

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 135 OF 2013

Balaso Shivaji Pattekari, Age : 38 years, Occu : Driver, R/o Hanbarwadi, Tq. Karvir, Dist. Kolhapur.	}	Appellant (Orig. Accused)
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Versus

State of Maharashtra, Through Karvir Police Station, Dist. Kolhapur.	}	Respondents (Orig Accused)
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ALONG WITH
CRIMINAL APPEAL NO. 198 OF 2013

State of Maharashtra, Through Karvir Police Station, Dist. Kolhapur.	}	Appellant (Orig. Complainant)
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Versus

Balaso Shivaji Pattekari, Age : 38 years, Occu : Driver, R/o Hanbarwadi, Tq. Karvir, Dist. Kolhapur.	}	Respondents (Orig Accused)
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Mr. Manoj Patil for the Appellant in Criminal Appeal No. 135/2013 and for Respondent in Criminal Appeal No. 198/2013.

Mr. H.J. Dedhia, APP for Respondent – State in Criminal Appeal No. 135/2013 and for Appellant in Criminal Appeal No. 198/2013.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATED : JANUARY 18, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the

learned Additional Sessions Judge, Kolhapur in Sessions Case No. 18/2010, dated 30.11.2012, whereby Appellant – Orig. Accused herein was convicted of the charge for committing offences punishable under Section 376, Indian Penal Code (for short “IPC”), and sentenced to suffer Rigorous Imprisonment for ten years and fine of Rs. 10,000/- in default to suffer further simple imprisonment for six months, the present Criminal Appeal is preferred by the Appellant.

2. At the outset, we may state here that as both these Criminal Appeals arises out of the same judgment and order, we take up Criminal Appeal No. 135/2013 as lead matter.

3. The case of prosecution reflects yet another story of a father driven physical lust and sexual urge exploiting and ravishing his own daughter. Though, learned Trial Court refers to the name of victim, we deem it appropriate not to disclose the name of the victim and we may refer her as prosecutrix. The victim prosecutrix lodged report at Karvir police station on 11.09.2009 disclosing the trauma she suffered on two occasions. Mother of prosecutrix, prosecutrix, her younger brother were residing at Hanbarwadi, Tq. Karvir, Dist. Kolhapur. Though prosecutrix

is unable to remind the date and time of first incident, she stated that it took place in the month of June after reopening of her school. At the relevant time prosecutrix was studying in 9th standard. Though prosecutrix fails to remind the date, she refers that it was Saturday and after finishing the dinner she was sleeping on cot along with her younger brother at about 10.00 pm suddenly Appellant came close to her and by gagging her mouth by one hand he pushed her to kitchen. Then by applying force he made her lie down on the floor, removed her undergarments by one hand and made an attempt to insert his penis in her vagina. In doing so, his hand gagging mouth of prosecutrix was removed as such, prosecutrix raised shouts loudly making her mother and brother to rush at the spot. There was quarrel between the mother of the prosecutrix and appellant. The appellant gave abuses to the mother of prosecutrix and also by assaulting her he gave threats of life. Mother of prosecutrix disclosed this incident to her mother i.e. grandmother of prosecutrix. After 2 months of this incident, again on Saturday the prosecutrix attended her morning school and on her return after lunch she proceeded to the agricultural field along with her mother. In the evening, the prosecutrix assisted her mother in cooking food. The family

took dinner by 09.00 pm and at about 10 pm they went for sleep. In the courtyard prosecutrix was sleeping on cot along with younger brother and parents were sleeping on the floor. At about 11.00 to 12.00 pm the appellant made the prosecutrix to wake up and by gagging her mouth he rushed her to kitchen. Appellant by applying full force gagged the mouth of prosecutrix and made her lie down on the floor and then committed rape on the prosecutrix. The prosecutrix suffered bleeding and pains. That time the younger brother woke up and asked for water. Mother of prosecutrix got up and on finding that the mother of prosecutrix and brother woke up the appellant left the prosecutrix and went in the front room of the house as the prosecutrix was in immense pains she lied down on the cot. Then a quarrel took place between the mother and the appellant. Appellant gave a threat to the mother by saying that if she discloses the incident to anybody else he would kill her and children by administering them poison as he had already stored the bottle of poison in the house. The clothes worn by the prosecutrix namely, gown and the undergarment next day washed by her mother.

The prosecutrix stated in the report that due to fear and apprehension of the appellant she had not lodged the report to the police

but when her mother committed suicide on 03.09.2009 because of ill-act of the appellant and thereafter the prosecutrix went to her maternal uncles house for sometime and the again returned back to her parental home. Even at the parental home she was exploited by the appellant in the month of June.

