

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 306 OF 2014**

Rajendra Sakharam Mohandule,
Age : 23, Occ : Service,
R/o : Village Ingalun, Tal : Junner,
Dist : Pune

...Appellant

Versus

State of Maharashtra
(Through officer in-charge,
Junner Police Station, Pune)

...Respondent

Mr. Paras D. Yadav for the Appellant

Ms. P. P. Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 23rd APRIL 2019

ORAL JUDGMENT :

1 By this appeal, the appellant has impugned the judgment and order dated 14th March 2014 passed by the learned Sessions Judge, Pune, in Sessions Case No. 485/2011, convicting and sentencing him as under :

- for the offence punishable under Section 376 of the Indian

Penal Code ('IPC') to suffer RI for 7 years and to pay a fine of Rs. 1000/-, in default, to undergo SI for 3 months.

The appellant was, however, acquitted of the offence punishable under Sections 342 and 506 of the IPC.

3 According to the prosecution, the incident took place on 15th May 2011 at about 2:00 p.m in Ward No. 12 in a hospital at Junnar. It is alleged that the appellant wrongfully confined the prosecutrix aged 15 years and committed rape on her. The prosecutrix informed her aunt (PW 4) and other relatives of the sexual assault, pursuant to which, a complaint/FIR was registered as against the appellant. On 15th May 2011 itself, the appellant was arrested and the prosecutrix was sent for medical examination.

After investigation, charge-sheet was filed as against the appellant for the offences punishable under sections 376, 342 and 506 of the IPC in the Court of the learned Judicial Magistrate, First Class, Junnar. It appears that co-accused "G" being a juvenile and in conflict of law, her case was dealt with by the Juvenile Justice Board.

As the offence punishable under Section 376 of the IPC was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions for trial.

Charge was framed as against the appellant for the offences punishable under Sections 376, 342 and 506, to which, the appellant pleaded not guilty and claimed to be tried.

The prosecution, in support of its case, examined eight witnesses-PW 1- the prosecutrix (complainant), who lodged the FIR (Exhibit 12); PW 2-Dr. Vipul Gurav, the Medical Officer who examined the prosecutrix; PW 3-Dr. Amol Shinde, who produced the report (Exhibit 34) of the Ossification test conducted by him on the prosecutrix; PW 4-the aunt of the prosecutrix; PW 5-Bansi Chature, a panch to the spot panchanama; PW 6-Nivrutti Kamathkar, Head Mistress of the Zilla Parishad Primary School, where the prosecutrix had taken education. The said witness had produced the General Register of the School (Exhibit 44) and the School Leaving Certificate

of the prosecutrix (Exhibit 45); PW 7-Anil Ghone, panch to the seizure of clothes of the prosecutrix and PW 8-API Suryakant Pawar attached to Junnar Police Station, who conducted the investigation and filed the charge-sheet.

The defence of the appellant was of total denial and false implication.

4 Learned counsel for the appellant assailed the impugned judgment and order on several grounds. He submitted that the applicant had been falsely implicated in the said offence due to the political pressure of the activists of Shiv-Sena; that the prosecutrix had gone to Ward No. 12 to meet her boyfriend-Sachin and that when she was found in the said room, she disclosed the name of the appellant. He further submitted that the prosecution had failed to prove that the prosecutrix was a minor, below 18 years of age at the relevant time and that there are several contradictions in the evidence of PW 1-prosecutrix and PW 4-her aunt.

5 Learned A.P.P supported the judgment and order of conviction and sentence and submitted that no interference was warranted.

