

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1135 OF 2012

Ganpati Yeshwant Channe,
Age 75 yrs, Currently at Kolhapur
Central Prison, Kalamba, Kolhapur
- 400007, Convict No.C-4554.

... **Appellant**

V/s.

The State of Maharashtra,
At the instance of Kadegaon Police
Station, District Sangli
(C.R.No.27/2008)

... **Respondent**

.....

Mr.Ganesh Bhujbal, Advocate for the Appellant.

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

....

CORAM : A.M.BADAR J.

DATED : 6th JULY 2018.

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging the Judgment and Order dated 23/10/2008 passed by the learned Additional Sessions Judge, Sangli in Sessions Case No.121 of 2008 thereby convicting the appellant/accused of the offences punishable under Sections 376(f) and 506 of the Indian Penal Code. He came to be sentenced to suffer rigorous imprisonment for ten years as well as rigorous imprisonment for two years on

each count apart from further direction to pay compensation of Rs.50,000/- to the victim girl and in default thereof to undergo further rigorous imprisonment for one year.

2 Briefly stated prosecution case is thus :

- (a) P.W.No.4 Bayabai is resident of Sohali in Kadegoan Taluka of Sangli District. She has two daughters aged fifteen years and nine years respectively and a son aged about six years. Her husband died one year prior to the incident.
- (b) The incident in question took place on 17/03/2008. Second daughter of P.W.No.4 Bayabai is the victim of the said crime. On that day, at about 2.15 p.m., she returned from her school during recess for taking curry. While proceeding back to the school, the appellant/accused allured her on the pretext of giving chocolate to her and took her in the tin shed. There he committed rape on the victim girl.
- (c) On return from the school, the victim girl/P.W.No.5 reported about bleeding from her vagina to her mother P.W.No.4 Bayabai. P.W.No.4 Bayabai presumed it to be of menstrual cycle. On 21/03/2008, she sought opinion of P.W.No.8 Jyoti Jadhav, Health Assistant. This witness informed P.W.No.4 Bayabai that such a small child cannot attain menarche and

somebody else might have done something to the victim girl/P.W.No.5.

- (d) Upon being asked by her P.W.No.4 Bayabai, the victim girl/P.W.No.5 disclosed her mother the incident of commission of rape on her by the appellant/accused. She then disclosed the said incident to her cousin Arvind Mohite, who happened to be Sarpanch of the village. Under his guidance, P.W.No.4 Bayabai then lodged report (Exhibit 13) with Police Station, Kadegaon, which resulted in registration of Crime No.27 of 2008 for the offences punishable under Sections 376(f) and 506 of the Indian Penal Code against the appellant/accused. During the course of investigation, the spot was inspected in presence of P.W.No.1 Abaso Jadhav and spot panchanama (Exhibit 7) came to be prepared. Map of the spot (Exhibit 26) was drawn by P.W.No.9 Sayaji Gaikwad, Naib Tahsildar. Clothes of the P.W.No.5/victim girl came to be seized on 22/03/2008 vide seizure panchanama (Exhibit 9) in presence of P.W.No.2 Baban Mohite. On that day itself, in presence of P.W.No.3 Prakash Mohite, panch witness, blood stained full pant, half pant and underwear was also came to be seized by seizure panchanama (Exhibit 11). The victim girl was referred for medical examination and she came to be examined by P.W.No.7 Dr.Shashikant Bhise, Medical Officer of Rural Hospital, Chinchani. On completion

of investigation, the appellant/accused came to be charge-sheeted.

- (e) In order to bring home the guilt to the appellant/accused, the prosecution has examined in all thirteen witnesses and also placed reliance on the documentary evidence.
- (f) Defence of the appellant/accused was that of total denial.
- (g) Upon hearing the parties, the learned trial Court by the impugned Judgment and Order was pleased to convict the appellant/accused of the offences punishable under Sections 376(f) and 506 of the IPC. He came to be sentenced as indicated in opening paragraph of this Judgment.

3 I heard Shri.Ganesh Bhujbal, the learned Advocate appointed to represent the appellant/accused at the cost of the State. He argued that there is inordinate delay in lodging the FIR. Even the victim girl has not disclosed the alleged incident to her mother immediately. She routinely attended her school indicating that the FIR is false. The appellant/accused is, therefore, entitled for benefit of doubt.

4 The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction and resultant sentence.

5 I have carefully considered the submissions so advanced and also perused Record and Proceedings.

6 Considering the nature of case, its fate hinges on the testimony of the victim girl (P.W.No.5). Principles of appreciation of evidence in rape cases can be found in the Judgment of the Honourable Apex Court in the matter of *State of Punjab vs. Gurmeet Singh*¹ and the relevant portion of the said Judgment 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 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

1 1996 Cr.L.J. 172.

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.”

