

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

CRIMINAL APPEAL NO. 342 OF 1998

Ankush Ramu Bhoir
Age : about 19 years,
R/o. Wafa. Tal. Bhiwandi,
Dist. Thane.

... Appellant

Versus

State of Maharashtra

... Respondent

.....

Mr. P. R. Arjunwadkar, Advocate for the Appellant.
Mrs. Veera Shinde, APP for Respondent – State.

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CORAM	:	PRAKASH D. NAIK, J.
RESERVED ON	:	14th JULY, 2021.
PRONOUNCED ON	:	3rd AUGUST, 2021.

JUDGMENT :-

1. The appellant is aggrieved by the Judgment and order dated 13th February, 1998 passed by the IV Additional Sessions Judge, Thane, in Sessions Case No.124 of 1997. The appellant is convicted for the offence punishable under Section 376 of Indian Penal Code (for short “IPC”) and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.2,000/- and in default to suffer further rigorous imprisonment for six months.

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2. The case of the prosecution is that the victim girl aged about 14 years was taking education in school at Sagaon. She was staying with her maternal uncle at Wafa. On 22nd October, 1996 at about 10.00 a.m. she was proceeding to school alone. It is alleged that the appellant followed her, caught her and took her behind the bush and by threatening committed rape and ran away. The victim girl returned home and narrated the incident to her maternal aunt. Her maternal uncle had been to Shahapur and on his return, the incident was disclosed to him and the complaint was filed with Padgha Police Station vide C.R. No. I-157 of 1996. The appellant was arrested on 23rd October, 1996. Vide order 1st September, 1997, he was granted bail by this Court during the pendency of trial.

3. Charge was framed on 29th August, 1997 for offence under Section 376 of IPC. Trial proceeded. The prosecution examined seven witnesses.

4. PW-1 is the victim girl. PW-2 – Sukrya More is the maternal uncle of the victim. PW-3 – Thama @ Sunil Sukrya More is material aunt of victim. PW-4 – Baby Pandurang

Sonawane is schoolmate of victim. PW-5 Raghunath Kondu Dalvi is the panch witness for spot panchanama. PW-6 Ramchandra M. Dhuri is P.S.I. attached to Padgha Police Station and Investigating Officer. PW-7 – Dr. Anil Pichad is the Medical Officer, who examined the appellant.

5. Statement of the accused was recorded under Section 313 of Cr.P.C. Defence of accused is of false implication. Appellant was in partnership business with Sukrya. He was too receive Rs.15,000/- from Sukrya. He demanded amount from Sukrya (PW-2). He picked up quarrel. Accused was threatened by PW-2.

6. Learned counsel for the appellant urged following submissions :-

- i) There is delay in lodging First Information Report (for short “FIR”).
- ii) The spot of incident was busy road. There is no independent witness.
- iii) The victim did not disclose the incident to PW-4.
- iv) The victim did not raise cry and did not shout at the time of incident.

- v) Medical evidence do not corroborate the version of the victim.
- vi) Medical Officer is not examined and hence adverse inference will have to be drawn against the prosecution.
- vii) No evidence to establish the age of the victim.
- viii) Chemical Analysis (C.A.) report do not support the prosecution case.
- ix) The evidence of witnesses is contradictory to each other, which creates doubts about the genuineness of prosecution case.
- x) The statement of the accused recorded under Section 313 of Cr.P.C. is bad in law. The circumstances relied upon by the prosecution against the appellant were not put to him and without giving an opportunity to tender explanation, the appellant was convicted.
- xi) Accused is entitled for benefit of doubt.

7. Learned counsel for the appellant relied upon the following decisions :-

- i) Supreme Court decision in the case of Rajoo & Ors. V/s. State of M.P. dated 3rd December, 2008 delivered in Criminal Appeal No. 1094 - 1098 of 2000.
- ii) Rahim Beg & Anr. V/s. State of U.P. AIR, 1993, SC, 343.

- iii) Shaikh Maqsood V/s. State of Maharashtra, (2009), 6 SCC 583.
- iv) Inspector of Customs, Akhnoor, Jammu and Kashmir V/s. Yashpal and Anr. (2009) 4 SCC 769.
- v) Supreme Court decision in the case of State of Karnataka V/s. F. Natraj, decided on 7th October, 2015.

