

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 731 OF 2002

The State of Maharashtra

...Appellant

Versus

1. Ghanshyam @ Ganesh Bhanudas
Pharande,
Aged 33 years, R/o. 2239,
Phule Nagar, Wai, District
Satara.

2. Kashibai Maruti Gholap,
Aged 65 years,
R/o. 456, Ganpati Ali, Wai,
District Satara.

} ...Respondents
(Orig. Accused)

Ms. S.V. Sonawane, APP for Appellant – State.

Mr. H.E. Palwe for Respondent No. 1.

CORAM : PRASANNA B. VARALE &
N. R. BORKAR, JJ.

RESERVED ON : AUGUST 25, 2021

PRONOUNCED ON : FEBRUARY 01, 2022

JUDGMENT (PER PRASANNA B. VARALE, J)

1. The present Criminal Appeal takes an exception to the judgment and order passed by the learned IV Additional Sessions Judge, Satara, dated 17.04.2002, in Sessions Case No. 86/2000, whereby acquitted the Respondents herein for the offences punishable under Sections 312, 313, 314 read with Section 34 & Section

376 of Indian Penal Code (for short "IPC"), the present Appeal is preferred by the Appellant – State of Maharashtra.

2. Respondent No. 1 original accused No. 1 – Ghanshyam @ Ganesh Bhanudas Pharande was charged for an offences punishable under Section 376 of IPC and was also charged for commission of offences punishable under Sections 312, 313, 314 read with 34 of IPC along with Respondent No. 2 original accused No. 2 – Kashibai Maruti Gholap.

3. The case of prosecution unfolded through the complaint filed at the instance of Ganpat Jagannath Jamdale (PW 2). The couple Ganpat Jamdale and his wife Lata @ Kalpana were blessed with four issues i.e. Sarita, Sangita, deceased Sarika and son Sameer. The Respondent No. 1 Ghanshyam was residing near the house of Ganpat. It can be said that he was the neighbourer of Ganpat and Kalpana. It is the case of prosecution that Respondent No. 1 developed friendship with Sarika and this friendship turned in love relationship and on assurance and pretext that he will marry Sarika,

Respondent No. 1 Ghanshyam sexually exploited Sarika. Respondent No. 1 Ghanshyam used to pressurize Sarika for physical relationship nearly at every weekend. The physical relationship between accused Ghanshyam and Respondent No. 2 led to pregnancy of Sarika. In the initial stage of pregnancy, Sarika had not disclosed anything about her love relationship with accused or physical intimacy to her parents.

4. When Sarika completed pregnancy of three months, she disclosed this fact to Respondent no. 1 on 23.07.1999. Then Respondent no. 1 took Sarika to Respondent No. 2. Then Respondent no. 2 resorted to a very unscientific method i.e. inserted small stick in the private part to cause termination of pregnancy of Sarika. Then Respondent No. 2 informed Sarika that after 2-3 days embryo would come out. On 23.07.1999 at about 09.00 pm Sarika suffered an abortion in a public toilet. She returned to her home. She was shivering, suffering from fever as well as stomachache. At the relevant time, brother of Ganpat, Anandrao who was residing with Ganpat, along with another lady Vijaya took Sarika at the dispensary of one Dr. Jamdade. It

seems that while conducting clinical examination on the complaint of fever and stomachache Dr. Jamdade gave some medicine to Sarika.

5. As there was no positive effect of the medicines & on the contrary, as Sarika was feeling more uneasiness, Anandrao and Vijaya carried Sarika to another doctor i.e. Dr. Saigaonkar. Sarika was subjected to undergo an sonography. On the basis of report, Dr. Saigaonkar opined that the Sarika is required to undergo curatine. It is the case of prosecution that at that point of time, Sarika disclosed that she was subjected to sexual exploitation by Respondent No. 1. Ganpat and mother of Sarika Kalpana were unaware of all these incidents. On 24.07.1999, the couple worked in their field for the entire day and after finishing their dinner they slept in their house situated in the agriculture field itself. On the next day i.e. 25.07.1999 at about 06.30 am Anandrao brother of Ganpat reached the house of Ganpat and informed him that on earlier day i.e. 24.07.1999 at about 11.30 am Sarika was admitted in the hospital of Dr. Saigaonkar. By giving this information,

