

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1312 OF 2013

Nandu Vitthal Pawar.	]	
Age - 39 years,	]	
R/at - Vireshwar Zopadpatti, Mahad,	]	
Taluka - Mahad, District - Raigad.	]	... Appellant / (Orig. Accused)

Versus

The State of Maharashtra.	]	... Respondent
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Ms. Ameeta Kuttikrishnan, Appointed Advocate, for Appellant.
Mr. Rajan Salvi, APP for State.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 08 MAY, 2018

JUDGMENT :-

1. By this Appeal, the Appellant has challenged the Judgment and Order dated 03/01/2011 passed by the learned Additional Sessions Judge, Mangaon, District Raigad, in Sessions Case No.37 of 2010. By the said Judgment and Order, the Appellant was convicted for commission of the offences punishable under Section 376 read with Section 511 of the IPC and was sentenced to suffer R.I. for five years and to pay a fine of Rs.1,000/- and in default of payment of

fine, to undergo R.I. for one year. The Appellant was also convicted for the offence punishable under Section 354 of the IPC and was sentenced to undergo R.I. for six months and to pay a fine of Rs.2,000/- and in default of payment of fine, to suffer further R.I. for three months. The sentences were directed to run concurrently and the Appellant was given benefit of set off under Section 428 of the Cr.P.C.

2. The prosecution case, in short, is that on 11/06/2010, the FIR was lodged at Mahad City Police Station vide C.R.No.38 of 2010 under Sections 376, 511 and 354 of the IPC by one Geeta Soheshah. According to Geeta, she was residing near old post office at Mahad with her mother. Geeta's sister Raju was residing nearby with her two children, one of whom is the victim in the present case and the other child is by name Purab. Geeta's mother was in the hospital and therefore, her sister Raju was in the hospital attending to her on 11/06/2010. At about 6.30 p.m. when the first informant was in her house, Purab came to her crying and informed her that his sister i.e. the victim was forcibly taken by a person in a lavatory of a school. Geeta rushed to the spot. She called the victim loudly. The victim

came out of the lavatory in a frightened condition and she was crying. She was followed by the Appellant who was trying to run away. The people present on the spot apprehended him. The name of the Appellant was revealed when he was apprehended. He was handed over to the police. The first informant lodged her FIR at Mahad Police Station as mentioned earlier.

3. After registration of the FIR, the investigation commenced. The victim and the accused were sent for medical examination. The statements of witnesses were recorded. The spot panchanama was drawn and the seized articles were sent for chemical analysis. After completion of the investigation, charge-sheet was filed and the case was committed to the Court of Sessions for trial.

4. The charges were framed on 18/10/2010 by the learned Additional Sessions Judge, Mangaon, District Raigad, under Sections 376, 454 and 511 of the IPC. During the course of trial, the prosecution examined seven witnesses. PW 1 Geeta was the first informant and the maternal aunt of the victim. PW 2 Nandkumar Patil prepared the map of the place of the incident. PW 3 Jayant

Kharvad was examined as a pancha in whose presence the Appellant was arrested. This witness has also seen the Appellant being chased and apprehended by the people at the spot. PW 4 was the victim herself and she has described the entire incident. PW 5 Munab Shaikh was a pancha when the spot panchanama was carried out. The spot panchanama is produced on record at Exh.17. From the spot panchanama and map of scene of offence, it can be seen that the incident had taken place at a lavatory of a school which was in a secluded area. The incident had taken place at 6.30 p.m. when there was nobody around in that area. PW 6 Dr. Sushant Bagade had examined the victim as well as the Appellant and has prepared the medical certificate which is produced on record at Exh.19. PW 7 Shivaji Shinde was attached to Mahad Police Station and has conducted the investigation.

5. Initially, the Appellant had sought assistance of a lawyer through legal aid which was granted by the learned trial Judge. However when the trial proceeded, the Appellant chose to conduct the trial himself. The Appellant himself cross-examined the witnesses and argued his case.

6. I have heard Ms. Ameeta Kuttikrishnan, the learned Counsel who was appointed to argue the Appeal on behalf of the Appellant. I have also heard Mr. Rajan Salvi, learned APP for State. With their assistance, I have gone through the record and proceedings and have also read the impugned Judgment.

7. PW 1 Geeta had narrated as to how on 11/06/2010 at about 6.30 p.m. her nephew Purab came running to her and informed her that his sister was taken to a lavatory by a person. Sensing danger, the first informant, along with others, rushed to the lavatory and called out victim's name loudly. The victim came out in a frightened condition and she was crying. The victim was followed by the Appellant. According to this witness, there were no undergarments worn by the victim at that time and that the Appellant was wearing only a shirt. The people who had gathered there, caught the Appellant. Somebody informed the police, who came on the spot. The Appellant was handed over to them and thereafter this witness had lodged her FIR. She has deposed that her house is hardly 20 ft. away from the lavatory where the incident had taken place. The FIR was produced on record at Exh.9. Her evidence, to some extent, is

supported by PW 3 Jayant who had seen people having gathered at the spot and who had caught the Appellant. He has seen the police arriving at the spot and he was the Pancha in whose presence the arrest panchanama was effected. The arrest panchanama is on record at Exh.13.