8. Learned APP Mrs. Veera Shinde submitted that there is no delay in lodging FIR. The victim had disclosed the incident to her maternal aunt. Maternal uncle was at Shahapur. On his return to village, the incident was disclosed to him and immediately thereafter, they proceeded to Padgha Police Station and FIR was lodged. The incident had occurred at lonely place and hence there were no independent witnesses. There is no reason to discard the evidence of the victim. She has categorically stated that the accused has sexually assaulted her. The testimony of the victim is sufficient to convict the accused. It is not necessary that her version should be corroborated by any other evidence. There is no reason to disbelieve the evidence of victim. There is no motive to falsely implicate the appellant. The resistance by the victim girl is apparent from the

fact that there were scratches of nail on the body of the accused. This fact is evident from the deposition of PW-7, who had examined the appellant. The victim was cross examined by the defence. Evidence of victim could not be demolished in any manner. The offence has been proved beyond reasonable doubt and the appellant has been rightly convicted by the trial Court.

9. I have scrutinized ocular evidence of witnesses and the documentary evidence on record. The victim (PW-1) has deposed that she was taking education at G.A. Patil Vidyalaya, Sagaon. She knows the accused. The accused caught her and took her behind the bush and committed rape. She narrated the incident to her grand mother. Her grand mother called maternal aunt Dhamabai. Both of them went to Padgha S. T. bus stand. Her maternal uncle returned from Shahapur and then they went to Police Station and lodged the complaint. On 22nd October, 1996 at about 10.00 a.m. the victim was on the way to school. In the cross examination she has stated that her school distance is at about 3.00 k.m. from Sagav. 10 to 15 students attend the school from Wafa. There are about 7 to 8 girls. School time is 11.00 a.m. to 4.45 p.m. She used to start from home at about

9.30 a.m and return at 5.30 p.m. She was going to school daily along with other students. On the day of incident her friends went ahead and she was behind by 15 minutes. She had talk with maternal uncle before going to Police Station. She saw her maternal uncle at Padgha bus stop. On the day of incident she did not see any student while going to school and returning. There were no blood stains on her clothes. She had no injury on any part of body. She was knowing the accused 4 to 5 years prior to incident. Baby Sonawane and Sunita Sonawane were her friends. She did not see Baby and Sunita on the day of incident in the morning.

10. PW-2 – Sukrya More is the maternal uncle of the victim. He had gone to Shahapur. He returned to Padgha at 6.00 p.m. His wife and the victim were sitting at the bus stop. Victim narrated him the incident. Complaint was lodged. The statement was recorded at the Police Station on the same day of complaint. He told the police that he saw his wife and victim at bus stop Padgha. The said fact was not mentioned in the statement. They went to Police Station and narrated the incident. Their statements were recorded. From his evidence it

is apparent that the victim and his wife were waiting at bus stop was an omission which fact is not reflected in his statement.

11. PW-3 – Thama More is the wife of PW-2. According to her she had gone to field. Her mother-in-law informed her that the victim has returned home and she is weeping. The victim told her that accused took her to Jwar crop and committed rape while she was going to school alone. They went to Padgha. 5 to 7 female students were going to school. They were going together and returning together. The victim started for school and thereafter, she went for work.

12. PW-4 Baby Sonwane is the student of the same school. She deposed that they attend school by walk. On 22nd October, 1996, she was going to school at 9.00 a.m. Victim was ahead. She saw her. She was returning. She was weeping. She asked the reason but the victim did not say anything. About 5 to 7 female students were going to school. They used to start from home at 9.00 a.m and returned at 5.30 p.m. Victim used to accompany them to go to school and return. It is foot way. On the way 4-5 person meet them.

13. PW-5 Raghunath Dalvi is the panch witness for spot panchanama. He stated that Sukrya is his brother-in-law. Sukrya asked him to join as witness.

14. PW-6 Ramchandra Dhuri is Police Head Constable attached to Padgha Police Station. He conducted investigation. He recorded statements of witnesses. Padgha is 25 k.m. distance from Wafa. There is agricultural land surrounding the spot. He did not record the statements of adjoining field owners and field labourers. He did not record the statements of teacher and head master. He did not record statements of parents of the victim. He did not ask for the certificate of the date of birth of the victim with her maternal uncle. There is no documentary evidence to show the age of victim except medical certificate. He was aware that the victim is taking education in school and the date of birth can be obtained from the school. He did not make any effort to obtain birth certificate from school. He did not make effort since he got medical certificate. He does not know whether 12 to 14 students were going to school at Wafa including 8 to 10 girls. He did not know that panch Raghunath is the brother-in-law of Sukrya. He called Raghunath. Name of

the Police Constable, who took victim to Civil Hospital is not mentioned.