Anandrao carried Ganpat to the dispensary of Dr. Saigaonkar on his motorcycle. The duo then reached to Dr. Saigaonkar's dispensary at about 08.00 am. Ganpat found that saline was administered to his daughter Sarika and she was under treatment. On enquiry with Sarika, Sarika told Ganpat that she is suffering from stomachache. Thereafter, Anandrao told Ganpat that his wife informed that Sarika was carrying pregnancy and was subjected to abortion initially and subsequently, curatine was performed by Dr. Saigaonkar. Ganpat then took Sarika in confidence and made enquiry with her to which Sarika told her father about the ill-acts i.e. sexually exploiting and then subjecting her to abortion by Respondent Nos. 1 and 2.

6. Though Sarika was under treatment of Dr. Saigaonkar for 3-4 days, but as she was suffering from urinary problem on advice of Dr. Saigaonkar she was shifted to Puna Hospital on 28.07.1999. On her admission in Puna Hospital, the information was provided to police. On receipt of information, police head constable Sanade (PW 8) attended Puna Hospital on 29.07.1999 and recorded statement of Sarika. This

statements of Sarika are marked as Exhibit 52 and 53. In Puna Hospital also there was no improvement in the health status of Sarika and the Puna Hospital authorities informed parents of Sarika that for her treatment they would require to spare Rs. 1,00,000/-. As the parents of Sarika were not financially sound to bear this expenses, Sarika was shifted to Sassoon Hospital. On admission at Sassoon Hospital also an information was provided to police and on 10.08.1999 PSI Vijay Jadhav (PW 9) recorded the statement of Sarika and same is marked as Exhibit 55. Unfortunately, there was no further improvement in the health status of Sarika, ultimately on 12.08.1999 at about 04.00 am, Sarika breathed last.

7. On the same day police constable of Sassoon Police Chowky performed inquest panchnama of the dead body of Sarika in presence of two panchas. The dead body of Sarika was subjected to an autopsy. Postmortem was conducted by Dr. Patil. On that very day father of Sarika Ganpat lodged first information report bearing Crime No. 76/1991 and accordingly, entries in station diary were taken. PSI Jadhav (PW 9) who had taken over

the charge of investigation undertook various activities in the process of investigation. Scene of offence panchnama was drawn in presence of panchas. Arrest of accused persons was effected. Accused no. 1 was subjected to medical examination. Clothes of deceased Sarika were collected on information provided by the parents. Certain documentary material was collected in respect of birth date of Sarika. Medical papers as well as certificates were also collected including certificates issued by Dr. Saigaonkar and certificates issued by Puna Hospital. After collecting the evidence, charge-sheet came to be filed in the Court of JMFC, Wai. As the offences attracted against the accused persons being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The prosecution in support of its case examined as many as 9 witnesses. The learned Trial Court on appreciation of evidence was unable to find sufficient evidence against the accused persons so as to pass the judgment and order of conviction, learned Trial Judge acquitted both the accused for the charges leveled against them. Hence, this Appeal.

8. Learned APP vehemently submitted that learned Trial Judge failed to appreciate the evidence in its proper perspective. Learned APP further submitted that the statements recorded by the police officials of the victim were soon before the death and in these statements the victim disclosed her sufferance at the hands of accused persons in detail. Learned APP further submitted that apart from the medical evidence, there is also an additional evidence and learned Trial Court failed to consider that evidence in the form of school certificates and though the prosecution has examined the witnesses namely, Assistant Head Master and staff members working in the school. Learned Trial Court failed to appreciate the evidence and discarded the evidence of these witnesses on the technical grounds. Learned APP further submitted that soon before death of victim Sarika her statements were recorded and as such, these statements are in the nature of dying declarations and they assume the importance and further the case of prosecution. Thus, learned APP prayed for allowing the Appeal.

