

Anand

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

CRIMINAL APPEAL NO. 625 OF 2014

Suresh Karbhari Belhekar .Appellant
Age : 33 yrs, Occu : Agriculturist
R/o. - Kalwadi, Pimpalwandi,
Taluka – Junnar,
District – Pune.

(Presently lodged at Yerawada
Central Prison, Pune)

Vs.

The State of Maharashtra .Respondent

Mr. P. Dabade i/b. Mr. V. B. Shivarkar, Advocate, for the
Appellant
Mr. P. H. Gaikwad, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 22.04.2019

ORAL JUDGMENT

. By this Appeal, the Appellant has impugned the
Judgment and Order dated 14.03.2014 passed by the learned
District Judge – 2, Pune in Sessions Case No. 484 of 2011,
convicting and sentencing him as under :-

- for the offence punishable under Section 363 of the Indian Penal Code, to suffer R. I. for five years and to pay fine of Rs. 200/-, in default to suffer R. I. for one month;

- for the offence punishable under Section 366A of the Indian Penal Code, to suffer R. I. for five years and to pay fine of Rs. 200/-, in default to suffer R. I. for one month;

- for the offence punishable under Section 376 of the Indian Penal Code, to suffer R. I. for seven years and to pay fine of Rs. 200/-, in default to suffer R. I. for one month;

- for the offence punishable under Section 506 of the Indian Penal Code, to suffer R. I. for one year and to pay fine of Rs. 100/-, in default to suffer R. I. for 15 days.

All the sentences were directed to run concurrently.

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

PW.2 – prosecutrix aged 13 years and the Appellant aged 33 years were residing in adjacent houses in the same village. According to the prosecution, the Appellant took the prosecutrix with him under a threat on 01.05.2011 from their village to Alephata, Ahmednagar, Shirdi, Chandrapur, Thane, Mumbai and Alephata. It is the prosecution case that on 05.05.2011, the Appellant booked a room in a lodge at Ahmednagar, where he raped PW.2 – prosecutrix. As PW.2 went missing, her father – PW.3 lodged a missing complaint with the Narayangaon Police Station. On 05.05.2011, PW.2 – prosecutrix was found. The prosecutrix disclosed to her mother, the incident of sexual assault by the Appellant on the next day i. e. 06.05.2011. Pursuant to the disclosure, PW.1 – mother of the prosecutrix informed the relatives and lodged a complaint at the Narayangaon Police Station as against the Appellant, alleging offences punishable under Sections 363, 366A, 376 & 506 of the Indian Penal Code. After investigation, charge-sheet was filed as against the Appellant in the Court of the learned Judicial Magistrate First Class. As the offences were triable by the Court of

Sessions, the case was committed to the Court of Sessions for trial. The learned Sessions Judge framed charge as against the Appellant to which the Appellant pleaded not guilty and claimed to be tried.

3. The prosecution in support of its case examined 11 witnesses i. e. PW.1 – the Complainant and mother of the prosecutrix; PW.2 – the prosecutrix, aged 13 years; PW.3 – father of the prosecutrix; PW.4 – Babusha Neherkar, panch to the seizure of clothes of the Appellant; PW.5 – Mangesh Jindam, hotel manager of Shivshakti Lodge at Ahmednagar, where the Appellant had stayed on 05.05.2011; PW.6 – Mohan Hiranwale, the lodge owner, who has deposed that the Appellant had visited the hotel on 05.05.2011 alongwith a girl and had stayed in a room for two hours. He has identified the entries made in the said register; PW.7 – Pandurang Fulsundar, Head Master of the School, where the prosecutrix was studying. The said witness produced the original School Leaving Certificate of the prosecutrix and has deposed with regard to the date of birth of the prosecutrix, being 15.05.1997; PW.8 – API, Asif Shaikh, the Investigating Officer;

PW.9 – Dr. Vipul Gurav, Medical Officer, who examined the prosecutrix; PW.10 – Dr. Amol Shinde, Medical Officer, who examined the prosecutrix to determine her age and PW.11 – Dr. Nivrutti Survase, Medical Officer, who examined the Appellant.

4. The defence of the Appellant was that of total denial and false implication. The tenor of the cross-examination is to suggest that the prosecutrix – PW.2 was in love with the Appellant and had gone on her own accord with the Appellant. The allegations of rape / sexual abuse are denied by the Appellant.

5. After hearing the parties, the learned Judge was pleased to convict and sentence the Appellant as aforestated in para 1.

6. Learned counsel for the Appellant submitted that the Appellant is innocent and has been falsely implicated in the said case. He submitted that the evidence of PW.3 – father of the prosecutrix as well as the evidence of PW.8 – Investigating Officer shows that it is the Appellant, who had brought the prosecutrix

and handed her over to her father (PW.3). He submits that it is the prosecutrix, who had gone with the Appellant on her own accord and that no incident of rape, as alleged had taken place.

7. Learned APP supported the impugned Judgment and Order of conviction and sentence and submitted that no interference is warranted.