15. PW-7 Dr. Anil Pichad examined accused. He deposed that on examining the accused he found three abrasions due to nail on his right side of the chest. Age of injury was about 24 hours. Those were caused due to nail. It is necessary to issue certificate in the prescribed form. In medico legal cases it is necessary to write the name of Police Officer, who brought the patient. He forgot to write the name of the Police Constable in his certificate. Scratches mentioned in the certificate can be caused by thorns of Karvandi and Bori. Scratches mentioned in his report can be caused by any nail (male or female). The injuries are not possible due to scuffle with the Police.

16. From the evidence adduced by the prosecution, it is not possible to convict the appellant for the offence charged against him. The evidence on record does not inspire confidence to award conviction. The charge is not proved beyond all reasonable doubt. There are discrepancies in the evidence lead by the prosecution and accused is entitled to benefit of doubt.

17. The evidence of the victim indicates that, every day she used to visit the school with her friends. The distance between the residence and school is at about 3 k.m. According to prosecution, the route to the school is through agriculture fields. However, according to victim on the day of incident she was alone. The victim has stated that usually she used to start for school at about 9.30 a.m. On the day of incident, she started for school at 10.00 a.m. Her friends had left ahead. However, the evidence of PW-4 Baby Sonwane indicate that, on the day of incident, victim was ahead. PW-4 started for school at 9.00 a.m. and she saw the victim returning and that she was weeping. The victim's evidence however disclosed that, her friends were ahead and she left for school at 10.00 a.m. Hence, the deposition of PW-4 that while returning she saw victim weeping is doubtful. It is also difficult to believe that considering the route to the school and usual mode of going to school, on the day of incident the victim was alone and the accused followed her and committed the alleged act. PW-4 has stated that the victim always used to accompany them to school and return. On the way 4 to 5 persons used to meet them. The victim did

not disclose the incident to her, although she was weeping. PW-1 has not referred to presence of PW-4. PW-2 & PW-3 are maternal uncle and maternal aunt of the victim. The victim has admitted that there were no blood stains on her clothes. The clothes of the victim were seized vide Exh.9.

18. The prosecution has preferred an application under Section 294 of Cr.P.C. vide Exh.7 calling upon the accused to admit the documents and the defence/accused had admitted documents at Sr. Nos. 1, 3, 5 & 6 viz. Panchanama of the arrest of accused dated 23rd October, 1996, panchanama of seizure of the clothes of the victim dated 24th October, 1996 (Exh.9), Medical certificate of the victim dated 23rd October, 1996 (Exh.10), letter to C.A. report dated 1st November, 1996 (Exh.11). Exh.10 is provisional medical certificate. The said document indicate that the final certificate will be issued after availability of C.A. report. The victim was examined by Dr. K.P. Ubale on 23rd October 1996. The examination reads as follows:-

“Injuries : External Injuries :- Nil
Internal Injuries :- Nil.
Vagina: Well developed and Specious.

Her blood vaginal smear, vaginal swab of pubic hairs collected, sealed and sent for C.A.'s opinion."

19. There is no other medical examination report of the victim on record. This medical certificate does not indicate injuries sustained by the victim and whether she was sexually assaulted. The prosecution has not examined medical officer to substantiate the prosecution case that the victim was subjected to sexual assault.

20. PW-5 Raghunath Dalvi is the panch for spot panchanama which was recorded on 24th October, 2016. He has admitted that he is the relative of complainant. The spot panchanama is on Exh.16. The contents of the said panchanama indicate that the grass was grown up to the knee and there are bushes near the alleged spot of incident. On minute observation, no mark was found at the place. Apparently, it had rained at the relevant point of time. Although, it is the case of the prosecution that the victim was aged about 14 years and that there is no theory of consensual relationship, the prosecution has not bothered to establish the age of victim. The Investigating Officer has not collected any documents to establish the age of victim.

He did not obtain birth certificate of victim. He admitted that there are no documents regarding age of victim. He did not record the statements of school teacher and head master. He recorded statements of other students.