4. Prosecutrix then finding that her life is becoming miserable and on gathering courage she lodged the report. On lodgment of the report the crime was registered against the appellant. The police station officer attached to police station took over the investigation and completed the necessary formalities of the investigation. Arrest of the accused was effected. Charge-sheet came to be filed in the Court of JMFC. As the offence being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The appellant claimed trial. The defence of Appellant was of denial and false implication.

5. Learned Trial Judge on appreciation of evidence in his detailed judgment and order find that the prosecution successfully established the charge against the appellant that the material evidence in the form of testimony of witnesses as well as the medical evidence.

Learned Trial Judge by holding the appellant guilty of commission of offence recorded the judgment and order of conviction and sentence.

6. Learned Counsel appearing for the Appellant vehemently submitted that there are many discrepancies in the prosecution evidence more particularly, the version of star witness. It is also the submission of learned Counsel for Appellant that the medical evidence is not supporting the case of prosecution. Learned Counsel for Appellant submitted that there is inordinate delay in lodging the report. Hence, learned Counsel for Appellant prayed that Appeal may be allowed.

7. Per contra, learned APP strongly supported the case of prosecution and submitted that the prosecutrix stood firm in her version before the Court. It is also submitted by learned APP that discrepancies, if any are of such minor that they hardly affect the case of prosecution. Learned APP submitted that though there is delay in lodging the report, same is explained by justifiable reason that is the threats given by the appellant to her and her mother and the prosecutrix was continuously under pressure and apprehension because of the threats given by the Appellant. Learned APP then submitted that the prosecution was

successful in establishing the age of prosecutrix who was minor at the relevant time. The documentary evidence in the form of the admission register and the school documents which are proved by the head master of school. Learned APP submitted that the mother of prosecutrix committed suicide because of ill-act and threats of the appellants and this factor itself shows that the family was under apprehension as such, the delay in lodging the report by prosecutrix cannot be said to be fatal to the case of prosecution. Learned APP thus, prayed that appeal may be dismissed.

8. With the assistance of learned Counsel appearing for the respective parties, we have gone through the record.

9. PW 1 is the prosecutrix gives the entire account of events and sequence of events as they occurred. As we have already referred to the sequence of events in our earlier part, it may not be necessary for us to repeat the same.

Though witness was subjected to a detailed cross-examination and an attempt was made firstly to show that the witness was not disclosing true and correct facts before the Court and secondly

that there was an inordinate delay in lodging the report, the suggestions to the effect are denied. In our opinion, the version of the witness is truthful and inspires the confidence of the Court. It may not be out of place to refer to the part of version of this witness before the Court. The witness stated that after the incident which took place in the month of August though initially the appellant assured the mother of prosecutrix that he will not do same act again but in the month of September when a quarrel took place between the appellant and the mother the appellant told that he will do same act again and he uttered the words that he will eat tender coconut (मी कोवळी काकडी खानारच). He also carrying poison bottle and gave threats to the family members that if they disclosed the incident to anybody else he will give poison to everyone.

This fact show that the appellant was bend upon to exploit minor prosecutrix.

10. Now we may refer to another important witness who supports the case of prosecution i.e. Dr. Amol Apaté (PW 6), Medical Officer. Though defence made an attempt to submit before the Court that taking benefit of admission in the cross-examination that this witness fails to mention the age of prosecutrix on the certificate and also

failed to conduct ossification test, in our opinion, this would not seriously affect the case of prosecution as the prosecution came before the Court with other evidence in the form of school record.

At this stage, we can also state that though we are aware that the accused is at liberty to put any defence in countering the case of prosecution but here in the present matter an attempt was made by the defence Counsel to submit that the prosecutrix was habitual for sexual intercourse and was a consenting party and as the act of physical intimacy between the appellant and the prosecutrix was seen by other family members namely, the mother and brother of prosecutrix, the report was lodged. We are unable to accept this defence theory.

As stated above, the prosecutrix stated before the Court that she was subjected to sexual exploitation by applying physical force and when the mother made an attempt to stop appellant from doing such heinous act he gave threats of life to his family members. Thus, in our opinion, the defence that minor prosecutrix was a consenting party would be only an insult to the injury.

11. The prosecution has examined other witness. Sarjerao Dhenge (PW 2) is the ex deputy sarpanch stated that he heard quarrel at

the house of appellant on 02.09.2009 therefore, he visited the house of the appellant and on inquiry the mother of prosecutrix told him that she is unable to disclose the reason of quarrel because it is shameful for her. Though this witness declared hostile, he supports the case of prosecution on the aspect that at the relevant time family was residing at Hanbarwadi and the prosecutrix was studying in 9th standard at the relevant time.

12. Arun Patil (PW 3) is the member of grampanchayat to whom mother of prosecutrix disclosed that the appellant is trying to make force on her daughter and requested this witness to pursue the appellant otherwise she would commit suicide. This witness told mother of prosecutrix not to commit suicide as this would only cause loss to her children. He assured mother of prosecutrix if the appellant commit such act again he will see him. On the next day i.e. on 03.09.2009 he received information that mother of prosecutrix fell down in the well of one Prakash Khot.