9. *Per contra*, learned Counsel appearing for Respondent No. 1 supported the judgment of the Trial Court. Learned Counsel for Respondent No. 1 submitted that the so called star witnesses of the prosecution namely, mother and father of victim are full of contradictions and omissions. The Counsel for Respondent NO. 1 further submitted that as the evidence of witnesses on all material aspects was full of contradictions and omissions, no reliance could have been placed on these evidence, and the Trial Court was justified in discarding these evidence. It is also the submission of learned Counsel for Respondent No. 1 that the medical evidence indicates that Sarika was suffering from chronic disease. It was also submitted that the Court below committed serious error in applying the charges under Section 313 and 314 of IPC against the Respondent No. 1. Learned Counsel for Respondent No. 1 further submits that considering the case of prosecution as it is, the advice and certain acts leading to the miscarriage of victim were performed only by Respondent No. 2 and Respondent No. 1 had not committed even a single act. Thus, learned

Counsel for Respondent No. 1 submitted that the investigating agency and the prosecution were having casual approach and the accused may not be subjected to any act for the casual approach of Appellant – State. Thus, learned Counsel for Respondent No. 1 prayed for dismissal of Appeal.

10. With the assistance of both the learned Counsel appearing for respective parties, we have gone through the record and material.

11. To bring home the guilt of the accused persons, the prosecution has examined as many as 9 witness as follows: Kalpana Jamdade (PW 1) and Ganpat Jamdade (PW 2) are the mother and father of victim respectively, and star witnesses of prosecution, Dr. Prashant Patil (PW 3) is the autopsy surgeon, Ashok Sawant (PW 4) is the Asst. Head Master, Ayasha Saiyyad (PW 5), is the school teacher, Balasaheb Kochale (PW 6), is the Gramsevak, Dr. Sanjay Patki (PW 7), is the medical officer working in Puna Hospital at the relevant time, Sultan Sanadi (PW 8), is the Police Head Constable who recorded the statement of victim, & Vijay

Jadhav (PW 9), is the investigating officer.

12. As the prosecution mainly relies on the version of Kalpana Jamdade (PW 1) and Ganpat Jamdade (PW 2) are the mother and father of victim respectively, we may refer to the evidence of these two witnesses, firstly.

13. Kalpana Ganpat Jamdade (PW 1), is the mother of deceased. This witness deposed before the Court that her parental place is Sarjapur, Tq. Jaoli. She had four children including deceased Sarika. She was staying jointly with her husband, children, husband's brother and his family. Deceased Sarika was her eldest daughter. She was educated upto 5th standard. Sarika born at Sarjapur on 14.06.1983. Her birth date was registered at Sarjapur. Sarita is her second daughter born at Wai on 29.12.1985. Her third child is son Sameer born at Wai on 10th August, 1987, and third daughter Sangita born at Sarjapur on 03.03.1990. This witness further deposed that Sarika was admitted in first standard in school no. 7 of Wai Municipality School in which the classes were upto 4th Standard.

Sarika studied in the said school upto 4th standard. Then in 5th standard she was admitted in Shinde School, Wai. Sarika was studying in 10th standard when she died. This witness further deposed that on 20.07.1999 this witness and her husband have gone for cultivation at their land. Her children were at their house at Wai. On that day they halted at their field. On the next day at 06.00 am her husband's brother Anandrao came and informed them that last night he got Sarika admitted in the hospital of Dr. Saigaonkar. Then she herself, her husband and his brother came to the hospital of Dr. Saigaonkar. Before their arrival Leelabai and Vijaya the wives of her husband's brother were already present in the hospital. Then this witness inquired to them as to what happened to Sarika, to which they disclosed her that Sarika was complaining pain in her and hence she was admitted and doctor examined her.

14. This witness further deposed that after sometime she inquired with Sarika what has happened to her and she disclosed her that accused no. 1 used to meet her on every Saturday and Sunday and promising her to marry, used to keep physical relations with her.

