Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 393 OF 2014

Ramdas Gulab Khavale .Appellant
Age : 44 yrs, Occu : (Original
Residing at Government Madhyamik Accused)
Ashramshala, Bamnoli, Taluka – Jaoli,
District – Satara.

Vs.

The State of Maharashtra .Respondent
(Notice to be served upon A. P. P. High
Court, A. S., Bombay.)

Mr. Arun Rajput i/b. Mr. Aashay Topiwala, Advocate, for the Appellant
Mr. V. V. Gangurde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 29.03.2019

ORAL JUDGMENT

. By this Appeal, the Appellant has impugned the Judgment & Order dated 03.04.2014 passed by the learned Additional Sessions Judge, Satara in Sessions Case No. 52 of 2013, convicting and sentencing him as under :-

- for the offence punishable under Section 376(2)(c) of the Indian Penal Code, to suffer R. I. tor ten years and to pay fine of Rs. 10,000/-, in default to suffer R. I. for one year.

The Appellant was, however, acquitted of the offence punishable under Section 506 of the Indian Penal Code.

2. The prosecution case in brief is as under :-

PW.3 – the prosecutrix, aged around 13 years, was studying in the 9th Std., in a residential School, at the relevant time. The Appellant was working as a Cook in the said residential School and was also residing in the School premises. According to PW.3 (prosecutrix), the incident took place in the intervening night of 06.11.2012 to 07.11.2012, at about 2.15 a. m. to 2.30 a. m., when she stepped out of her room to go to the toilet. She has stated that the Appellant came there and took her to his room and had forcible intercourse with her. She has further stated that when PW.4 – Mahipati Pandurang Chaugule knocked the door,

the Appellant kept her in the kitchen and opened the door, pursuant to which, PW.4 – Chaugule entered the house and found her in the house. PW.4 – Chaugule brought PW.3 out, after which PW.1 – the Superintendent of the residential School took her to her house. On 09.11.2012, PW.3 disclosed the incident of sexual assault to PW.1, as she had pain in her abdomen. The police came to the School and recorded PW.3's statement, pursuant to which, FIR was registered as against the Appellant for the offence punishable under Section 376(2)(c) of the Indian Penal Code. The prosecutrix was sent for medical examination, spot panchanama was prepared, clothes of the prosecutrix were seized under a panchanama and on 18.11.2012, the Appellant was arrested. After investigation, charge-sheet was filed as against the Appellant in the Court of the learned J.M.F.C. Since the offence was Sessions triable, the case was committed to the Court of Sessions for trial. The learned Sessions Judge framed charge as against the Appellant for the offences punishable under Sections 376(2)(c) & 506 of the Indian Penal Code, to which the Appellant pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 12 witnesses; PW.1, the Superintendent of the

residential School; PW.2 – brother of the prosecutrix; PW.3 – the prosecutrix; PW.4 – Mahipati Chougule, watchman of the residential School; PW.5 – Chandrakant Gore, panch to the seizure of bed sheet and shirt of the Appellant and spot panchanama; PW.6 – Pandurang Gore, panch to the seizure of clothes of the prosecutrix; PW.7 – Dr. Karanjkar, who examined the prosecutrix; PW.8 – Sambhaji Khandagle, panch to the seizure of Appellant's clothes; PW.9 – Dr. Lipare, Medical officer, who examined the prosecutrix; PW.10 – teacher of the residential School; PW.11 – friend and classmate of the prosecutrix, who was studying in the same residential School and PW.12 – Dattatraya Kale, the Investigating Officer.

3. The defence of the Appellant was that of total denial and false implication.

4. Learned counsel for the Appellant assailed the impugned Judgment and Order of conviction and sentence on several counts; that the Appellant has been falsely implicated in the said case; that no such incident as alleged by the prosecutrix

had taken place; that one of the document on record shows that the prosecutrix was between the age group 18-20 and not 16, as alleged by the prosecution. He further submits that if the statement of PW.1 – the Superintendent is seen, it would be evident that there was some affair between the prosecutrix and the Appellant. According to the learned counsel for the Appellant, in the absence of any other incriminating material to corroborate the statement of the prosecutrix, the Appellant cannot be convicted. Learned counsel relied on the Judgment of the Apex Court in the case of ***State of Madhya Pradesh Vs. Munna alias Shambhoo Nath*** decided on ***18.09.2015*** in ***Cri. Appeal No. 658 of 2011***.

5. Learned APP supported the impugned Judgment & Order of conviction and sentence and submitted that no interference was warranted.

6. Heard learned counsel for the parties at length and perused the evidence and documents on record with their assistance.

