State of Madhya Pradesh (2008) 15 SC 133.**
- (ii) Tameezuddin Alias Tammu Vs. State (NCT of Delhi) (2009) 15 SCC 566.**
- (iii) Abbas Ahmad Choudhary Vs. State of Assam (2010) 12 SCC 115.**
- (iv) Sudhansu Sekhar Sahoo Vs. State of Orissa 2002 (SC) 1244.**
- (v) Bhaiyamiyan Alias Jardar Khan and anr. Vs. State of Madhya Pradesh (2011) 6 SCC 394.**
- (vi) Ramdas Vs. State of Maharashtra, 2006 (SC) 961.**
- (vii) Bibhishan Vs. State of Maharashtra, 2007 (SC) 1392.**
- (viii) Rajkumar s/o. Rangrao Bodule & Anr. Vs. State of Maharashtra, 2006 ALL MR (Cri) 1961.**
- (ix) Abdul Mehboob s/o. Abdul Samad & Ors. Vs. State of Maharashtra 2006 ALL MR (Cri) 1964.**
- (x) State of Punjab Vs. Sukhchain Singh and anr. (2008) 16 SCC 629.**
- (xi) Anmol S/o Shridhar Gharde Vs. State of Maharashtra 1998 (Bom.) 644.**
- (xii) Suresh Ratan Nadage Vs. State of Maharashtra 2006 Law Suit (Bom.) 206.**

(xiii) Valliappa Harijan Vs. State of Goa, 1996 Law Suit (Bom.) 286.

10. We have given our anxious consideration to the rival circumstances and the submissions made.

11. One Mr. Jitendra Prasad is the owner of Real Group having its Head office at St. Cruz, Panaji. The Group has a branch office on the first floor of Pancharatna building, Margao, where the incident is alleged to have happened. The Real Group is dealing in sale of house hold appliances. Admittedly, the prosecutrix P.W.11 was working as an office assistant in the Margao office of the Group. Earlier, her cousin Ophelia Fernandes (P.W.6) was working as an office assistant in the same office since April 2012 to November 2012. After Ophelia Fernandes (P.W.6) was required to leave the job on account of some personal reason, the prosecutrix was engaged as the office assistant. Shri Murtuz Kadar (P.W.1), Sagar Kumar (P.W.2) and Deepak Kumar (P.W.3) are working as salesman, who are required to visit the customers and give demonstration etc, and their work essentially involves field visits. It is stated that P.W.1 got the job as a salesman with the active assistance of P.W.11 and Rosy Fernandes (P.W.9), who is the sister-in-law of P.W.6 and it has come on record that the prosecutrix was very close to P.W.9 and they were knowing each other from their childhood.

12. The accused was working as a Sales Executive for the said Real Group and his job also involved training of the employees. It has also come on record that P.W.2 and P.W.3 who were working as salesmen were residing in the office of the Real Group at Margao and used to cook their food in the office. Having regard to the prosecution case, apart from the evidence of P.W.11 it would be necessary to look into the evidence of Shri Murtuz Kadar (P.W.1), Sagar Kumar (P.W.2) and Deepak Kumar (P.W.3).

13. P.W.11 states that on 19/12/2012 as usual she went for work and reached office at 9.a.m., when Sagar Kumar (P.W.2) and Deepak Kumar (P.W.3) were present in the office. (P.W.1) Murtuz had joined duties on the same day. Sagar Kumar (P.W.2) and Deepak Kumar (P.W.3) left for field work and returned back during the lunch hours at around 1.30p.m. The appellant came to the office and scolded Murtuz for not doing field work on that day and sent him away for the field work. Murtuz returned back to the office at 2.30p.m. saying that he was unable to approach the customers. At that time Sagar and Deepak were in the office. The appellant left the office for going to Benaulim. At around 2.30p.m. Deepak and Sagar also left the office. Thus P.W.11 and (P.W.1) Murtuz were only in the office. At around 3.p.m., the appellant came back and again asked Murtuz to go for field duty