21. Prosecution has heavily relied upon the evidence of PW-7 to contend that there were abrasions on the person of accused in the form of scratches and there was resistance by the victim girl. The victim has not stated in her evidence that she had caused any scratches by nail to the accused. Apart from that PW-7 has stated that scratches referred to by him in the certificate can be caused by thorns of Karvandi and Bori or it can be caused by nail (mail or female).

22. Although it is a case of the prosecution that the victim was minor and she was sexually assaulted by the accused. The prosecution has failed to examine medical officer which speaks volume of doubt about the prosecution case. The C.A. report do not corroborate the version of the prosecution. Exh.20 is the C.A. report with regards to pubic hair and semen of the accused and the result of analysis shows that neither

semen nor vaginal fluid was detected and the blood group of semen cannot be determined as the results are inconclusive. C.A. report Exh.21 is in respect of blood, vaginal smear, vaginal swab and pubic hair of the victim. The results of analysis are neither semen nor vaginal fluid is detected. Exh.22 is the C.A. report in respect to the clothes of the victim and earth and the result of analysis is that undergarment was stained with blood on middle portion. No blood was detected on the shirt, skirt, pant, undergarment and earth. No semen was detected on shirt, skirt, undergarment & pant.

23. I have perused the statement of the accused recorded under Section 313 of Cr.P.C. Although the prosecution had examined 7 witnesses, the questions put to the accused are cryptic without referring to the evidence to most of the witnesses lead by the prosecution. Statements under Section 313 of Cr.P.C. refers to the part of the evidence of PW-1 and PW-7. No question relating to place of incident is put up to accused. Statement is silent with regards to circumstances brought by prosecution through evidence of PW-2, PW-3 and PW-4. There is absolutely no reference to their evidence. There is reference to

spot panchanama but not to the evidence of PW-5. Statement under Section 313 of Cr.P.C. is also silent qua evidence and investigation of PW-6. The object of Section 313 is to give an opportunity to the accused to tender explanation. The questions must be framed in such way as to enable the accused to know what he has to explain, what are the circumstances which are against him and for which the explanation is needed. The whole object of the Section is to afford the accused a fair and proper opportunity of explaining circumstances which appears against him and that the questions must be fair and must be couched in a form which a person will be able to appreciate and understand. The accused in the present case was a village boy aged about 19 years. The trial Court had ignored the requirement of Section 313 of Cr.P.C. In the case of *Shaikh Maqsood V/s. State of Maharashtra* (Supra), the Apex Court had observed that no question was put to the accused which established that he was the author of the crime. The purpose of Section 313 is to explain any circumstances appearing in the evidence against accused. In the case of *Inspector of Customs, Akhnoor, Jammu and Kashmir V/s. Yashpal and Anr.* (Supra),

the Supreme Court has again explained the object and necessity of the statement under Section 313 of Cr.P.C. It was observed that incriminating material was not brought to the notice of accused while examining them under Section 313 of Cr.P.C. The provision is mainly intended to benefit the accused and it is corollary to benefit the Court in reaching the final conclusion. It should be borne in mind that the provision is not intended to nail the accused to any position but to comply with the most salutary principle of natural justice enshrined in the maxim *audi alteram partem*.

24. Solitary testimony of prosecutrix may be sufficient to base conviction under Section 376 of IPC, if it inspires the confidence of Court. The medical evidence in this case do not corroborate prosecution case. The medical certificate adduced in evidence is silent about occurrence of sexual assault and victim being subjected to such ordeal. If the Court on facts finds it difficult to accept version of prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony.

25. In the light of the aforesaid observations, I am of the considered opinion that the prosecution has not established its case beyond all reasonable doubt and the Judgment of conviction would not sustain and it is required to be set aside.

26. Hence, I pass the following order :-

ORDER

- i) Criminal Appeal No. 342 of 1998 is allowed.
- ii) Impugned Judgment and order dated 13th February, 1998 passed by the IVth Additional Sessions Judge, Thane, in Sessions Case No.124 of 1997, convicting the appellant for the offence under Section 376 of IPC and sentenced him to suffer rigorous imprisonment for seven years and to pay fine of Rs.2,000/- is set aside and the appellant is acquitted for the said offence.
- iii) Fine amount, if any deposited by the appellant be returned to him.
- iv) The appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)