

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 270 OF 2019

Rajesh @ Raju Vitthalrao Wahare,
aged about 30 years, Occ. Labourer,
R/o Husanapur, Tah. Seloo, District Wardha.

...APPELLANT

Versus

State of Maharashtra,
through PSO, Police Station Deoli,
District Wardha.

...RESPONDENT

Shri P. B. Thaware, Advocate for the appellant.
Shri M.J. Khan, A.P.P. for the respondent.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : JANUARY 13, 2021.

ORAL JUDGMENT :

Heard.

2. This appeal is directed against the judgment and order dated 05/03/2019 passed by the District Judge-1 & Spl. Judge (POCSO Act), Wardha in Special (POCSO) Case No.49/2015, whereby the appellant/accused is convicted for the offence punishable under Sections 452, 354 and 324 of the

Indian Penal Code, 1860 (for short “IPC”), and Section 7 punishable by Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”).

For the offence punishable under Section 452 of the IPC, the appellant/accused is sentenced to undergo rigorous imprisonment for three years.

For the offence punishable under Sections 354 and 324 of the IPC, and Section 7 punishable by Section 8 of the POCSO Act, the appellant/accused is sentenced to undergo rigorous imprisonment for three years with fine of Rs.250/- (rupees two hundred fifty) for each of the offence, and in default of payment of fine, to undergo simple imprisonment for ten days.

All the sentences were directed to run concurrently.

3. The case of the prosecution, in brief, is as under :

i. The age of the prosecutrix at the relevant time was 16 years. Her mother died prior to sixteen years of the incident. The informant Bandu Devpare is the father of the prosecutrix.

She along with her father was residing at the house of her paternal aunt Chhabubai. Her other paternal aunt Deokabai was residing in the vicinity of her house. Praful is the son of Chhabubai. The appellant/accused was having grudge against Chhabubai, the father of the prosecutrix and the prosecutrix herself, as Praful – son of Chhabubai, had kidnapped the niece of the appellant/accused, and for that purpose, he was behind the bar.

ii. On 29/06/2015, at around 6.00 pm, when the informant was sitting under the neem tree outside his house, the accused trespassed the house, hugged the prosecutrix and pressed her breast. She shouted. On hearing her noise, her father came inside the house immediately. He tried to rescue her. During that process, the appellant/accused inflicted several blows on the head of the informant with wooden rod of 'Axe', which was lying there, as a result of which, he sustained bleeding injuries. The neighbors also rushed to the spot. They took the informant - injured to the Police Station, Deoli, where he lodged report, and thereafter, he was referred to the hospital.

iii. On the basis of report lodged by the informant, a crime came to be registered against the appellant/accused. The police started the investigation and the accused came to be arrested. The prosecutrix was sent for medical examination. The weapon, used for committing the alleged offence, and the clothes of the prosecutrix, were seized. The spot panchanama was prepared. The statements of the witnesses were recorded. After investigation, chargesheet came to be filed before the Court of Magistrate, who in turn, committed the case to the Sessions Court. The Sessions Court framed charge against the appellant/accused for the offence punishable under Sections 452, 354D and 324 of the IPC, Section 7 punishable under Section 8 of the POCSO Act, and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The charge was read over and explained to the appellant/accused in his vernacular, to which he pleaded not guilty, and his plea was recorded.

iv. In order to substantiate the charge against the appellant/accused, the prosecution examined in all eight

witnesses, and also brought on record necessary documents. The Sessions Court recorded statement of the appellant/accused under Section 313 of the Code of Criminal Procedure.

v. After hearing both the sides, the Sessions Court found that the prosecution could establish its case beyond reasonable doubt, and passed the judgment of conviction and sentenced the appellant/accused as above. This judgment is impugned in this appeal.

4. Shri Thaware, learned counsel for the appellant, reading out the deposition of the witnesses, vehemently submitted that the appellant/accused has been falsely implicated in the instant case in view of previous enmity between the parties on account of kidnapping of niece of the appellant/accused by the son of Chabubai.

He further submitted that apart from the prosecutrix and her father, none of the independent witnesses have supported the case of the prosecution. Lastly, he pointed out

some irregularities in the investigation and submitted that the appellant/accused is entitled to be acquitted.

5. As against this, Shri Khan, learned A.P.P., appearing on behalf of the State, strongly supports the impugned judgment and order of conviction. He submitted that the prosecution could establish the case of molestation by the appellant/accused through the depositions of the prosecutrix (PW/1) and the informant Bandu (PW/2). Learned A.P.P. also pointed out relevant paragraphs of the judgment of the Sessions Court and submitted that the Sessions Court has properly appreciated the evidence on record, and therefore, he urged to dismiss the appeal.

6. I have considered the submissions put forth on either side and perused the record.

7. At the outset, the fact that the niece of the appellant/accused was kidnapped by the son of Chabubai - the paternal aunt of the prosecutrix, is not disputed at all. The

prosecutrix and the informant in their testimonies deposed that the appellant/accused used to abuse the prosecutrix, her paternal aunt and the informant, under the influence of liquor. With regard to incident, they testified that when the prosecutrix was alone in the first room of the house, and her father was sitting outside the house below the neem tree, the appellant/accused barged in her house, hugged her and pressed her breast, and when she shouted, her father came for her rescue. The informant also supports the case of the prosecutrix on this point. Apart from this evidence, there is nothing on record to show as to where was the paternal aunt of the prosecutrix – Chabubai, at the time of incident. Secondly, the spot map (Exh. 49) does not show the neem tree in front of the house of the prosecutrix. Thirdly, the probability of false implication cannot be ruled out in view of the previous strong animosity between the parties. Fourthly, the neighbors, who gathered after the incident, does not support the case of the prosecution, on molestation. With regard to torn of clothes by the appellant/accused, the prosecutrix does not say about the same in her deposition.

8. In the given facts, this Court is of the opinion that the appellant/accused needs to be given benefit of doubt for the offence of molestation.

9. With regard to voluntarily causing hurt, the deposition of the informant, coupled with the medical evidence, immediate medical treatment, immediate FIR and the testimonies of the informant and the other independent witnesses i.e. Manoj (PW/6) and Lahu (PW/7) show that there was a head injury on the head of the informant. The independent witnesses deposed that during fight between the informant and the appellant/accused, the informant sustained injury by means of rod of 'Axe' at the hands of the appellant.

10. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that though the appellant is entitled for benefit of doubt for the offence punishable under Section 354 of the IPC, however, he is guilty of the offence punishable under Section 324 of the IPC. Hence, the following order :

ORDER.

- i. The Criminal Appeal is partly allowed.
- ii. The judgment and order dated 05/03/2019 passed by the District Judge-1 & Spl. Judge (POCSO Act), Wardha in Special (POCSO) Case No.49/2015, whereby the appellant is convicted for the offence punishable under Sections 452 and 354 of the IPC, and Section 7 punishable by Section 8 of the POCSO Act, is quashed and set aside.
- iii. The appellant is acquitted of the offence punishable under Sections 452 and 354 of the IPC, and Section 7 punishable by Section 8 of the POCSO Act.
- iv. The conviction of the appellant under Section 324 of the IPC is maintained, however, the sentence is modified to the extent that the appellant shall undergo six months simple imprisonment.
- v. If the appellant has undergone any imprisonment, he shall be entitled to set off for the said period.

CRIMINAL APPLICATION NO. 372/2019.

In view of disposal of Criminal Appeal, this application does not survive. It is disposed of accordingly.

JUDGE

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