leaving the appellant and P.W.11 as the only ones who were present in the office. P.W.11 states that the appellant sat on the sofa and had conversation with her about the stocks and the sales. He also inquired about her personal life and family details and asked whether there were money counting machines in the stock. P.W.11 after checking, found that there was one money counting machine in the stock. The appellant wanted the appellant to give him a demo and to bring the machine. Incidentally it has come on record that the office consists of a front portion having a reception and a inner room separated by a partition. There is a wooden door in front behind which, there is a glass door. It is the evidence of P.W.11 that when she went in the inner room, for searching for the counting machine, she was shocked to see that the appellant had followed her and caught hold of her. When she tried to shout, he closed her mouth with his hand. She somehow escaped and came to the front room. However, she found that the main door was latched from inside. She tried to open it, however, the appellant again caught hold of her from behind and dragged her in the inner room behind the partition where there were tower fan boxes stored. It is the material case that the appellant removed her clothes put her on the tower fan boxes and had forcible sexual intercourse with her. She claimed that the appellant threatened her saying that he will kill her if she discloses the incident to anyone. The appellant also asked her to tell him if she had any need for money or anything else and then he left. It is the

evidence of P.W.11 that she continued to sit in the office. Murtuz (P.W.1) came to the office at around 4.30p.m. and gave the list of 4 to 5 customers and their phone numbers. Before 6p.m. Sagar and Deepak came back to the office. She handed over the keys to Sagar (PW.2) and then left the office and went home. It has further come on record that she again came back to the office the next day at 10 a.m. to hand over the office mobile phone to P.W.2. In the evening she went to the house of Rosy Fernandes (P.W.9) who inquired with her as to why she was looking sad and it is at this point of time that P.W.11 narrated about the incident to P.W.9. P.W.9 informed about the incident to Ophelia Fernandes (P.W.6) who was then staying at the house of her uncle. The next morning i.e. on 21/12/2012, P.W.11 along with P.W.6 came to Margao Police Station and lodged the complaint. She was medically examined on the same. She claimed that at the time of the incident she was wearing a black colour kurta and black leggings. M.O.1 (Exhibit A).

14. P.W.11 has been extensively cross examined both on the incident as well as on her subsequent conduct. Admittedly, the complaint is lodged after two days of the incident. The reason given by P.W.11 is that she was under mental shock and also a threat given by the appellant. However, P.W.11 has admitted that when she was at the house of Rosy (P.W.9) she felt safe when she narrated the incident to Rosy at around 7.30.p.m. on 20/12/2012.

The fact remains that P.W.11 continued to remain in the office at least till 6p.m. when the incident is alleged to have happened between 3.30p.m. to 4.15 p.m.. P.W.11 did not narrate about the incident either to P.W.1 who had come to the office followed by P.W.2 and P.W.3 nor there is any evidence that she told about the incident to her mother, brother or the grand mother.

15. Sagar Kumar (P.W.2) states that on 19/12/2012 he left the office for field work at around 2.30p.m. and returned back at 6.30p.m. when (P.W.1) Murtuz and P.W.11 were in office. P.W.11 handed over the keys to them and left the office. It was on the next day that Jitendra informed him that P.W.11 has leveled a charge of rape against the appellant. It has come in the evidence of this witness that there was no delivery of tower fans on 19/12/2012 since there was no stock although there were some pending orders. The stock of tower fan boxes was received on 21st and 22nd December 2012.

P.W.2 in categorical terms claimed that there were no boxes of tower fans either in the front room or in the inner room on 19/12/2012. He also claimed that there were no money counting machines in the Margao office and these machines were in the Panaji office where the demo was given.

16. At this stage it would be necessary to note the defence of the appellant. According to the appellant, one Sameer who was the boy friend of

P.W.11 and was close to her, used to visit the Margao office. Jitendra was not happy with the work of P.W.11. The appellant claims that on 19/12/2012 at 1.30p.m. when he came to the office besides P.W.11, (P.W.1) Murtuz and Sameer were also present in the office. The appellant accosted P.W.11 for presence of Sameer asking her to keep her private affairs out of the office. There was some altercation between Sameer and the appellant in which Sameer threatened the appellant that he will teach him a lesson as the appellant was an outsider, whereupon the appellant warned P.W.11 that he will report the matter to Jitendra and will also inform (P.W.6) Ophelia about P.W.11's relations with Sameer. According to the appellant on account of this incident he has been falsely implicated. It would be now necessary to see whether there is any material brought on record to probabalise the defence.

17. Sagar Kumar (P.W.2) has admitted that when he and Deepak (P.W.3) came back to the office on 19/12/2012 at 1.30p.m. Sameer was present in the office along with P.W.11 and the appellant had accosted P.W.11 asking her to keep her private affairs out of the office. He also admitted that Sameer had an argument with the appellant and that Sameer had threatened the appellant that he (i.e Sameer) will teach a lesson to the appellant as the appellant was an outsider.

