

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 389 OF 2014

Jalindar Vitthal Garje.

Age : 27 years. R/o Patara,

Tal. Ashti, Dist. Beed.

(Presently accused is in Kolhapur

Central Prison.)

..Appellant.

V/s.

State of Maharashtra

(through Bhuij Police Station).

..Respondent.

Mr. Avinash Bhaskar Avhad, advocate for appellant.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : DECEMBER 3, 2018.

JUDGMENT:

1 The appellant herein is convicted for the offence punishable under section 376(2)(n) of the Indian Penal Code and sentenced to suffer R.I. for 10 years and fine of Rs. 10,000/- I.d. to suffer R.I. for one year. He is convicted for the offence punishable under section 3(a) read with section 4 of the Children Act and sentenced to suffer R.I. for 10 years and fine of Rs. 10,000/-. The appellant is also convicted for offence punishable under section 5(j), (ii) read with section 6 of the Children Act

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and sentenced to suffer R.I. for 10 years and to pay fine of Rs. 10,000/- i.d. to suffer R.I. for one year, by the Special Sessions Judge, Satara in Special Sessions Case No. 24 of 2013 vide Judgment and Order dated 20/2/2014. Hence, this appeal.

2 Such of the facts that are necessary for decision of this appeal are as follows :

(i) It is the case of the prosecution that in October, 13, the victim had come to Bhuinj alongwith her parents and her brother and they were working as sugar cane cutters. The parents used to go for sugarcane cutting and the victim and her brother used to be at home.

(ii) In March, 2013 victim had complained of stomach ache and hence, she was taken to hospital. Upon examination, it was diagnosed that she was carrying pregnancy of 16 weeks. Thereafter, they were referred to Civil Hospital, Satara. It was a case of unwarranted pregnancy and hence, the victim had undergone medical termination of pregnancy.

(iii) Upon enquiry by her parents, the victim had disclosed that the appellant who resides in their neighbourhood had sexually assaulted her on more than 2 occasions and had threatened her that she shall not disclose the said act to anybody, or else she would have to face dire

consequences.

(iv) The parents had lodged report at the police station on 23 March, 2013. On the basis of the said report, Crime No. 50 of 2013 was registered at Bhuij Police Station since the offence had occurred within the jurisdiction of Bhuij Police Station.

(v) The appellant herein was arrested and charge-sheet was filed against the accused. Case was committed to the Court of Sessions and registered as Special Sessions Case No. 24 of 2013. The prosecution has examined as many as 9 witnesses to bring home the guilt of the accused.

3 The victim has been examined as P.W. 4. She has deposed before the Court that one fine day, she had complained of stomach ache. She was taken to hospital and it was declared that she was carrying pregnancy which was subsequently terminated. It is elicited in the cross-examination that her statement was not read over to her. There are inherent omissions and contradictions in the evidence of the victim. The first information report is at Exh. 24, she was confronted with the said statement and she has stated that she had disclosed to the police that the incident had taken place in the shed of Mukadam and also of another and the same does not find place in the FIR. In fact, there is an admission that she had not read the statement. She has not been

shattered in her cross-examination. The deposition of the parents is on the basis of the statement of their daughter.

4 P.W. 5 Dr. Dnyaneshwar Ramchandra Shitole has deposed that on 22/3/2013 he had examined the victim. The victim was accompanied by her mother. They had shown willingness to terminate pregnancy. Her pregnancy was terminated on 31/3/2013. It is elicited in the cross-examination that birth date of the victim is not mentioned in Exh. 30. That the ossification test was not conducted. After the termination of pregnancy, the samples were taken for DNA matching.

5 P.W. 9 is the investigating officer. She had admitted in the cross-examination that the victim had not named the accused in the FIR but she had stated the surname of the accused. It is also admitted that the victim had learnt about the name of the accused from her father and that on the day of arrest of the accused, his family was with him. Investigating Officer has also admitted that she had requested medical officer to ascertain the age of the victim. However, no such document would indicate that her date of birth is 1st April, 1998.

6 P.W. 7 Dr. Sudhir Kadam has deposed before the Court about the ultra sonography test, which was conducted on 30/3/2013.

7 The case rests on not only the evidence of the victim but on medical evidence, in as much as the samples were taken for DNA testing. The report was received on 9th October, 2013 and the report is as follows : "Jalinder Garje is excluded to be the biological father of Exh. 4 foetus of Seema Vishnu Garje. (ii) Seema Vishnu Garje is concluded to be biological mother of Exh. 4 foetus."

8 The learned Counsel for the appellant submits that the CA report would falsify the case of the prosecution. It is a matter of record that the victim had not named the accused either in the information report or before the doctor. It has surfaced subsequently. The learned Counsel submits that in view of the CA report, the appellant deserves to be acquitted.

9 In the case of **Ramdas & ors. V/s. State of Maharashtra reported in (2007) 2 SCC 170**, the Hon'ble Apex Court has held that -

“the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity.”

10 In the present case, CA report would show that the appellant is excluded from being biological father of the foetus. In view of this, the appellant would be entitled to be acquitted on the principle of benefit of

doubt. It cannot be said that the prosecution has proved the guilt of the accused beyond reasonable doubt. Hence, following order is passed :

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The conviction and sentence awarded vide Judgment and Order dated 20/2/2014 passed by the Special Sessions Judge, Satara in Special Sessions Case No. 24 of 2013 is hereby quashed and set aside. The appellant is acquitted of all the charges.
- (iii) The accused be released forthwith if not required in any other case.
- (iv) Fine amount, if paid, be refunded.
- (v) The Writ be issued expeditiously.
- (vi) The Appeal is disposed of accordingly.

The Registry to communicate this order to the appellant, who is lodged in jail forthwith.

[SMT. SADHANA S. JADHAV, J.]