8. The victim was examined as PW 4. At the time of examination in Court, she was 9 years of age. The learned trial Judge had an interaction with her and he was satisfied that the victim, though was a child witness, she was able to understand the sanctity of oath and was able to depose properly and therefore, she was administered oath and her evidence was recorded. The victim has narrated that she, along with her brother, had gone to buy chocolates but the shop was closed. When they were returning home, the Appellant followed them. She has deposed that the Appellant put his palm over her mouth and took her in the lavatory situated within the campus of the school. She had deposed that the Appellant removed their clothes and was about to penetrate her private parts. At that moment, her aunt Geeta gave a call and thereafter, somehow, she escaped from the clutches of the Appellant and came out. At that

time, people who had gathered there, caught the accused. She has identified the Appellant before the Court as the same person who had committed the sexual act with her.

9. PW 6 Dr. Bagade had examined the victim as well as the Appellant. He has produced the medical certificate on record at Exh.19. He did not find any injury or bruises on the person of the victim. The Medical Officer has opined that the rape might not have taken place. He had sent pubic hair and vaginal swab for examination. The same Medical Officer has also examined the Appellant and has found that he was capable of performing sexual intercourse. The Medical Officer again mentioned in the medical certificate of the Appellant that the rape might not have taken place.

10. The learned trial Judge has discussed the evidence on record and after taking into account the evidence of the victim, as well as the evidence of the Medical Officer, reached the conclusion that though the evidence was lacking as far as the offence punishable under Section 376 of the IPC is concerned, the prosecution was successful in proving that an offence of attempt to commit rape was

sufficiently proved. The learned trial Judge convicted and sentenced the Appellant as mentioned earlier.

11. Ms. Ameeta Kuttikrishnan, learned Appointed Advocate for the Appellant, submitted that the Appellant has already undergone the entire sentenced awarded by the trial Court. She submitted that the statement of the Appellant recorded under Section 313 of the Code of Criminal Procedure, 1973 shows that the Appellant and PW 1 were on enmical terms and that the Appellant had lodged complaint in police and therefore he was falsely implicated. She further submitted that the incident could not have taken place at a place which was hardly 20 ft. away from the residence of the first informant. She also pointed out that there was discrepancy between the evidence of PW 1 Geeta and PW 3 Jayant. According to her, both of them have given different versions as to whether the Appellant was wearing any clothes.

12. *Per contra*, Mr. Rajan Salvi, learned APP for State, submitted that the victim has given cogent evidence and there was no reason to disbelieve her. Mr. Salvi submitted that a child of 9 years of

age was not concerned with the possibility of enmity between the Appellant and the PW 1. The victim would not depose falsely before the Court. Mr. Salvi further submitted that the Appellant was caught at the spot and it was because of the presence of mind shown by the victim's brother, the people could rush to the spot and save the girl from the further serious untoward incident. Mr. Salvi thus supported the impugned Judgment.

13. Having heard both the parties and after going through the record and proceedings, I find that the evidence given by PW 1, PW 3 and PW 4 is quite reliable. There is hardly any discrepancy which goes to the root of the matter. The victim girl has narrated the incident as per her understanding and she stated how the Appellant had forced himself on her. PW 1 had rushed on the spot and had even called the name of the victim loudly whereon the victim rescued herself and came out of the lavatory as the Appellant got frightened. The evidence of PW 3 shows that the Appellant was caught on the spot by police who immediately reached there. Thus, there is no reason whatsoever to disbelieve these witnesses. The prosecution has proved beyond reasonable doubt that the incident had taken place.

14. The next crucial question is as to whether this was an offence of rape as defined under Section 375 of the IPC or was it an attempt to commit rape as envisaged under Section 511 of the IPC. In this regard, the evidence of Medical Officer is important. He had, in clear terms, opined that rape has not taken place and there were no injuries on the private parts of the victim. Even the learned Judge has given due weightage to the opinion expressed by the Medical Officer and I see no reason to take a different view. Thus from the overall evidence, it appears that the Medical Officer has rightly opined that the rape could not have taken place. However, the fact remained that the Appellant had taken the victim girl forcibly to the lavatory and was in the process of commission of the offence when the victim was saved by her aunt. Thus, the Appellant has clearly attempted to commit the offence of rape. The learned trial Judge has rightly convicted the Appellant under Section 376 read with Section 511 of the IPC. The evidence also shows that the offence of outraging the modesty of the victim as defined under Section 354 of the IPC, is made out. On that count also, the learned trial Judge has convicted and sentenced the Appellant. In this view of the matter, in my view, the learned trial Judge has not committed any error in convicting and sentencing the Appellant.

15. As a result of the above discussion, I find no merit in the Appeal. The Appeal accordingly stands dismissed.

(SARANG V. KOTWAL, J.)