

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

CRIMINAL APPEAL NO. 636 OF 2019

Bhausahab Bapu Sangolkar

..Appellant

Versus

The State of Maharashtra

..Respondent

Ms. Manisha A. Devkar for Appellant.

Mr. Yogesh Y. Dabke, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th JULY 2022.

JUDGMENT:

1. This is an Appeal challenging the Judgment and order dated 08/01/2019 passed by the learned Extra Joint Additional Sessions Judge, Pandharpur in Sessions Case No.7 of 2014. By the impugned Judgment and order the Appellant was convicted for commission of offence punishable U/s.376 of I.P.C. and was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.5000/- and in default to suffer R.I. for one month.

The Appellant was also convicted for commission of offence punishable U/s.452 of I.P.C. and was sentenced to suffer R.I. for one year and to pay a fine of Rs.1000/- and in default to

suffer R.I. for one month.

In addition, the Appellant was convicted for commission of offence punishable U/s.506 of I.P.C. and was sentenced to suffer R.I. for one year and to pay a fine of Rs.1000/- and in default to suffer R.I. for one month. Substantive sentences were directed to run concurrently. The Appellant was given benefit of set off U/s.428 of the Cr.p.c.

2. The prosecution case is that, the prosecutrix and the appellant were neighbours. In the night of 20/11/2013 and 21/11/2013 when the prosecutrix was alone in her house, the Appellant entered her house and committed rape on her. On the next day, she informed about this incident to her husband and thereafter lodged this F.I.R. The investigation was carried out. The Appellant was arrested on 23/11/2013. During trial the prosecution examined 9 witnesses.

PW-1 Chaya Dattatraya Aldar was Pancha for the panchanama under which clothes of the prosecutrix were seized.

PW-2 was the victim herself.

PW-3 was her husband.

PW-4 Madhukar Narayan Khadatare and PW-5 Ramesh Bagal Jadadhane were the Panchas for spot panchanama; they had turned hostile. Their evidence is not important.

PW-6 Kallappa Dhondappa Bansode was the police officer who had taken down the F.I.R.

PW-7 Dr. Girnar Sudhakar Gavali had proved the medical evidence in this case.

PW-8 Sandeep Rangrao Kolekar, P. I. had carried out some part of investigation and filed the charge-sheet.

PW-9 Sunil Shivaji Chavan, Police Naik had carried out major part of the investigation.

After recording of evidence, the appellant's statement U/s.313 of Cr.p.c. was recorded. The defence of the appellant was that, there was a dispute regarding right of way through the land of the victim. There was also dispute between the appellant and his nephew and on the instigation of that nephew this false case

was created and lodged by the victim.

3. As mentioned earlier, the important evidence is that of the victim herself. She has stated that, she was working as Anganwadi helper. Her husband was a plumber and was working at an Engineering college at Gopalpur. He was residing there. The prosecutrix - PW-2 used to stay at village Redde. Her husband used to visit village Redde over the weekends. They had two sons. One son was staying with her husband at Gopalpur and the other son was staying with PW-2. On 20/11/2013 her son who was staying with her had gone to Pandharpur for treatment of his eye. However, as it was late, he stayed with the husband of PW-2 at Gopalpur. PW-2 was alone in the house. The appellant was her neighbour. At around 11.00p.m. the Appellant made a phone call to the victim. He suggested that he could visit her house, but the victim told him that since she was alone in the house, he should not come to her house. She switched off her phone. She locked the door and went to sleep. At about 2.00a.m. the Appellant knocked the door of PW-2. She opened the door. The Appellant pushed the victim, came inside and committed rape on her. He threatened her.

PW-2 was in a shock. On the next day at about 5.00p.m. she informed her husband about the incident telephonically. Her husband came to village Redde and then they went to Mangalwedha to lodge F.I.R. The F.I.R. is produced on record at Exhibit 34. It was lodged at 10.40p.m. on 21/11/2013 at Mangalwedha police station. The police came to her house. She showed the spot of incident. Police seized her clothes. She gave her mobile phone to the police.

