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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. 208 OF 2010

Ramsingh Ramnihar Kahar	)
Aged about 41 years,	)
Residing at 4, Lakh Chawl,	)
2 nd Floor, Rungtha House,	)
Off. Nepean Sea Road,	)
Mumbai – 400 006	)
At present undergoing the sentence	)
imposed upon him at Nashik Central	)
Prison	)...Appellant

Versus

1. State of Maharashtra	)
(at the instance of Senior Inspector of	)
Police, Gamdevi Police Station vide	)
their C.R. No. 117 of 2016)	)
2. Anita Ashok Patel	)
Age 13 yars, Residing at in front of	)
Suryaprakash Building, Near 64 No.	)
Bus Stop, Near Babulnath Mandir,	)
Mumbai	)...Respondents

Mr. Aniket Vagal for Appellant
Mr. S.S. Pednekar -APP for the State / Respondent No.1

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : JANUARY 14, 2019

JUDGMENT.:

1. Heard. The Appellant is convicted by the Additional Sessions Judge, Greater Bombay vide judgment and order dated 21.02.2009 in Sessions Case No.763 of 2006 for the offence punishable under Sections 342, 354 and 376 (2) (f) of the Indian

Penal Code. For the offence punishable under Section 342 of IPC, the appellant is sentenced to suffer R.I. for one year. For the offence punishable under Section 376 (2) (f) of IPC, the Appellant is sentenced to suffer R.I. for 10 years and to pay fine of Rs.10,000/-, out of which Rs.6,000/- is payable to the victim girl as compensation and Rs.4,000/- to the State. In default, to suffer further R.I. for six months. So far as, the sentence for the offence punishable under Section 354 of IPC is concerned, no separate sentence is awarded.

2. Such of the facts necessary for the decision of the appeal are as follows.

3. The Appellant was working as a cook with one Mr. Ashish Rungtha, residing at Rungtha House at Nepean Sea Road. The accused appellant was residing in the servant quarters of Rungtha House. The house at the relevant time was occupied by Kejariwal family, who were residing in London, but the keys of the house were in the custody of their daughter Smt. Gita Piramal and the Appellant was working with them.

4. The Complainant Rekha Patel was living on the footpath in front of Babulnath Temple along with her husband and four daughters. She was working as maid servant. Her husband was an alcoholic. At the time of incident, the victim, who was the second daughter of the complainant, was 11 years' old and studying in Vth standard. On 19th December, 2006, the victim had disclosed to her father that a fortnight ago, Ramu Uncle, who was residing in

the house of Kejriwal, had called her home under the pretext of giving food to her and her sisters. Her sisters were made to wait at the ground floor and the prosecutrix was taken by Ramu Uncle to the house of Kejriwal. She had disclosed that the accused had denuded her of her clothes and had sexually assaulted her. Thereafter, the mother of the victim had reported to Gamdevi Police Station about the said incident. On the basis of the report, Crime No. 117 of 2006 was registered against accused-appellant for the offence punishable under Sections 342, 354 and 376 (2) (f) of the Indian Penal Code.

5. At the trial, the prosecution examined 9 witnesses to bring home the guilt of the accused. The case rests on the evidence of PW1 Rekha Patel, mother of the prosecutrix. PW2 – victim herself. PW-3- Dr. Pratap Anand, PW6 Geeta Parimal and PW8 – Ramu Bind.

6. PW1- Rekha Patel has deposed in consonance with the first information report and the same is marked at Exhibit '17'. According to PW1, on 19th May, 2006 at about 10.30 a.m. her daughter Ms. 'X', who was 11 years' old, disclosed to her about the act of the accused and, therefore, she had reported the same to the police. She has stated in the cross examination that all her three daughters used to call him as Ramu Uncle. That the victim was examined at Nagpada Hospital. She has specifically stated that her daughters were acquainted with accused appellant and every time he visited their house, he used to offer biscuits, chocolates and money to her daughters. That from 13th May, 2006 to 19th May,

2006, her daughter was complaining about stomach ache. On 17th May, 2006 for the first time, she had learnt about the stomach ache. She has denied that she had complained to the police on 13th May, 2006 that her daughter has been sexually abused by a person, who was cooking food at Mulchand Bhavan. She has denied the suggestion that she used to demand money from the accused 4/5 times in a month. In fact, the incident had come to light due to the fact that on 19th May, 2006, her relative had seen the victim being molested by a boy while she was trying to go by lift. He had reported the incident to PW1. The husband of PW1 was enraged and at that time, the victim had disclosed to her father that she was sexually abused by accused appellant. In the cross examination, it is elicited that the relative was the first person, who had reported the incident to PW1. It is admitted that Suryaprakash Building is a four storied building having lift facility.

7. PW2 was aged about 13 years at the time of recording her statement. According to her, Geeta Piramal to whom she referred as 'Didi', used to call her and her family members for meals. The accused was working with Didi. Didi used to send a message through Ramu Uncle and he used to convey to them that they have been called for meals. According to the prosecutrix, on 13th of May, 2006, she along with her sister had been to Chowpaty Petrol Pump. While they were playing, the accused told them that Didi had called them for meals. He had offered them biscuits and chocolates. He had taken all the three sisters to Mulchand Bhavan. He had taken the prosecutrix alone to first floor of Mulchand Bhavan. She has narrated the whole incident. The victim has

further stated that on the very next day of the said incident, Ramu Uncle had been to the house of the victim and had again taken her to Mulchand Bhavan and had sexually abused her. She had then narrated the incident dated 17th of May, 2006 wherein she was molested by a boy in the lift of Suryaprakash Building. According to her, she had not disclosed the incident to her parents prior to 17th May, 2006. In the cross examination, she has denied to have stated portion marked 'A', in which she stated that the Didi used to invite them for meals once or twice in a week. She has denied to have stated so before to the police, but surprisingly, the said averment forms a part of the examination-in-chief. According to her, she had suffered no pains at the time when the accused had sexually abused her. She has also admitted that she did not raise any cries. She has stated that on the very next day, he had again taken her home, but did not repeat the act of sexual intercourse, but had sexually abused her.

