

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 458 OF 2015

Ajaysingh Kuvarsingh Dahiya.

Age: about 40 years. Occ. Business.

Residing at House No. 1157,

Sector 9, Gurgaon,

Haryana (At present lodged in Tihar Jail.)

..Appellant.

V/s.

1 The State of Maharashtra

(through Sr. Inspector of Police

Samata Nagar Police Station,

Mumbai C.R. No. 416/2012

in C.C. No. 3052/PW/2012)

2 Rith Shyamsunder Duva,

202/3, Sainik Enclave 3,

Jharoda Kalan Road,

Najafgarh, New Delhi 100043.

..Respondents.

Mr. Ujwal R. Agandsurve, 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) of the Indian Penal Code and sentenced to suffer R.I. for 7 years and to pay fine of Rs. 25,000/- I.d. to suffer R.I. for six

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months. The appellant is also convicted for the offence punishable under section 506(II) of the Indian Penal Code and sentenced to suffer R.I. for one year and to pay fine of Rs. 5,000/- I.d. to undergo further R.I. for 6 months vide Judgment and Order dated 30/1/2015 passed by the Additional Sessions Judge, Gr. Bombay in Sessions Case No. 28 of 2013. Hence, this appeal.

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

(i) It is the case of the prosecution that the victim herein was residing at Delhi. The victim was about 10 years old at the time of incident. A discordant note had struck between her parents and they had separated. The mother of the victim was not willing to take the custody of her daughter and her son and therefore, the children were entrusted in the custody of the present appellant as he was good friend of their father.

(ii) The appellant, his wife and two children were residing. The victim was sexually abused by the appellant in his house. She had narrated the said incident to his wife Meena. She had exonerated the allegations levelled by the victim and had informed her that it was some kind of hallucination which she had.

(iii) The accused/appellant was visiting Mumbai quite often as second wife Sonia who happens to be a bar dancer at Goregaon was residing at Goregaon alongwith his son.

(iv) That in the year 2010, the victim was brought to Mumbai and was made to reside in his house alongwith Sonia and her son who was about 4 years old.

(v) The appellant used to visit Mumbai. On every occasion he visited Mumbai, he had sexually assaulted the victim on multiple occasions.

(vi) A friend of Sonia had learnt about the sexual relation between the appellant and the victim and had accordingly informed Sonia about the same.

(vii) Sonia had taken cognizance of the said information and had enquired with the victim. The victim had answered in the affirmative and had spelt out the details in the manner in which she was being sexually assaulted by the accused/appellant.

(viii) Sonia had taken the victim to the hospital and thereafter, she

was taken to the office of National Health Organisation, wherein she had narrated the atrocities meted out at the hands of the appellant.

(ix) Hence, criminal prosecution was initiated against the appellant. On the basis of the said report filed by the victim, Crime No. 416 of 2012 was registered at Samatanagar Police Station, Mumbai against the appellant for the offence punishable under section 376 and 506(ii) of the Indian Penal Code. Charge-sheet was filed on 31/12/2012.

3 At the trial prosecution examined 8 witnesses to bring home the guilt of the accused. The case rests upon the evidence of the victim i.e. P.W.5, P.W.3 Dr. Sucheta Phad, who had examined the victim and P.W.6 Soniya, who had initiated criminal prosecution against the appellant by taking cognizance of the complaint of the victim.

4 P.W.5 Ms. X who happens to be the victim has narrated in consonance with her FIR. She has deposed before the Court that she was residing in the house of the accused from June, 2009 to March, 2010. During this period, she was not treated properly by the wife of the appellant. That the appellant had sexually abused her on several occasions. There was nobody to give a ear to her plight. In March, 2010 the appellant had visited Mumbai alongwith victim and his son and left

them in the custody of P.W. 6 Sonia. On every occasion appellant sexually assaulted victim, he would send Sonia to Gym and the children to play outside the house. He had threatened the victim of dire consequences and sexually assaulted her. He had made her to talk with his first wife and his friend Priti, who did not pay any heed to the complaint made by the victim. That Sonia's friend Shriya had disclosed about the same to Sonia and thereafter, criminal prosecution was initiated. The defence has failed to make any dent in the cross-examination.

5 P.W.3 Dr. Suchita Phad has submitted that she had examined the victim on 26/10/2012. The victim was brought from Samata Nagar Police Station for medical examination. Her age was between 13 to 14 years. She had noticed an old hymen tear.

6 P.W.6 Sonia has deposed before the court that the victim had disclosed to her the atrocities meted out to her at the hands of the accused/appellant and therefore, she was constrained to file a complaint. She has admitted that she was a bar dancer at Goregaon. However, she has shown her sensitivity by taking cognizance of the complaint made by the victim.

7 It is a matter of record that the victim was being sexually assaulted for a period of 2 years or more i.e. right from the age of 11 to 13 years. In fact, her father had entrusted her custody with the appellant in the hope that she will be taken care of although the family has been shattered. The learned Special Judge has awarded the sentence of 7 years for the offence punishable under section 376 of the Indian Penal Code. In fact, this was a fit case for enhancing the sentence upto 10 years, since the victim was being sexually assaulted for more than 2 years at the hands of the appellant. The prosecution has proved the guilt of the accused beyond reasonable doubt. There is no reason to interfere with the findings recorded by the learned Special Judge. Hence, the appeal being sans merits deserves to be dismissed. Hence, following order is passed.

ORDER

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

[SMT. SADHANA S. JADHAV, J.]