Sarika disclosed to her that accused no. 1 was doing so with her since one year. Sarika has attained the age of puberty before a year of the incident. Accused no. 1 Ghanshyam is our neighbourer. Sarika also disclosed to her that Ganesh advised her to take the medical treatment from one lady. Sarika disclosed to her that she was taken there by accused no. 1. This witness further deposed that Sarika disclosed her that lady had penetrated one stick of Vilayati Sher in her private part and that lady said to Sarika that within two days the embryo will come out. After two days an embryo had not come out and hence Sarika disclosed the said fact to accused no. 1 and again accused no. 1 advised her to take treatment. With the help of same lady again Sarika was treated in the same fashion by the same lady as above. On the same night at about 10 to 11 pm an embryo of Sarika had come out. After that she stated shivering & thus they took her to the doctor Saigaonkar. Then Dr. Saigaokar advised them to take Sarika to Pune for further treatment. On 28.07.1999 they took Sarika to Pune Hospital and admitted her where she was indoor patient for two days. Thereafter, they admitted Sarika

to Sassoon Hospital. On 12.08.1999 at about 04.00 am Sarika died.

15. In the cross-examination, this witness stated that they went to the hospital of Dr. Saigaonkar, the treatment of saline was in progress to Sarika and at that time Sarika was complaining pain in her abdomen. Dr. Saigaonkar had given the treatment for the stomachache of Sarika. Sarika was for three days in the hospital of Dr. Saigaonkar where other patients were also present. Then this witness made the inquiry with Sarika. This witness disclosed Dr. Saigaonkar about the disclosure made by Sarika to her regarding her abortion. This witness further deposed that within that three days this she has not informed the police. After three days health of Sarika was deteriorated and hence she was shifted to Pune. She was with Sarika when Sarika was admitted at Pune hospital through out and there was improvement in the health of Sarika. In the Sassoon Hospital there was no improvement in the health of Sarika and subsequently Sarika died. This witness further stated that after 25th July, 1999 there was no talk between this witness and Sarika regarding the acts

by the accused no. 1 with her till her death. Then this witness admitted that she has not stated to police that Sarika was born on 14.06.1983 at Sarjapur. This witness further admitted that she had not stated before the police that Sarika was admitted in first standard in school no. 7 of Municipality, Wai.

16. Ganpat Jagannath Jamdade (PW 2) is the father of deceased and complainant. This witness reiterated the same facts as stated by PW 1. It may not be necessary for us to repeat those facts. This witness deposed before the Court that Sarika disclosed to him in the hospital when he took her in confidence that accused Ganesh exploited her sexually on the promise of marriage since one year and hence she became pregnant. Sarika also disclosed him that accused no.1 had taken her to one lady who inserted one stick in her private part for the purpose of terminating the pregnancy for two times and on the second time there was miscarriage. This witness further deposed that till 12.08.1999, he had not complained, due to reputation of Sarika. Till the death of his daughter he was in depressed mood, hence he lodged the complaint on 12.08.1999 after the

funeral of Sarika.

In the cross-examination, this witness deposed that Dr. Saigaonkar had not disclosed that Sarika was having some trouble of kidney. After taking treatment of Dr. Saigaonkar there was no improvement in the health of Sarika. Even there was no further improvement in health of Sarika in the hospital at Pune and ultimately Sarika died subsequently at Sassoon Hospital. Then this witness stated that Sarika disclosed the facts in the hospital to Leelaabi and Leelabai informed the same to him and hence he came to know about the abortion of his daughter Sarika. He had no contact with police till death of Sarika.

