

Neeta
S.
Sawant

Digitally
signed by
Neeta S.
Sawant
Date:
2021.02.20
17:19:15
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 364 / 1998

Sadanand Kalya Pagi

aged about 29 years,

Occupation : Agriculturist,

R/at Chinchoti, Taluka Vasai,

Dist. Thane.

.. Appellant

Versus.

The State of Maharashtra

.. Respondent

Adv. Ameya Mahadik a/w Mr. Anthony Nadar & Ms. Tanvi Tapkire i/
by Ms. S.D. Khot, Advocate for the Appellant.

Mr. S.R. Agarkar, APP for State/ Respondent.

CORAM : SANDEEP K. SHINDE J.

DATE : 16th FEBRUARY, 2021.

ORAL JUDGMENT : -

1. Appellant – accused has been convicted for an offence punishable under Section 376 of Indian Penal Code, 1860 and sentenced to suffer rigorous imprisonment for five years and fine of Rs. 500/- in default to suffer imprisonment for three years by the learned Additional Sessions Judge, Palghar vide judgment and order dated 18th February, 1998 in Sessions Case No. 512/ 1996.

Against the conviction and sentence, this appeal is preferred.

2. Prosecution case unfolded in the testimony of evidence of victim (PW-1) is as under ;

Accused and victim, both triables, were living in the remote hamlets, called Pagipada and Goripada. Accused knew to the victim. That on 4th January, 1993 at about 8 pm., she went out of her house to

urinate near the house of one, Yunusbhai. At that time, her mother-in-law Taibai was in the house. Victim testified that while she was returning home, the accused drew her inside the unoccupied hut of Yunusbhai, and though she had resisted, accused forcefully committed the penetrative sexual assault and left the place. Victim would say her cries for help were in vain. She disclosed the incident to her mother-in-law Taibai, and her husband, but a complaint could not be lodged as they had no means to reach out to police station.

3. Before appreciating the evidence of this witness, it may be stated that though the alleged incident had occurred on 4th January, 1993 at around 9 pm., report was lodged on 7th January, 1993. As it appears victim had no means to travel to police station at late hours and therefore, report could not be lodged immediately. Looking at

the background of the victim and the place where the alleged incident had taken place, evidence justifying for not lodging the complaint immediately is acceptable. However at the same time a fact cannot be ignored that there is no acceptable explanation for not lodging the complaint for two days i.e. on 5th and 6th January, 1993. The evidence of victim suggests that there was a police chowki on the outskirts of Village Chinchoti and it also appears victim had assumed and presumed that the police would not take any action on a complaint and therefore did not approached police for two days. This reason is not acceptable. Thus to be stated, the prosecution has not explained at all the delay of two days caused the filing the complaint, though alleged incident was a grave in nature. This circumstance has to be kept in mind, while

appreciating victim's evidence.

4. Be that as it may, the evidence admits, that the accused committed sexual assault in the vacant house of Yunusbhai.

Learned Counsel for the appellant argued that victim's evidence is inconsistent to natural conduct and spot of the alleged incident being very close and near to the victim house as evident from spot panchanama, Victim's assertion that she cried for help but none helped her out was not only probable but indefinite and debatable.

To appreciate this contention, I have perused a spot panchanama at Exhibit – 19. It shows the place of the incident was just 5 feet away from the house of the complainant. Admittedly, at the given point of time, mother-in-law of the complainant was in the house and therefore, the version of the victim that she offered resistance and

raised cries, but none helped out, renders her version improbable and disputable. Though the prosecution had examined mother-in-law as PW-3 but mother-in-law deposed nothing in support of the alleged incident and further evidence of victims' husband being hearsay I have kept it out of consideration. At the same time, I cannot overlook the medical evidence. Prosecutrix was examined by Dr. Sadhana Agrawal PW-4. Her evidence in no way suggests that she was subjected to the forceful sexual assault. She did not notice any mark of injury on her person. Therefore to say that the medical evidence also has not corroborated the prosecutions' case of the sexual assault as alleged by the victim.

5. Thus, the evidence of the victim is debatable and not inspiring confidence of this Court. It is unlikely that though the alleged

incident occurred just 5 feet away from her house and victim's mother-in-law did not hear her cries is the most doubtful and questionable circumstance. All these circumstances collectively and/or singularly renders the prosecution's case uncertain and debatable. Moreso, delay has not been satisfactorily explained. Besides the medical evidence also does not corroborate the victim's version. Moreso, conduct of witnesses is inconsistent with ordinary course of human nature.

6. Thus, in consideration of the facts of the case and evidence, in my view, the learned trial Judge has erroneously convicted the accused in absence of cogent, definite a trustworthy evidence. In the result, the impugned conviction and the sentence passed in Sessions Case No. 512/ 1996 is quashed and set aside.

7. The appeal is allowed. The bail bond executed by the appellant is cancelled and surety is discharged.

8. Appeal is allowed and disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)

N A J E E B..