7. PW.3 (prosecutrix) was studying in the 9th Std, in a residential School, at the relevant time. She has stated that her date of birth is 15.04.1996. According to PW.3, she knew the Appellant, as the Appellant was working as Cook in the said School. She has stated that the relatives of all the students studying in the said residential School would call on the cell phone of the Appellant and that he would give the phone to the students to speak; and that her relatives would also call on the Appellant's cell phone. She has stated that since June, 2012, the Appellant's family members were not residing with him in the School premises. According to PW.3, in the intervening night of 06.11.2012 to 07.11.2012, when she stepped out to answer the call of nature at about 2.15 - 2.30 a. m., she found the Appellant standing near the room. She has stated that the Appellant called her, pursuant to which she went to his room, thinking that she may have received a call on the Appellant's cell phone. She has stated that the Appellant took her to his room and thereafter, committed forcible sexual intercourse with her. She has stated that she tried to rescue herself. She has further stated that after

some time, as PW.4 – Chaugule, the watchman knocked the door, the Appellant took her to the kitchen room and thereafter, opened the door. She has stated that PW.4 – Chaugule entered the house and took her outside. She has stated that when she went outside, PW.1 – the Superintendent of the School was present and that she took her to her house. She has further stated that PW.1 enquired with her whether anything wrong had happened, to which she replied in the negative, as she was concerned about her future. She has stated that in the night, she slept in the house of PW.1. According to PW.3, on 09.11.2012, as she had pain in her abdomen due to sexual relations with the Appellant, she informed PW.1. She has stated that thereafter, the police as well as her family members came to the School and she narrated the incident to the police. Accordingly, PW.1'S complaint (Exh. 18) was registered. She has stated that she took the police to the spot, pursuant to which, the spot panchanama was prepared, photographs were taken and her clothes were seized. PW.1 was, thereafter, referred to the Civil Hospital, Satara for medical examination.

8. The tenor of the cross-examination was to show that no such incident took place. The suggestion made in the cross-examination that the Appellant was falsely implicated in the said case and that no such incident had taken place has been denied by PW.3. There is nothing in the testimony of PW.3, to discredit the same.

9. The prosecutrix's evidence is corroborated by her friend – PW.11, also a student of the residential School. PW.11 has stated that she found PW.3 missing and hence, informed the Superintendent of the School (PW.1) about the same, after which PW.1 informed PW.4, the watchman and they took search and found PW.3 in the Appellant's room. The evidence of PW.1 – Superintendent of the said residential School is also on identical lines, that she was informed by PW.11, that PW.3 was missing from the room, pursuant to which, she informed PW.4 – watchman and that they took search and found PW.3 in the Appellant's room. The evidence of PW.4 – Chaugule, watchman of the residential School also shows that when he went searching for

PW.3, he found PW.3 in the Appellant's kitchen. The evidence of all the aforesaid witnesses is also corroborated by the evidence of PW.10 – teacher of the residential School. The spot panchanama and the panch to the spot panchanama i. e. PW.5 – Gore, has also supported the prosecution case. In the spot panchanama, the bed sheet and shirt of the Appellant was seized. Similarly, the clothes of PW.3 were also seized under a panchanama and PW.6 – Gore is also a panch to the said panchanama. From the C. A. Report, it appears that semen stains were found on the bed sheet and the nicker of the prosecutrix was also found to have stains.

10. It appears that soon after the incident, the Appellant fled from the School and was arrested only on 18.11.2012.

11. The medical evidence also corroborates the prosecutrix's case of sexual assault. PW.9 – Dr. Lipare was attached to the Civil Hospital as a Gynaecologist, at the relevant time. He has stated that after taking PW.3's consent, he examined her in the presence of a nurse. He has stated that he recorded the history from the patient regarding her marital status who

disclosed that she had sexual contact two days prior and that she had changed her clothes and taken a bath. Although PW.9 did not find any injuries on her person, he found that her hymen was ruptured.

12. As far as the contention of the learned counsel for the Appellant, that the prosecutrix was between the age group of 18-20 and not 16 as alleged by the prosecutrix, is to be noted only to be rejected. It is pertinent to note, that there is absolutely no cross-examination on the age of the prosecutrix, much less a suggestion to any of the witnesses that the prosecutrix was not 16 at the relevant time, more particularly, when the prosecutrix had categorically deposed her date of birth as 15.04.1996. The Judgment relied upon by the learned counsel for the Appellant is clearly distinguishable and does not apply to the facts of the present case.

13. As far as the submissions of the learned counsel for the Appellant, that it is a case of a love affair between the Appellant and the prosecutrix, once having come to the conclusion that the

prosecutrix was 16 years of age, at the relevant time, the question of consent would not arise. The Appellant was a family man, married with two children and as such, had abused his position and taken advantage of a young girl aged 16 years, who was residing in a residential School, by exploiting her.

14. There is no infirmity / perversity in the impugned Judgment & Order of conviction and sentence. The Appeal is, accordingly, dismissed.

(REVATI MOHITE DERE, J.)