13. Vijay Pattekari (PW 4) is another important witness i.e. the younger brother of prosecutrix.

Though in the cross-examination an omission is brought on

record about the force being applied by the appellant while exploiting the prosecutrix in so far as other part is concerned, he supports the case of prosecution.

14. Jaywant Patil (PW 7) is the headmaster of Ishwara Wadkar High School, Dindnerli, Dist. Kolhapur at the relevant time. He stated before the Court that prosecutrix was admitted in the school on 16.06.2008 in 8th standard and as per the register her birth date is 09.10.1994. He further stated that he has issued bonafide certificate of the prosecutrix to the police as per demand which was Exhibit 46. He further stated before the Court that at the time of leaving school in the year 2009 the prosecutrix was studying in 9th standard.

15. Deepak Thombare (PW 8) is the head constable attached to Karvir Police Station at the relevant time. He stated that the prosecutrix visited police station and lodged first information report. He further stated that at the time of lodging the report Lady Police Naik Ms. Nejkar was also present and on the basis of complaint, he registered the offence bearing Crime No. 183/2009 and handed over the investigation of crime to investigating officer.

16. Pandharinath Powar (PW 9) who was attached to Karvir Police Station as PSI at the relevant time and on registration of the crime investigation was handed over to him. He further states about the steps taken by him in the process of investigation.

17. Learned Trial Court on appreciation of evidence of PW 1 find that the version of witness inspires the confidence and she is reliable witness. Learned Trial Court also refers to the mental condition of the prosecutrix and trauma suffered by her. We are in total agreement of these observations of the learned Trial Court and it is not necessary for us to repeat the same. We may only refer to the relevant observations of learned Trial Court while accepting the version of PW 1 in paragraphs 34 and same reads thus:

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Moreover, it is also material to note that, PW 1 also categorically stated about the chain of incidents as well as events occurred at the relevant time meticulously and her testimony reflects the conduct and behaviour of the accused and nothing beneficial to the case of the accused could be elicited from the searching cross-examination

conducted by the defence, and therefore, it is amply clear that, said testimony withstood the test of cross-examination and has not been demolished therein and hence, same is required to be accepted as reliable and trustworthy to connect the accused with the crime.

18. The defence also made an attempt to submit that the medical evidence is shot of any mark of the violence. Learned Trial Judge by assigning the sound reasons did not accepted the defence, we may refer to this reasons assigned by the learned Trial Court as under:

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In the present case the prosecutrix is examined by the Medical Officer after about one month of the incident and therefore such marks of violence cannot be found on her body. On the contrary accused is a stout, healthy and tall person than prosecutrix and weight of prosecutrix is 37 kg at the time of incident and therefore it cannot be said that at the time of incident she had struggled as she has no power to struggle against a grown up person that too, who is her own father. In small children the hymen, being situated high up in the canal, is not usually ruptured, but may become red and congested along with

the inflammation and bruising of labia, or if considerable violence is used, there is often laceration of the fourchette and perineum.

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19. On the aspect of awarding the sentence, learned Trial Judge heard both the learned Counsel. It was the submission of learned defence Counsel that considering the age of the accused and considering the fact that he is not an habitual offender the minimum punishment be award to him. Per contra, learned APP submitted before the Court that the accused had committed heinous act against his own daughter and considering the seriousness of the offence i.e. forcible sexual exploitation of his own daughter maximum punishment be awarded to the accused.

20. Learned Trial Court on considering the evidence as well as the submission of the learned Counsel hold accused appellant guilty of commission of offence punishable under Section 376 of IPC, and sentenced to suffer Rigorous Imprisonment for ten years and fine of Rs. 10,000/- in default to suffer further simple imprisonment for six months. The appellant was also convicted for offence punishable under Section

506 of IPC and was sentenced to suffer Rigorous imprisonment for one year and fine of Rs. 2,000/- in default to suffer simple imprisonment for two months.

21. Considering all the above referred aspects, we are of the opinion that the learned Trial Judge committed no error in appreciating the evidence and recorded the judgment and order of conviction and awarded a proper sentence to the Appellant – Accused. Appeal, thus, being devoid of any merit, deserves to be dismissed. Accordingly, Criminal Appeal No. 135/2013 is dismissed.

22. In our opinion, just and proper view is adopted by the learned Trial Court in awarding the sentence. We see no reason to show any indulgence in the quantum of sentence awarded by the learned Trial Court as such, we are of the opinion, that the Criminal Appeal No. 198 of 2013 filed by the Appellant – State of Maharashtra with a prayer of enhancement of sentence being merit-less, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)