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

9. As noted above, the prosecutrix – PW. 2 was about 13 years of age at the relevant time and the Appellant was 33 years of age and a married man. The evidence of the prosecutrix and her parents (PW.1 and PW.3) shows that the prosecutrix was a minor, at the relevant time. PW.7 – Pandurang Fulsundar, Head Master of the School, where the prosecutrix was studying has also deposed with regard to the age of the prosecutrix. He has deposed the prosecutrix's date of birth as 15.05.1997. PW.7 - Pandurang

Fulsundar had issued a Bonafide Certificate to the prosecutrix after verifying the general register and School Leaving Certificate of the prosecutrix. He has produced the said Bonafide Certificate (Exh. 28) and has admitted his signature and the contents therein. He has also produced the yadi (Exh. 29) as well as general register (Exh. 30). Thus, the evidence on record clearly shows that the prosecutrix's date of birth as 15.05.1997, which means that her age at the time of the incident was about 13 years. There is nothing elicited in the cross-examination of PW.7 – Pandurang, to discredit his testimony.

10. With regard to the incident, PW.2 – the prosecutrix has stated that at the time of the incident, she was in 8th Std.; that the Appellant was residing in the adjacent house and that he would visit their house often; and that the Appellant would treat her like his daughter. According to PW.2, as on 01.05.2011, her school result for (8th Std) was to be declared, she went to Pimpalwandi ST stand; that when she reached ST stand and was proceeding towards her School, she met the Appellant, who told her that she should accompany him; and that when she refused,

the Appellant threatened to kill her. She has stated that the Appellant took her to Ale Phata in a Rickshaw; from Ale Phata to Shirdi and from Shirdi to Chandrapur, under a threat. She has stated that when they reached Chandrapur ST stand, they went to the house of one Patkar, who was known to the Appellant. According to PW.2, when the lady (Patkar) asked who she was, the Appellant disclosed that she was the daughter of his maternal uncle; that after having lunch, they left her house and came to the ST stand at Chandrapur; from there they took a bus at 5.30 p. m. to go to Nasik; that on 03.05.2011 at 7.00 a. m., they reached Nasik ST stand and from Nasik, they reached Mumbai, where they wandered; that on 04.05.2011, from Mumbai they went to Ghatkopar by ST bus, after which the Appellant took her to Thane ST stand; that at 12.00 midnight, from Thane they went to Parner ST stand and on 05.05.2011 at 7.00 a. m., they reached Ale Phata; that from Ale Phata, the Appellant took her by truck to Ahmednagar to a lodge, where he entered his name in the register; that he took her to a room on the third floor and sexually assaulted her, under a threat to kill her; that he told her not to disclose the incident to her family members or he would kill her;

thereafter, they came to Ahmednagar ST stand to go to Ale Phata and reached at Ale Phata at 5.00 p.m., where the police accosted them, pursuant to the missing complaint. PW.2 has stated that she did not disclose the incident of sexual assault to her family members out of fear, on that day i. e. 05.05.2011, however, on the next day i. e. on 06.05.2011, she disclosed the incident to her mother, after which her mother lodged a police complaint as against the Appellant. PW.2 was, thereafter, sent for medical examination.

11. The tenor of the cross-examination of the said witness is to show that she was in love with the Appellant and that she wanted to marry the Appellant, which was opposed to, by her parents. It was also sought to be suggested that she gave a false statement to the police, as her parents had pressurized her to do so, despite no such incident of rape having taken place. The prosecutrix has denied all the said suggestions.

12. The incident which took place during the period from 01.05.2011 to 06.05.2011 has been duly corroborated by PW.1 –

Complainant and mother of the prosecutrix as well as by PW.3 - father of the prosecutrix; that the prosecutrix went missing on 01.05.2011 after she left home to go to the School to collect her result and returned only after a missing complaint was lodged on 05.05.2011. There is corroboration also with respect to the disclosure made by the prosecutrix to them on 06.05.2011.

13. The medical evidence also corroborates the testimony of PW.2 – prosecutrix, that she was sexually assaulted. PW.9 – Dr. Gurav attached to the B. J. Medical College and Sassoon Hospital, Pune at the relevant time, has stated that on 07.05.2011, the prosecutrix was brought by the Narayangaon police, pursuant to which, he took her consent for examination. He has stated that the prosecutrix gave history that

“the Appellant is living in her neighbourhood since many years; that on 1st May, 2011, Appellant forcefully abducted her and took her first to Alephata and then to Shirdi and then to Mumbai; that in Mumbai they stayed in a lodge where Appellant allegedly raped her; that thereafter, they went to Ahmednagar via Thane where he again raped her.”

PW.9 – Dr. Gurav gave his final opinion that there is evidence of penetrative vaginal intercourse.

14. The evidence of PW.6 – Mohan Shankar Hiranwale corroborates the aforesaid evidence of the prosecutrix coupled with the medical evidence. The Appellant had taken the prosecutrix to a lodge in Ahmednagar, where the prosecutrix was raped. PW.6 in his evidence has stated that on 05.05.2011, the Appellant had visited the lodge alongwith a girl at about 10.00 a. m.; that Room No. 304 was provided to the Appellant; that both were in the room for two hours and thereafter, they left the lodge.

15. The evidence on record clearly shows the complicity of the Appellant in the offences with which he is charged. The Appellant aged 33 years, a married man had taken advantage of a young girl aged 13 years. The prosecutrix was almost like his daughter. The Appellant has clearly abused the said relationship and had taken advantage of her by enticing her and thereafter,

sexually abusing her. The question of consent does not arise, inasmuch as, the prosecutrix was a minor, aged 13 years.

16. Considering the evidence on record, no infirmity can be found in the impugned Judgment and Order of conviction and sentence. Hence, the Appeal is, accordingly, dismissed.

(REVATI MOHITE DERE, J.)