17. Prashant Narayan Patil (PW 3), is the medical officer who conducted autopsy on the dead body of Sarika. This witness deposed that on 12.08.1999 he was working as a lecturer in forensic medical department of MS Medical College, Pune. He performed the autopsy of Sarika Ganpat Jamdade on 12.08.1999. On external examination subcutaneous hemorrhagic patches present all over the body. On internal examination in abdominal cavity he noticed peritonitis with intestinal adhesion,

mesenteric, hameriges. He also found blood and blood clots about two liters under diaphragm. On examination of liver he noticed sub capsular hemorrhages, spleen showed perplenitis with small infracted area. Both kidneys were contracted and granular. On examination of uterus he noticed peritonitis. Accordingly, he opined caused of death as hemorrhagic shock due to DIC septicemic with evidence of cronical disease.

18. Ashok Baburao Sawant (PW 4), is the Assistant Head Master in Marathi Shikshan Sanstha, Wai. This witness deposed before the Court that he has brought the record of Sarika Ganpat Jamdade, who was learning in 10th standard. She took admission in 5th standard on 14.06.1993. She had come from municipal school no. 7 of Wai. She died while learning in 10th standard. When Sarika admitted in their school she had produced her certificate of previous school. Then this witness deposed that he is producing the same with the list at Exh. 35.

In the cross-examination, this witness stated that he was not in the said school in the year 1993. He had no personal knowledge regarding the information of

Sarika when she was admitted at their school.

19. Sau. Ayesha Ahmad Saiyyad (PW 5) is working as teacher in the Municipal School -1, Wai since 1971 and since June 2001 she was attached to School no. 7. This witness deposed before the Court that in the said school no. 7 there are the classes from first standard to seventh standard. While taking the admission a slip is to be filled in. She brought the original slip filled up in the case of Sarika Ganpat Jamdade and she is producing the same with the list Exh. 39.

 In the cross-examination, this witness stated that Sarika Ganpat Jamdade was admitted in the school on 15.06.1988 and on that day she was not working in the said school and this witness cannot state in whose handwriting is there on the document below Exh. 39. This witness further stated that she does not know regarding the document produced if any so far as the birth date is concerned. She does not know how Lata Ganpat Jamdade was related to Sarika Ganpat Jamdade. She was not in the school when this entry was filled in the said register. Even she was not in the school when Sarika left the said school.

20. Balasaheb Dattatraya Kochale (PW 6). This witness deposed before the Court that since December 1999, he was working as a Gramsevak at Sarjapur, since 1953 grampanhcyat has been established at Sarjapur. He has brought the original register of the year 1983 of birth and death of grampanchayat. AS per this original register the birth date of Sarika Ganpat Jamdade is 14.06.1983.

In the cross-examination, this witness admitted that he had no personal knowledge about the said entry. This witness further admitted that the name Sarika was not entered when the said entry has been made. This witness admitted that in the month of June 1983 this is only the entry in the said register. This witness further stated that he cannot state who put the name Sarika in the register but the name written in column no. 5 as Sarika is in different ink than the rest of the entries made in the register. He cannot state when the name Sarika has been entered in column no. 5 and by whom. This witness admitted that at the time of original entry the column no. 5 regarding the name of the child was blank.

21. Dr. Sanjay Damodhar Patki (PW 7), is the medical officer. This witness deposed before the Court that since two months he was attached at Pune Hospital as incharge of emergency and trauma care unit. He has brought the original medical case papers of Sarika Ganpat Jamdade. Said patient Sarika was brought to casualty. The relatives of Sarika brought the reference letter of Dr. Saigaonkar at Wai. Sarika was admitted by Dr. Pawar under the supervision of Dr. Bafna. Dr. Pawar, Dr. Bafna and Dr.Ukidve treated Sarika. Then this witness produced the file of original case papers of Sarika along with the list Exh. 46.

In the cross-examination, this witness stated that Dr. Bafna was nuero-surgeon and Dr. Pawar casualty medical officer and Dr. Ukidave is the kidney specialist.

