

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 55 OF 2015**

Baban Devji Rathod.

Age- 28 years.

R/o Pathkhamatha,

Taluka and Dist. Satara.

(At present in Satara Jail.)

..Appellant.

V/s.

The State of Maharashtra.

At the instance of Satara

City Police Station.

..Respondent.

Mr. Ramanik Pawar, advocate for appellant.

Mr. S.R. Agarkar, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J.**

**DATE : APRIL 10, 2019.**

**JUDGMENT :**

1           The appellant herein is convicted for the offence punishable under section 376(2) (f) of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 10 years and to pay fine of Rs. 10,000/- I.d. to suffer S.I. for one year by the Additional Sessions Judge, Satara vide Judgment and Order dated 20/11/2014 in Sessions Case No. 11 of 2013. Hence, this appeal.

2           It is a traumatic and pathetic story of minor girl aged about 10

*Talwalkar*

years, who has been sexually assaulted by her own biological father. The appellant happens to be the biological father of Ms. X. The appellant is father of one son and two daughters. Son resides with the appellant whereas the daughters are residing with their grand-mother(mother's mother) who was working as an agricultural labour.

3 On 3/9/2012 the appellant herein had been to the school of the victim i.e. his daughters, informed her teacher that he has to take the daughter for signing in the rationing office. He had misled the daughter i.e. victim and taken her in agricultural land. There was a sugarcane crop at the place where she was denuded of her clothes and was sexually assaulted by her father. He had then dropped her to her grand-mother's house and had threatened her of dire consequences in the eventuality that she would disclose the incident to anybody.

4 The victim had sustained bleeding injuries. She was weeping at home. Her maternal aunt had enquired with her the reason for crying and she narrated the atrocities meted out to her by her own father. In the evening at about 6 p.m. her grand-mother Sushila Chavan P.W.7 returned home, saw state of her grand-daughter and then she had called upon Tanaji Shinde. He had seen the victim and then had advised her grand-mother to take her to Civil Hospital. She had disclosed the

incident as narrated by her grand-daughter. Her statement was recorded by police. On the basis of her report, Crime No. 162 of 2012 was registered against the appellant for the offence punishable under section 376 of the Indian Penal Code.

5           After completion of investigation, charge-sheet was filed. The case was committed to the Court of Sessions and registered as Sessions Case No. 11/2013. The prosecution examined as many as 17 witnesses to bring home guilt of the accused. The case rests on the evidence of the victim, P.W.7-grand-mother of the victim Sushila Chavan, P.W.5-Asha Kambale, P.W.4 Tanaji Shinde, P.W.10-Dr. Jyoti Jadhav, P.W.12-Dr. Dnyaneshwar Shitole, medical case papers and the statement of the victim recorded under section 164 of the Code of Criminal Procedure, 1973.

6           The victim has been examined as prosecution witness No. 9. The learned Special Judge has verified that she understood meaning of administration of oath. The victim has resiled from her earlier statement and has been declared hostile. She has even denied that she was admitted in the civil hospital. Little did she know that the same is being corroborated by medical case papers. The appellant was enlarged on bail after filing of charge-sheet. The victim has categorically stated

before the court that she was accompanied by her mother and father. She has deposed before the court as follows : **“It is true that I am feeling that my father should get free from the jail, as early as possible.”** Her evidence is concluded in denial as follows : **“It is not true that to help my father I am not disclosing true fact before the court.”**

7           It is admitted position that the appellant had taken motorcycle from the husband of P.W.2. On the date of the incident they had not received permanent registration number. In fact, the vehicle was taken by the father of the appellant and therefore, the said vehicle, which was used in the commission of the offence was seized in the course of investigation and then released in favour of the registered owner.

8           The substantive evidence of P.W. 4 Tanaji Shinde would show that he was called upon by Sushila Chavan on 3/9/2012 at about 6.15 pm. He had seen that blood was oozing from her private part and therefore, he had advised her to take her to the hospital.

9           P.W.5 Asha Kambale happens to be teacher of Z.P. Primary School. She has deposed before the court that on 3/9/2012 at about 4p.m. Father of the victim had taken his daughter from the school as he

wanted to take out rationing card from the office and for that purpose presence of both the daughters was required. Both the sisters were sent alongwith their father. She has not been shaken in her cross-examination to the extent that on 3/9/2012 the appellant herein had taken custody of his daughters from the school. The said statement of P.W.5 is corroborated by P.W.6 Santosh Shinde who had seen the victim in the custody of the appellant on 3/9/2012 at about 4 p.m.

10 P.W.7 Sushila Chavan happens to be grand-mother of the victim. She has deposed before the court in consonance with her first information report, which is marked at Exh. 36. According to her daughters of the appellant are residing with her as her daughter is having grievance against appellant. It is elicited in the cross-examination that she was not on talking terms with the accused and his parents since last 4 to 5 years and her relations with the accused are strained. The defence of the accused is that the accused appellant has been falsely implicated at the behest of P.W.7 Sushila Chavan, since she was not on talking terms either with the appellant or his parents.

