

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

CRIMINAL APPEAL NO.298 OF 2014

Hirendra Puransingh Das

Age : 25 years,

R/o : Ganeshkrupa Chawl,

Sathye Nagar, Mankhurd (West),
Mumbai

.... Appellant
(Original Accused)

Vs.

The State of Maharashtra & Ors.
(At the instance of Mankhurd
Police Station).

.... Respondent

Mr. Shyam B. Keswani for the Appellant
Mr. S.H. Yadav APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 6th December 2018

JUDGMENT :

1 Heard the learned counsel for the parties.

2 The appellant/original accused herein is convicted for the offences punishable under Sections 376, 452 and 506(II) of Indian Penal Code and is sentenced to suffer rigorous imprisonment for seven years for the offence punishable under Section 376 of Indian Penal Code and six months rigorous imprisonment for the offence

punishable under Section 452 of Indian Penal Code and fine of Rs.500/-, in default to suffer rigorous imprisonment for one month. During the pendency of trial, the victim died and she is having one daughter of 5 years old. Therefore, the learned Judge has directed the accused to deposit an amount of Rs.25,000/- towards the compensation to the daughter of victim and if he fails to pay the said amount, he has to suffer rigorous imprisonment for further six months.

3 Such of the facts necessary for the decision of the appeal are as follows:-

That the victim was staying in a hutment area made up of plastic gunny bags. She was residing with her minor daughter. On 12th November 2012 in the early hours at about 4.00 am., she realised that she was being inappropriately touched by somebody. She opened her eyes and saw a person lying on her person and having sexual intercourse with her. She tried to raise shouts, but the said person had gagged her mouth. He had bit her cheek and chin. Soon thereafter she took her minor daughter and ran outside her hut

and reached to the house of Roshan Khatun. There were shouts due to which persons from the locality had woke up. The accused was trying to flee from the house of victim, but he was chased by the people from the locality. He had also bit the hand of Mohammed Islam and the ear of Mohammed Shafiq. He escaped through the lanes. The victim had identified him as Virendra Singh, son of Puransingh Nepali. She then approached the police station and lodged a report. On the basis of report, Crime No.342 of 2012 was registered by Mankhurd Police on 12th November 2012 for the offence punishable under Sections 376, 452 and 506 of Indian Penal Code. The accused was arrested on the same day. After completion of investigation, the charge-sheet came to be filed and the case was committed to the Court of Sessions at Greater Mumbai and registered as Sessions Case Number 226 of 2013.

4 The prosecution has examined as many as 12 witnesses to bring home the guilt of the accused.

5 The case rests upon the evidence of PW-1, the survivor and the people who had attempted to intercept the accused. PW-1,

Ms. "X" has deposed before the Court in consonance with the F.I.R.. She had referred to the accused as "Nepali", since according to her they were from Nepal. She could identify the accused as he was resident of the same locality and used to pass from front of her house for answering nature's call. The F.I.R. is at Exhibit '16'. It is admitted that she does not have any electric meter in her name as it is hut made up of gunny bags. It is admitted that she has obtained electricity connection, although illegally. After she raised the shouts, 40 to 50 persons had gathered. She has denied the suggestion that there was no light in the hut at the time of incident and therefore, she could not identify the accused. The contradiction is marked as portion mark "A". She has also admitted that the accused had covered his face with white colour stole and he had left the same in her house.

6 PW-2 is Mohammed Ismail Mohammed Mansoori, who had woke up on hearing shouts of the complainant. He had chased the accused and had apprehended him. That the accused had bit on his right hand and ear of Shafiqul and thereafter fled from their

clutches. His statement was recorded on the same day. He has denied the suggestion that there is no light in the said area. PW-2 has further admitted in the cross-examination that the people living in the locality had gathered at that time. He was acquainted with the accused prior to the incident, but he had seen him many times in the said area.

7 PW-3, Dr. Baban Shripati Shinde had examined the victim on 12th November 2012. The victim had given the history that on 12th November 2012 at about 4.00 am., someone had entered into her house, threatened to kill and thereafter ravished her. Dr. had noticed:

(i) Teeth marks over left side of the neck. Oval in shape. Oblique in direction.

(ii) Teeth marks over right lateral aspect of chin. Oval in shape.

(iii) Teeth marks oval in shape.

(iv) Teeth marks over the right side right breast, upper and medial quadrant of breast.

All injures were tender, caused within 24 hours. The doctor has opined that the injuries of teeth marks are possible during

sexual assault. All that is elicited in the cross-examination that there were no injuries on the private parts of the victim.

8 PW-4, Roshan Khatun Mohammed Jalal happens to be the neighbour of the victim. She has deposed before the Court that about 4.00 am. on 12th November 2012, the victim had been to her house crying and told her that one person had entered in her house and ravished her. She had rushed to the house of the victim and saw one person sleeping without clothes in her house. She woke up her neighbours Islam and Rafiq and they apprehended him. That the said person had bitten the witnesses. The witness has not been shattered in her cross-examination.

9 PW-5, Raeesa Bano Shamed Ahmed Khan is the panch for seizure of clothes. PW-6 Dr. Ajinath Kondiba Andhale had examined Mohammed Islam who had brought to the hospital and found human bite mark on right forearm. He had examined him and issued certificate to that effect.

10 PW-7, Salma Khatun Ansari has deposed before the Court that she is residing in front of the house of the victim and she had heard cries at about 4.00 am.. The victim had disclosed to PW-7 that Virendra had ravished her. She had seen the accused leaving the hut of the victim.

11 PW-8, Akbar Ali Kirtaz Ali Shaikh is the panch witness for seizure of clothes of the victim. PW-9, Swami Dhondiram Gaikwad is also a panch. He has admitted in the cross-examination that he has only signed the panchanama after it was disclosed by Police that they had seized the clothes of the victim. PW-10, Bashir Shaikh is also a panch.

12 PW-11, Bhimashankar Rambhau Dhole, is the investigating officer. He has deposed before the Court that the victim had lodged a report on 12th November 2012. The complaint was recorded by PSI Karande as per the say of the victim. The signature and handwriting of Mr. Karande has been verified and proved by PW-11. He has deposed before the Court in respect of the

steps taken during the course of investigation and has also admitted that the documents were prepared on 12th November 2012 were not countersigned by him. He was unaware of the steps taken by PSI Karande in the course of initial investigation.

13 Upon perusal of the statement of the victim, the injured witness who had apprehended the accused and the two witnesses who were residing in front of the house of the victim i.e. PW-4, Roshan Khatun Mohammed Jalal and PW-7, Salma Khatun Ansari. It is clear that the complainant has left no room for suspecting that it was the accused alone who had committed the said heinous offence. The accused was identified by the victim.

14 Learned counsel for the appellant/accused has challenged the visibility of the scene in view of the fact that there was no electricity supply at the time of incident and therefore implication of the accused could be a result of mistaken identity. The said submission is devoid of any foundation or corroboration and hence, cannot be taken into consideration. There is nothing on

record to even remotely indicate that the victim had any grudge to grind the accused or falsely implicate him. The evidence of the victim would inspire confidence of the Court. The victim could be the best witness in the present case. It is, in view of the above backdrop that the findings recorded by the learned Sessions Judge do not call for any interference. Hence, the following order :

ORDER

- 1 The Appeal stands dismissed.
- 2 The conviction and sentence passed by the Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai in Sessions Case No.226 of 2013 vide judgment and order dated 21st January 2014 stands confirmed.

(*Smt. Sadhana S. Jadhav*, J)