22. Sultan Ismile Sanadi (PW 8) is the police head constable attached to Vishram Bagh Police Station, Pune. This witness deposed before the Court that on 29.07.1999 he was on duty at Sena Datta Police Chauki from 09.00 am to 09.00 pm. At about 02.00 pm on that day he received telephone message from Vishram Bag

Police Station who directed him to record the statement of Sarika Ganpat Jamdade, admitted in Poona Hospital. Accordingly, he visited Poona Hospital. Sarika was admitted in H ward. He met the medical officer. The doctor had shown the patient to him. Then he inquired with the doctor whether Sarika was in condition to give statement and doctor opined positively. He also inquired with Sarika by putting her some formal questions. He observed that Sarika was in a fit condition to give valid statement. He recorded the statement of Sarika as per her version.

In cross-examination, this witness stated that he was serving in police department since 28 years. He has recorded about 100 and 150 statements of injured patients. He inquired about the condition of Sarika to Dr. Pawar who was sitting in his chamber.

23. Vijay Sonaji Jadhav (PW 9) is the investigating officer. This witness deposed before the Court that he was attached to police station during the period June 1998 to December 2000. On 08.08.1999 while he was on duty PI Sawant directed him to record the statement of Sarika admitted at Sassoon Hospital, Pune.

On the next day he went to Pune by obtaining permission from superior. Then this witness stated about the steps taken by him in the process of investigation such as, recording the statement of deceased Sarika, recording statement of witnesses, effecting arrest of accused persons, collecting medical papers, drawing various panchnamas, etc. Omissions in the statement of witnesses are proved through this witness.

24. Now considering the evidence of these two witnesses i.e., Kalpana (PW 1) and Ganpat (PW 2), it can safely be said that evidence of these witnesses are full of omissions and contradictions. On one hand, Kalpana Jamdade (PW 1), mother of deceased, stated in her evidence that after 25th July, 1999 there was no talk between herself and Sarika regarding the acts of accused no. 1 with her till her death and on the other hand, this witness stated in cross-examination that when she inquired with Sarika what happened to her and Sarika disclosed her that accused no.1 used to meet her on every Saturday and Sunday and promising her to marry used to keep physical relations with her. Whereas, Ganpat Jamdade (PW 2) in his evidence before the Court

stated that Sarika disclosed him in the hospital when he took her in confidence that accused Ganesh was sexually exploiting her since one year, hence, she became pregnant. Sarika also disclosed him that accused no. 1 had taken her to one lady who inserted one stick in her private part for terminating her pregnancy for two time and on the second time there was miscarriage. But, in the cross-examination, this witness stated that Sarika disclosed the facts in the hospital to Leelabai and Leelabai informed the same to him and hence he came to know about the abortion of his daughter Sarika.

25. On perusal of evidence of witnesses namely, Ashok Sawant (PW 4), Ayasha Saiyyad (PW 5) and Balasaheb Kochale (PW 6), who are on the point of birth record of deceased. Even if we consider the evidence of these witnesses as it is, in our opinion, evidence of these witness is of no help to the case of prosecution.

26. On assessment of the evidence brought before the Trial Court, firstly the learned Trial Court was unable to find any evidence so as to connect the accused with crime. Secondly, it found that the

prosecution utterly failed prove that the death of victim was only on account of termination of pregnancy. It is possible that she was suffering from chronic renal disease due to loss of blood. Thirdly, the Trial Court was unable to place reliance on the aspect of the declarations made by deceased i.e. oral dying declaration to his parents or written dying declarations recorded by investigating agency. On perusal of these evidence, we are of the opinion that the learned Trial Court committed no error in appreciating the evidence and arriving at the final conclusion.

27. In our opinion, though victim was an unfortunate young girl subjected to exploitation and trauma, but the evidence brought by the prosecution is wholly insufficient to establish its case against the accused persons.

28. Thus, the evidence brought before the Court by the investigating agency in support of case of prosecution is neither reliable nor trustworthy. On the contrary, many *lacunae* in the case of prosecution only

created doubts and suspicion over the prosecution case. Learned Trial Court, as such, committed no error in appreciating the evidence and arrived at just and proper conclusion. No interference in the judgment and order of the learned Trial Court is warranted. Appeal, thus, being devoid of merits, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(N. R. BORKAR, J.)

(PRASANNA B. VARALE, J.)