11 P.W.8 Shobha Athawale happens to be the maternal aunt of the victim. According to her, her sister Megha was harassed by the appellant since she has given birth to two daughters. This was precisely

the reason why the daughters were taken care of, by her grand-mother. According to P.W.8 Shobha Athawale, on 3/9/2012 the Appellant had been to her house and questioned about whereabouts of her mother and sister. At about 4.30 p.m. he had returned home alongwith both the daughters, as he had brought them from the school. He had then left house alongwith both the daughters on the pretext that he was to go to rationing office. At about 5 p.m. the victim girl had returned home. She was crying. She had seen that blood was oozing from her private parts. Upon enquiry, she had disclosed that she had been sexually assaulted by her father in the sugarcane field. It is elicited in the cross-examination that the grand-father of the victim i.e. husband of P.W. 7 was murdered 7 to 8 years back. He was addicted to liquor. The said fact is irrelevant.

12           The other relevant witnesses are Dr. Jyoti Jadhav P.W. 10 and P.W.12 Dr. Dnyaneshwar Shitole. According to P.W. 10, accused/appellant was brought to the hospital on 4/9/2012 at about 8 p.m. She had examined him. She had found abrasion on his left knee, which was reddish in colour and was caused within 24 hours. She has specifically stated that the said injury is possible, if any, person commits forcible sexual relations on rough surface. It is elicited in the cross-examination that there were no scratch injuries on the face of the accused.

13 Medical case record would indicate that the victim was admitted in the hospital at 7.10 p.m. with history of sexual assault. There was evidence of P.V. Bleeding since 1 and 1/2 hours. Injury certificate which is at Exh. 78 would show tear of hymen 2 cm x 1 cm. Irregular shaped. It is clear that the allegation levelled by the victim are corroborated by the injury certificate which is at Exh. 78. She was discharged from the hospital on 13/9/2012. She had to be treated as a indoor patient due to grievous injuries, which were sustained by her at the hands of the appellant. Her statement was recorded under section 164 of the Code of Criminal Procedure, 1973 and she has stated about the incident, as has been narrated by her grand-mother at her instance before the police.

14 P.W.12 Dnyaneshwar Shitole has examined the victim on 3/9/2012. That she was brought to the hospital by her grand-mother. He had examined her and had found that there was fresh bleeding from vagina of the victim. He has proved the medical case papers, which are marked at Exh. 77. A Certificate has been issued stating that there was tear of the hymen with laceration on posterior vaginal wall of irregular shape and on post vaginal wall up to the post forchette. The age of the injuries was 2 hours prior to the time of examination. The doctor had opined that the said injuries are possible in forcible sexual assault. In

the cross-examination, it is admitted by the doctor that the mother of the victim was not accompanying the victim. The victim had to be admitted in the civil hospital. It is admitted that the doctor had endorsed that he would give opinion about the sexual assault upon receipt of CA Report.

15           The learned Counsel for the appellant has made an attempt to show several laccunas in the course of investigation as well as by the prosecution. Learned Counsel for the accused appellant submits that in fact, it was grand-mother P.W. 7, who has concocted present case and the appellant has been falsely implicated. According to him, P.W. 5 and the other witnesses who had last seen accused appellant with his daughters cannot be relied upon for the simple reason that they are all resident of the same village. And that the news had appeared in the newspaper and therefore, the witnesses have deposed against the appellant at the behest of the police.

16           It is further submitted that the witness P.W.2 can not be relied upon to hold that the victim was in the custody of the appellant. According to the victim, the appellant was carrying oil and the same was applied to the private parts of the victim before committing sexual assault. Much reliance is being placed upon the fact that bottle of oil was found on the spot. Whereas P.W.3 has stated that the accused has

purchased pouch of jasmine oil. It is also urged that it is only because of the enmity with the grand-mother that the witnesses are deposing against the appellant.

17 As against this, the learned APP submits that it is a heinous offence committed by the appellant and the issues raised by the learned Counsel for the appellant are peripheral in nature. The fact that the medical certificate corroborates the narration of the incident as stated by the victim herself, it would be sufficient to hold that the prosecution has proved the guilt of the accused beyond reasonable doubt.

18 In the case of **Imran Shamim Khan v/s. State of Maharashtra**, (Criminal Appeal No. 936 of 2014 dated 22/1/2019) this Court had an occasion to consider a case in which grand-mother and the victim had turned hostile. This Court had considered the Judgment of the Apex Court in the case of **Ashok Kumar Raut & anr. V/s. State of Bihar reported in 2006 Cr. L.j. 3362**, wherein it was held that where witness turned hostile before court, his previous statement made before the Magistrate at the earliest opportunity under section 164 of the Code of Criminal Procedure, 1973 must get some credence, if it is being corroborated at material point.

19 In the present case, the victim was examined by doctor on 3/9/2012. The doctor had certified that she had sustained bleeding injury to her private part. The certificate at Exh. 78 would substantiate the allegations levelled against the appellant by the victim. There is no doubt the very fact that the father was on bail on the date of recording of evidence, he alongwith his wife have influenced the daughter and pressurised her to turn hostile and this Court cannot be oblivious of the said fact. The offence committed by the appellant is not only a heinous offence, but shatters the image of paternity in the eyes of a daughter. She could bear the physical pain but would be living with an injury to her soul. The biggest trauma would be that she was not even supported by her mother, and was expected to speak a lie before the Court. This is a scar on human relations.

20 In view of the above observations, the appeal deserves to be dismissed. Hence, following order is passed.

**ORDER**

(1) The appeal is dismissed and disposed of accordingly.

**[SMT. SADHANA S. JADHAV, J.]**