7 At the outset, let us examine evidence of the victim girl/P.W.No.5 in order to ascertain whether she is a witness of truth and her testimony can form the sole basis for convicting the appellant/accused. The victim girl, at the relevant time, was taking education in the Primary Marathi School. The prosecution has placed on record evidence regarding her age which is otherwise not disputed by the defence. The certificate issued by the Headmaster of Zilla Parishad, Primary School, Sohali (Exhibit 39) shows that the victim girl/P.W.No.5 was taking education in 3rd Std. in the year 2007-08 and her date of birth is 26/12/1996. It is thus clear that on the date of the incident i.e. on 17/03/2008, the P.W.No.5/victim girl was aged about 11 years.

8 It has come in evidence of P.W.No.5/victim girl that on the day of the incident, in recess she returned to her house for taking curry for having food. She was returning back to her school carrying curry in the kettle. At that time, the appellant/accused offered chocolate to her and took her in the shed where he has committed rape on her. P.W.No.5/victim girl further deposed that after commission of rape on her, the appellant/accused threatened her that if she disclosed the incident to anybody else, he will kill her. She, therefore, went back to her school and after school hours returned back to her house. Evidence of the P.W.No.5/victim girl shows that she did not disclose the incident to anybody because of threat given by the appellant/accused.

9 Despite searching cross-examination of the P.W.No.5/victim girl, nothing could be brought on record by the defence to disbelieve her version in respect of the incident of commission of rape on her by the appellant/accused. The victim girl, it is seen from her evidence that, she maintained her version during the course of her cross-examination.

10 Now, let us see whether evidence of the victim girl is gaining corroboration by other evidence adduced by the prosecution. The most important piece of corroborative evidence is that of P.W.No.7 Dr.Shashikant Bhise, Medical Officer, Rural Hospital, Chinchani. As per version of this witness, on

22/03/2008, he examined the P.W.No.5/victim girl and noticed the condition of her private part as under :

- * Tenderness on the perineum
- * Vulval eedema +
- * Reddish
- * Hymenal tear +, oedemat
- * Tenderness ++
- * Bleeds on touch
- * Admit one finger, tenderness ++
- * Swab collected before palpation.

11 Evidence of this witness is further corroborated by contemporaneous document i.e. medical certificate (Exhibit 20) issued by him. Cross-examination of this Medical Officer does not cast shadow of doubt on his version in the chief-examination. This medical evidence on record goes to show that even after the delay of four days from the incident, there was swelling to the vagina of the victim girl apart from presence of hymenal tear and tenderness on the perineum. Her hymen was bleeding on touch. All these facts do indicate that the P.W.No.5/victim girl was subjected to forceful sexual intercourse. Thus, testimony of the P.W.No.5 victim girl is gaining full corroboration from the medical evidence adduced by the prosecution.

12 Evidence of P.W.No.4 Bayabai, who is mother of the victim girl, goes to show that she presumed vaginal bleeding of the

victim girl as signs of menstrual cycle, but she sought opinion from P.W.No.8 Jyoti Jadhav, Health Assistant. Evidence of P.W.No.8 Jyoti Jadhav goes to show that she informed P.W.No.4 Bayabai that vaginal bleeding to such a teen aged child cannot be attributable to the menstrual cycle and P.W.No.4 Bayabai should visit the hospital. P.W.No.4 Bayabai has stated before the Court that then she made enquiry from her daughter and then her daughter P.W.No.5/victim girl informed her about commission of rape on her by the appellant/accused. P.W.No.4 Bayabai then sought help of P.W.No.10 Arvind Mohite, Sarpanch of the village and evidence of P.W.No.10 Arvind Mohite is fully corroborating the version of P.W.No.4 Bayabai in this regard. That is how, the FIR in question came to be lodged. All these circumstances brought on record reflect that, in fact, there was no delay in lodging the FIR. Under the spell of threat by the appellant/accused, the victim female child did not disclose the incident to her mother. Her father was not alive. Her mother presumed vaginal bleeding of the victim girl as a sign of attaining puberty and upon being advised by P.W.No.8 Jyoti Jadhav, Health Assistant, she had chosen to interrogate her daughter P.W.No.5/victim girl. Then actual incident came to the notice of P.W.No.4 Bayabai – mother of the victim girl. Hence, the delay in lodging the FIR gets explained from this chain of events. Even otherwise, with such circumstances on record, it cannot be held that such delay is in any manner fatal to the prosecution case.

13 With this evidence, the prosecution has successfully established the guilt of the appellant/accused for the offences punishable under Sections 376(f) and 506 of the Indian Penal Code. No infirmity can be found with the punishment inflicted on the appellant/accused. In the result, the appeal fails.

14. The appeal is, therefore, dismissed.

Raju
Dattatraya
Gaikwad

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(A.M.BADAR J.)