

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.561 OF 2017

IN

CRIMINAL APPEAL NO.334 OF 2017

GOURAV NARENDRA SINGH

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Vinod Kashid, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 4th APRIL 2018

P.C. :

1 The applicant/accused, by this application, is seeking suspension of sentence and his release on bail, during the pendency of the appeal filed by him. He is convicted of offences punishable under Sections 376 and 506 of the Indian Penal Code by the learned trial court vide impugned judgment and order dated 29th March 2017 passed in Sessions Case No.500 of 2013. For the offence punishable under Section 376 of the Indian Penal

Code, he is sentenced to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.2 lakh and default sentence of 1 year. For the offence punishable under Section 506 of the Indian Penal Code, he has been sentenced to suffer rigorous imprisonment for 2 years apart from payment of fine of Rs.50,000/- and default sentence of 3 months.

2 Heard the learned advocate appearing for the applicant/accused at sufficient length of time. He took me through the entire evidence adduced by the prosecution and submitted that the applicant/accused is falsely implicated in the crime in question by PW2 Om Prakash Singh, who is a professional criminal lawyer. The learned advocate further argued that though the incident of alleged rape took place from February 2012 to September 2012, the First Information Report (FIR) came to be lodged on 1st March 2013 and there is inordinate delay in lodging the FIR. The learned advocate further argued that keys of the house used to be with one Gulabi Giri, who is not examined as witness by the prosecution. It is further argued that father of the

victim to whom the victim had disclosed the incident in January 2013, is also not examined as witness in this case. Evidence of the prosecution suffers from inconsistencies and discrepancies because as per version of PW1/prosecutrix, she had disclosed the incident to her father in January 2013 whereas PW2 Om Prakash Singh has stated that father of the prosecutrix/PW1 had disclosed the incident to him in the end of December 2012. The learned advocate further argued that PW5 Dr.Rachana Shah, who had medically examined the victim, has stated that the victim came to the hospital accompanied only by a Woman Police Constable and no relatives were present, whereas the victim states that her grandfather accompanied her to the hospital. By relying on Medico Legal Certificate at Exhibit 22, the learned advocate for the applicant/accused argued that the Medical Officer has not opined about commission of rape on the victim. It is further argued that Investigating Officer PW6 Pramila Dondkar has stated that she had recorded FIR of the prosecutrix/PW1 by visiting her house whereas the prosecutrix/PW1 has stated that her FIR was recorded at the Police station.

3 It is further argued that PW2 Om Prakash Singh has admitted that there was civil dispute between the parties and Chapter case was initiated against him. There is discrepancy in evidence of the prosecutrix/ PW1 and that of Investigating Officer PW6 Pramila Dondkar. The prosecutrix/PW1 has lodged the FIR against her own father immediately on the next day of lodging the FIR against the present applicant/accused. In this view of the matter, in submission of the learned advocate for the applicant/accused, the applicant/accused, who was released on bail during pendency of the trial by this court by relying on the report lodged by father of the present applicant/accused with Safale Police Station and with the Assistant Police Commissioner on 19th February 2013 and 21st February 2013; needs to be released on bail. My attention is also drawn on these two reports wherein it is stated by father of the present applicant/accused that PW2 Om Prakash Singh along with others had threatened him with false implication of his son.

4 The learned APP opposed the application by contending that medical evidence is supporting the case of prosecution and evidence of the victim of the crime is reliable.

5 I have carefully considered the rival submissions and also perused the entire Record and Proceedings. The prosecutrix/PW1 is related to the present applicant/accused, who is son of elder son of her grandfather. PW2 Om Prakash Singh is maternal grandfather of the prosecutrix/PW1. He is father of mother of the prosecutrix/PW1. The prosecutrix/PW1, at the relevant time, was a girl of about 13 years of age, her date of birth being 13th November 1990.

6 As per version of the prosecutrix/PW1, she used to reside with her grandfather and her grandmother was suffering from cancer and therefore, she used to go for taking treatment at the hospital. Therefore, keys of the house used to be with neighbour named Gulabi aunty. As per version of the prosecutrix/PW1, she used to take keys of the house from Gulabi aunty. She

stated that in February 2012, she returned from school and went to the house of Gulabi aunty for fetching keys of the house. She was told that the present applicant/accused had already taken the keys of the house. The prosecutrix/PW1 found the present applicant/accused watching television program in the house, and therefore, she left the house and went to the house of Gulabi aunty. The prosecutrix/PW1 deposed that thereafter the present applicant/accused called her and asked to give him something for eating. She, therefore, gave biscuits to him, and at that time, the applicant/accused committed rape on her, after denuding her. The prosecutrix/PW1 stated that the present applicant/accused then threatened her by stating that he had prepared video clip of the act and also showed the clip to her. The prosecutrix/PW1 stated that thereafter time and again the present applicant/accused used to commit forcible sexual intercourse with her up to September 2012. Thereafter, her parents shifted to Mumbai and her father suspected changes in her body and questioned her. She disclosed the incident to her father in January 2013 but her father also took undue advantage of the situation and touched her