8. It is pertinent to note that the victim has admitted that the accused had subjected her to atrocity but at the same time, she has stated that she does not know the meaning of atrocity. She has denied the portion marked 'B'. She has also stated that on the next day, she had voluntarily been to the house of the accused and stayed there for around 20 minutes. **It is pertinent to note that PW2 has admitted that till 20th May, 2006, she did not know the accused by his name as 'Ramu Uncle'.** She has denied to have stated to the police that she used to go to the house of Didi along with her mother and sisters and she has denied portion marked 'C'. She has denied to have stated so to her mother that she

was sexually assaulted on 4/5 occasions. She has denied to have visited the police station on 26th May, 2006. She has admitted that she had answered the questions put by the doctor. She had not informed the medical officer that she was being molested since 10 days prior to 20th May, 2006. She has denied that Ramu Uncle had offered them biscuits on the date of the incident. She has admitted to visit the Court many times. She was not aware about the marks scored by her in Vth Std. She has denied the suggestion that there was quarrel between her mother and the accused over some transaction.

9. Her evidence as far as Accused No.2 is concerned, need not be discussed in view of the fact that he has not been convicted by the Learned Sessions Judge.

10. The victim was taken to the jail for identification. She has admitted that she has reported the incident in respect of the accused only after her relative 'Mama' had informed her mother about the incident in the lift.

11. PW3 Dr. Pratap Anand has categorically stated that the brief history recorded in the certificate is as per the information given by the victim. That upon being subjected to sexual intercourse the hymen of the victim could be ruptured. To substantiate the same, he has also referred to Modi's Medical Jurisprudence at page 503. He had clarified that having natural orifice means admits no finger. The history recorded is as follows:

“Victim girl says that some person name not known calling her

and doing bad things for last 10 days. He was calling her repeatedly to his house”.

The report further shows that hymen is intact. There were only contusions on both labia minora. There is no material to indicate that the victim was subjected to sexual assault. Moreover, the victim has not named the appellant although he was known to her. Hence, the charge under 376 IPC necessarily fails.

12. In the present case, it would not be necessary to discuss the evidence of PW4, who had admitted the test identification parade as it is the case of the prosecution that the victim was acquainted with the accused as he used to visit her house quite often.

13. PW6 Geeta Pirmal happens to be the daughter of Sohanlal Kejriwal, who was residing in London and had entrusted the keys with her. According to her, Ruchi Kejriwal, is her sister-in-law and she was referred by people as Ruchi Didi. According to her, Ashish Rungtha is the brother of Ruchi Kejriwal and Ramsingh Kahar i.e. the present Appellant is working with Ashish. She has categorically stated that the accused used to cook food for Kejriwal family in Mulchand Bhavan only when Kejriwal family visited India or otherwise, he used to work at Rungtha House. PW 6 was knowing the accused for more than 10 years.

14. PW8- Ramu Bind is residing in Mulchand Bhavan and he was running a pan stall. He was acquainted with the accused. He has stated that whenever Kejriwal family came to India, Ramsing used

to come to Mulchand Bhavan to cook food for them. He was also knowing the family of the victim, who were residing on footpath of Babulnath Temple. They used to come to his shop for purchasing chocolates, biscuits etc. Ramsing also used to bring them for purchasing chocolates and biscuits. In fact, he along with Upadhyay used to sit in the pan stall. He has stated that his shop is at the corner of Mulchand Bhavan. It is a matter of record that during that period Kejriwal family were not residing in Mulchand Bhavan and, therefore, there was no reason for the Appellant to be there.

15. At this stage, it is pertinent to note that the address of the accused is Rungtha House Compound, Nepean Sea Road, Malbar Hill, Mumbai. There is more than sufficient material to indicate that the accused was residing in Rungtha House and not in Mulchand Bhavan. The keys of Mulchand Bhavan were in the possession of PW6 of Geeta Piramal and the house was kept locked and used to be opened only when Kejriwal family visited India and, therefore, there was no reason for the accused to take victim to Mulchand Bhavan and sexually abused the victim in the kitchen of Kejriwal House. There is no material on record to show that any person had seen the accused taking the victim to Mulchand Bhavan. Prosecution had not examined any witness to that effect.

16. The allegations levelled by the victim and her mother are not corroborated by the medical evidence. The victim is alleged to casually disclosed about the incident to her father after 10 days of the incident that too because some other man had tried to molest

her.

17. The Appellant in his statement under section 313 of Cr.P.C. has stated that he has been falsely implicated. That the mother of the victim had borrowed Rs.2,500/- from him. He was insisting upon her to return the said amount and, thereafter, he has been arrested in the case filed by the mother of the victim.

18. In view of the above discussion, the Accused deserves to be acquitted of all the charges levelled against him. Hence, the following order.

ORDER

- (i) Appeal is allowed.
- (ii) The conviction, vide judgment and order dated 21.02.2009 passed by the Additional Sessions Judge, Greater Bombay in Sessions Case No.763 of 2006 for the offence punishable under Section 342, 354 and 376 (2) (f) of the Indian Penal Code, is hereby quashed and set aside.
- (iii) The Appellant is acquitted of all the charges leveled against him and he be released forthwith.
- (iii) Fine amount, if paid, be refunded forthwith.
- (iv) Writ be issued expeditiously.

19. Appeal stands disposed of in the aforesaid terms.

[SMT. SADHANA S. JADHAV, J.]