18. The evidence of Deepak Kumar (P.W.3) is on similar lines and there is one more important addition. P.W.3 stated in the cross examination that on 19/12/2012 they had come back to the office for cooking their food. P.W.3 and P.W.2 had food together and then waited for the customers till 4p.m. to give the demo. They thereafter left the office together as the appointment with the customers was canceled. It can thus be seen that it has come on record in the evidence of one of the prosecution witnesses, namely, Deepak (P.W.3) that he was in the office till 4.p.m. when the incident is alleged to have happened between 3.30p.m to 4.15.p.m.. Be that as it may, the fact remains that there was some altercation between Sameer and the appellant and Sameer had threatened the appellant as the appellant was an outsider.

19. Shri Murtuz Kadar (P.W.1) claims that his name for employment was recommended by P.W.11 and thus it can be seen that P.W.11 and P.W.1 were acquainted to each other. He claims that on day of the incident he left the office at 3.p.m. and returned back at 4.45p.m. After around 15 minutes Sagar and Deepak also came back to the office. At around 6p.m. P.W.1 along with P.W.11 left the office and while getting down the steps P.W.1 noticed that P.W.11 was nervous and was crying when P.W.11 informed him that she was crying as she remembered her aunty. P.W.1 had attended the Police

Station, Margao when P.W.11 lodged the complaint. Be that as it may, there is evidence to suggest that P.W.11 not only continued to stay in the office till 6p.m. but also returned to the office the following morning purportedly for returning the office mobile phone. Thus, it is difficult to accept that P.W.11 was scared on account of the alleged threat held out by the appellant, which is the reason given by her for not lodging the complaint immediately. On the contrary, there is evidence to probabalise the defence that the appellant had accosted P.W.11 shortly before the alleged incident at 1.30p.m. on account of the presence of Sameer in the office and Sameer had threatened the appellant saying that he will teach the appellant a lesson, as the appellant was an outsider.

20. The prosecution has examined Tejashri Vagmare (P.W.4) who is the receptionist at the clinic of Dr. Damodar Lotlikar, which is located in DF-6 and 7 in the Pancharatna Complex, Margao. She has been examined only on the point of the clinic of Dr. Lotlikar being closed in the second half of 19/12/2012, it being the Goa Liberation day. However, it has come on record that there were several other offices in the same building. Thus the evidence of P.W.4 to the effect that the clinic of Dr. Lotlikar was closed in the second half on the day of the incident does not take the prosecution case any further. There is absolutely nothing on record to show that P.W.11 tried to garner help

or to inform about the incident to anybody. The earliest point when P.W.11 has informed about the incident is to P.W.9 at about 7.30p.m. on 20/12/2012.

21. Ophelia Fernandes (P.W.6) states that on 20/12/2012 she was informed by (P.W.9) Rosy that P.W.11 was raped by the appellant. P.W.6, therefore, inquired with P.W.11 and their conversation was overheard by Nicolas, the brother of P.W.11. Then all of them discussed the matter among themselves, called Jitendra Prasad the owner of Real Group to find the details of appellant as to where he was residing. Jitendra Prasad informed that the appellant was residing in the office at St. Cruz. It has come on record that (P.W.6) along with Nicolas and their neighbour proceeded to Panjim, met the appellant and brought the appellant to the house of P.W.6 at Assolna, where he was assaulted. (P.W.6) claims that while taking the appellant from the office at Panaji, he was informed that he is being taken to Cuncolim Police Station. However, at the Cuncolim Police Station they were informed to report the matter to Margao Police Station. The appellant had lodged a complaint against P.W.6 and others on the incident of assault at the residence of P.W.6 at Assolna.

22. Mrs. Auda Viegas (P.W.10) is a panch on spot panchanama. She states that the office of Real Group is at the end of the corridor in the

Pancharatna building on the first floor. There is a wooden door followed by a glass door inside. The investigation officer had not made any attempt in this case to attach the tower fan boxes. The panch witnesses verified whether there were any dents or stains on the boxes, however found nothing. The contents of the boxes two in number were not checked. An envelope (M.O.1, Exhibit A) containing one black kurta with golden dots, one black leggings and pink colour panty belonging to (P.W.11) and worn by her at the time of the incident were seized in the presence of (P.W.10). However, the evidence of (P.W.10) clearly shows that the identity of the victim could not be vouched safe by these witnesses since her face was covered and no document of her identity was shown. Significantly the panchanama (**Exhibit C-27**) as also the evidence of (P.W.10) is silent as to the existence of any inner latch to the outer door of the office which would have lent credence to the evidence of P.W.11 that when she tried to escape, she found the outer door latched from inside.