6 Heard learned counsel for the parties and with their assistance, perused the evidence on record. The evidence of PW 1 (prosecutrix) shows that on 15th May 2011, she had gone to the Hospital with her grandmother and her aunt (PW 4), as PW 4's children were in the Hospital, as they were suffering from typhoid. She has stated that when she was sitting in the Hospital, “G”-a girl employee of the Hospital, came to her and told her that she wanted to talk to her for two minutes and hence, she went outside the room with “G”; that “G” took her to the Ward No. 12 and pushed her inside the room and left her alone in the said room; that the appellant who was working in the Hospital, was sitting in the said room; that the appellant closed the door, latched the chain and pushed her on a cot, gagged her mouth with a handkerchief; removed his clothes as well as the clothes of the prosecutrix and sexually assaulted her. According to PW 1, the appellant threatened her that if she disclosed the incident,

he would kill her. She has further stated that after the sexual assault, she unlatched the door and went to PW 4 (Aunt) and disclosed the incident to her, pursuant to which, PW 4 disclosed the said incident to the Hospital staff as well as to the grandparents of the prosecutrix. Thereafter, the prosecutrix, accompanied with her relatives, visited the police station, and lodged a complaint as against the appellant and the co-accused 'G' with respect to the incident. The prosecutrix has also deposed that she was born on 15th August 1996.

Although it is sought to be suggested to PW 1 that she was falsely deposing against the appellant, as the appellant was insisting that money be deposited before admitting the patient, same has been denied by her. It is also sought to be suggested that she had gone to the said Ward No. 12 to meet her friend-Sachin and being caught by her aunt (PW 4), she falsely disclosed the name of the appellant. The said suggestion has also been denied by PW 1. There is nothing which is elicited in the cross-examination of PW 1 to discredit her testimony.

7 The aforesaid evidence of PW 1 (prosecutrix) is duly corroborated by PW 4 (prosecutrix's aunt). The FIR has been lodged after the incident on the very same day. Infact, prior to the lodging of the FIR, PW 4, on a disclosure being made to her by PW 1 of sexual assault by the appellant, had informed the hospital authorities of the same. It is thus evident that there was no reason for the prosecutrix to contrive or confabulate the said incident.

8 The aforesaid evidence of sexual assault on the prosecutrix is also duly corroborated by the medical evidence that has come on record. PW 2-Dr. Vipul Gurav has stated that he examined the prosecutrix aged 15 years and that he also had taken history from her. He has stated that the prosecutrix disclosed to him that she had gone to visit the Hospital at Junnar to meet her younger brother; that she was staying in the hospital from 13th May 2011; that on 15th May 2011, at about 2:00 p.m., a nurse employed at the hospital took her to a room, where one boy suddenly came and locked the room from inside and that the said boy i.e. the appellant raped her. He has further stated that the prosecutrix also disclosed to her that she could not

shout as her mouth was gagged with a handkerchief and that after some time, when she got out of the room, she met her aunt and disclosed the incident to her. On examination, although PW 2 did not find any external injuries on labia majora and labia minora; but that the hymen was torn completely, hymnal tears were seen at 1, 6 and 9 O'clock position. From the history and clinical examination of the prosecutrix, PW 2 concluded that there was possibility of penetrative intercourse with her and accordingly issued medical certificate (Exhibit 30).

9 The prosecution has examined PW 6-Nivrutti Kamathkar, Head Mistress of the Zilla Parishad Primary School, Pune to prove the age of the prosecutrix i.e. that she was minor. PW 6-Nivrutti has produced the General Register, wherein the date of birth of the prosecutrix was recorded as 15th August 1996 (Exhibit 44). She has stated that the prosecutrix left the school on 2nd May 2009 after passing 7th standard and accordingly, the prosecutrix's school leaving certificate has also been produced by him (Exhibit 45). There is no ground to disbelieve the said documents produced by PW 6. There is

nothing in the cross-examination to disbelieve the said witness. There is also no suggestion that the said documents are fabricated and as such, the said documents clearly show that the prosecutrix was a minor at the time of the incident, aged about 15 years.

10 PW 3-Dr. Amol Shinde, who examined the prosecutrix to determine her age, has also come to the conclusion that the prosecutrix was 15 years to a maximum of 17 years and accordingly, issued medical certificate (exhibit 34).

11 The evidence on record thus shows that the prosecutrix was a minor at the time of the occurrence and there is no reason to disbelieve the said evidence, oral and documentary, that has come on record.

12 Having regard to what is stated aforesaid, no infirmity can be found in the impugned judgment and order of conviction. Accordingly, the appeal is dismissed.

REVATI MOHITE DERE, J.