private parts. The prosecutrix/PW1 further stated that then the incident was disclosed to her grandparents and then, along with her grandparents she went to Santacruz Police Station and lodged report Exhibit 12. Cross-examination of the prosecutrix/PW1 shows that she had not disclosed about the incidents happening with her to anybody else during the period of 13 months, when she was being subjected to forcible sexual intercourse by the present applicant/accused.

7 PW2 Om Prakash Singh, who is maternal grandfather of the applicant/accused, has stated in his evidence that in the end of December 2012, he received phone call from father of the prosecutrix/PW1 about the incident of rape on the prosecutrix/PW1 by the present applicant/accused. He further stated that then on 1st March 2013 along with the prosecutrix/PW1 and his daughter-in-law, he went to Santacruz Police Station where FIR of the prosecutrix/PW1 came to be registered. This witness admitted in cross-examination that Chapter proceedings are initiated against him.

8 The prosecutrix/PW1 was subjected to medical examination and it was conducted by PW5 Dr.Rachana Shah. This witness deposed that upon genital examination of the prosecutrix/PW1, she found old tear on hymen at 9 O'Clock position suffered by the prosecutrix/PW1. This witness has further stated that the prosecutrix/PW1 was a minor at the time of her medical examination and because of long gap, she was unable to give exact opinion regarding commission of sexual intercourse.

9 PW6 Pramila Dondkar, Police Sub-Inspector, has stated that it was grandfather of the prosecutrix/PW1 who visited the police station and then she went to the house of the prosecutrix/PW1 and recorded her FIR.

10 I have reproduced gist of evidence of prosecution witnesses in order to ascertain whether the discrepancies pointed out by the learned advocate for the applicant/accused goes to the root of the prosecution case in order to jettison the prosecution case. How evidence of the prosecution in sexual offences is

required to be appreciated and evaluated has been stated by the Honourable Apex Court in the matter of **State of Punjab vs. Gurmeet Singh**¹, the relevant paragraph of which needs reproduction and reads thus :

“.....It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must

1 1996 Cri.L.J. 172

deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

11 This makes it clear that evidence of the prosecution is required to be examined keeping in mind broader probabilities of the case and the court should not get swayed by minor discrepancies in the prosecution version. Similarly, effect of non-finding of injuries on the victim is also considered by the Honourable Apex Court in the matter of **Ranjit Hazarika vs. State of Assam**². Evidence of the prosecutrix in that case was accepted by the Honourable Apex Court to conclude that she had suffered rape despite absence of rupture of hymen and injuries on her private part. In the matter of **B.C.Deva vs. State of Karnataka**³, the Honourable Apex Court, despite finding any injuries on the person of the prosecutrix has held thus in paragraph 18 :

“18 The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though, the report of

2 (1998) 8 SCC 635

3 (2007) 12 SCC 122

the Gynaecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted.”

Thus, if evidence of the prosecutrix is found reliable and trustworthy, then non-finding of injury on her person and particularly after long lapse of time, is not sufficient to discard the prosecution case.

12 In the matter of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat**⁴ in paragraph 10 of its judgment, Hon’ble Apex Court has given 12 reasons as to why in Indian setting, false implication in the cases of sexual offences is minimal. Paragraph 10 of the said judgment reads thus :

“Without the fear of making too wide a statement or of overstating the case, it can be said that rarely will

4 AIR 1983 SC 753(1)

a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because :- (1) A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) it would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely

embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought in to controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocent. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent.”

13 If case in hand is examined in light of this position of law, then it becomes clear that, in the case in hand the victim as well as the present applicant/accused were relatives. The victim was a minor girl aged about 13 years at the time of the incident in question. The matter was involving honour of the family.

Therefore, the delay in lodging the FIR, at this stage, cannot be construed to hold that the entire prosecution case is concocted. At the time of final hearing it will have to be seen whether a maternal grandfather can put chastity of his minor granddaughter at stake only to wreak vengeance, because of pendency of some civil dispute with his family members.

14 Considering the nature of offence and evidence of the prosecutrix pointing guilt of the present applicant/accused, no case for suspension of sentence and release of the applicant/accused on bail is made out. Hence, the order :

ORDER

- i) The application is rejected.
- ii) Needless to state, observations contained in this order are prima facie observations and shall not have any bearing on the decision of the appeal.
- iii) Hearing of the appeal is expedited.

(A. M. BADAR, J.)