23. It would now be necessary to look into the medical evidence. Dr. Mandar Kantak (P.W.12) had examined (P.W.11) on 21/12/2012. He found a bruise 0.5 x 0.5 cms. Maroonish blue in colour, seen between hymenal tissue and labia minora at 6 O'clock position with tenderness. Hymenal tissue was annular and elastic. He opined that on physical and genital examination of

P.W11 there was evidence of recent genital blunt force penetration. There were no other injuries found on the person of the prosecutrix although she claimed that she resisted and was overpowered by the appellant.

In the cross examination he states that (P.W.11) had not given any history of the incident, however, the history was within his knowledge through the request letter of (Exhibit C-31) given by the I.O. mentioning that there was forcible sexual intercourse with her. He was also aware from the letter that the alleged incident had occurred on 19/12/2016 between 15.30 hours to 16.15 hours. It is true that the medical evidence would support the case of a recent vaginal penetration, however, the question is whether it is the appellant who had forcible intercourse with P.W11 in the office. As noticed earlier, and from the conduct of P.W11 coupled with the delay in lodging of the F.I.R which would be of some significance, we do not find that the view taken by the learned Sessions Judge can be said to be an impossible view. On the contrary, there is evidence which has come on record through the prosecution witnesses to probablise the defence of the appellant having accosted P.W.11 on account of the presence of Sameer in the office and Sameer having threatened the appellant with dire consequences and of teaching him a lesson. In fact, there was an incident in which (P.W.6) along with others had managed to take the appellant from Panaji office to Assolna and having assaulted the appellant.

24. Although the pink colour panty recovered from (P.W.11) was found to have human semen stains, it could not be established so as to correlate it with the appellant who is having blood group B Rh+. There is no DNA finger printing done so as to connect that the semen stains to the appellant.

25. The law relating to the scope and ambit of interference available in an appeal against acquittal is too well settled to be restated. The appellate court in such cases can interfere only when the view taken by the learned Sessions Judge is found to be perverse, or is an impossible view. In other words, if two views are equally possible, of which the learned Sessions Judge has opted, for one, the appellate court cannot substitute the other view on the ground that it is more plausible (**Chandrappa & Others vs State of Karnataka (2007) 4 SCC 415**). Applying the aforesaid test, we do not find that the appreciation of the evidence and the finding recorded and the view taken by the learned Sessions Judge can be said to be either perverse or an impossible view.

26. In the circumstances, we do not propose to refer to the various cases relied upon by the learned counsel for the respondent. However, we would briefly refer to the citations on which reliance is placed on behalf of

the appellant.

27. In the case of **Sudhansu Sekhar Sahoo (supra)** it has been inter alia held that the sole testimony of the prosecutrix can form the basis for conviction provided it is safe, reliable and worthy of acceptance. There cannot be any manner of dispute with the said proposition. However, the question whether the testimony of the prosecutrix is one on which implicit reliance can be placed and which is one inspiring confidence would be peculiar to the facts and circumstances of each case.

28. In the case of **Dayal Sahu (supra)**, the Supreme Court held that non-production of medical evidence would not be fatal to the prosecution if the statements of the prosecutrix and other prosecution witnesses inspire confidence. In that case, the learned Sessions Judge had convicted the accused which was set aside by the High Court inter alia on the ground of absence of medical evidence. The Supreme Court on facts found that once the statement of the prosecutrix inspires confidence and the same is accepted by the court, conviction can be based on such solitary evidence and no corroboration of her testimony is required, unless there are compelling reasons which necessitate the same.

29. As noticed earlier, we find that the evidence of P.W.11 is not one which would inspire confidence and on the contrary the evidence of P.W.2 and P.W.3 probablises the defence of the appellant.

30. We have carefully gone through the impugned judgment and we do not see that it suffers from any infirmity so as to require interference. The appeal is without any merit and it is accordingly dismissed.

PRITHVIRAJ K. CHAVAN, J

C. V. BHADANG, J.

Ap/