In the cross-examination she stated that, there are houses of others in the area. Those houses were situated at around 30ft. to 40ft. distance from from her house. She has admitted that, there was a common well in her land near her house. Her family, appellant's family and her neighbour Sitaram's family used the water from that well. For going to the well they have to pass through the land of their neighbour Sitaram. She denied the knowledge as to whether Sitaram was having strained relations with the appellant on the count of using that common way to the well. She denied the suggestion that, she always used to speak with Sitaram on mobile phone. She also denied that between

20/11/2013 and 21/11/2013 there was frequent conversation between PW-2 and Sitaram on telephone. Beyond that there is hardly anything in her cross-examination which helps the appellant.

4. PW-3, husband of PW-2 has corroborated her version that on 21/11/2013 PW-2 had informed him telephonically about the incident. Thereafter he had gone to village Redde and then to the police station where the F.I.R. was lodged.

5. PW-7 Dr. Girnar Sudhakar Gavali has produced the report in the form of reply to the questionnaire of the police. That report is produced at Exhibit 43. It is mentioned in that report that, there were no fresh injuries on the private parts of the victim.

6. The Investigating Officer's evidence shows that, articles and clothes were sent for Chemical analysis, however, C.A. report does not throw light on the case. There is nothing significant either in favour or against the appellant's case.

7. Learned Judge relied on the evidence of the victim. He has observed that, the incident had taken place in the night and

she could not have raised hue and cry. He did not agree with the submission of learned counsel for the accused that, delay in lodging of F.I.R. in this case is fatal to the prosecution. Learned Judge also considered the defence of the appellant and rejected it.

8. Learned counsel for the appellant submitted that, except for the evidence of the prosecutrix there are no incriminating circumstances against the appellant. The medical report does not show that PW-2 had suffered any injuries. To elaborate on this aspect, medical certificate is not produced on record at all. She submitted that, conduct of PW-2 was unnatural. She did not raise any shouts. She could have sought help of her neighbour. There was delay in registration of F.I.R. She submitted that, the appellant was 30 years of age and some leniency should be shown to him.

9. Learned APP, on the other hand, opposed this Appeal and supported the Judgment of the trial Court. He submitted that, there is no reason to discard the evidence of PW-2.

10. I have considered these submissions in the backdrop of the evidence led by the prosecution in this case. The deposition of

PW-2 is absolutely trustworthy. There are hardly any loopholes in the entire evidence. There is no force in the submission that the victim could have sought help from the neighbours. It was 2.00a.m. in the night when the appellant entered the house. Since the appellant had overpowered the victim, there was hardly any possibility to raise shout and seek help from her neighbours. The victim had informed her husband on the next day. She has stated that, she was in a shock. This is also understandable that only when her husband came to the village, she gathered courage and went to the police station to lodge the F.I.R. From her entire evidence, no circumstances are brought on record in her cross-examination to suggest as to why she would implicate the Appellant falsely. The defence taken by the Appellant in his statement recorded U/s.313 of Cr.p.c. does not inspire confidence in his theory. There was no reason for the victim to implicate the Appellant just because his own nephew instigated her to lodge the F.I.R. Nothing is brought on record to show that, there was any serious dispute between the victim and the appellant. There was no record of any past complaints between the parties.

11. Though, medical evidence shows that there was no injuries to the private parts, it has to be noted that the victim was overpowered by the appellant and she could hardly resist him. She was also threatened. The report tendered by Dr. Gavali by itself does not exonerate the Appellant. Taking into account entire circumstances on record, I do not find any reason to disbelieve the version of PW-2. Learned trial Judge has rightly and correctly appreciated the evidence on record.

12. So far as sentence part is concerned, the trial Judge has observed that the Appellant was a neighbour and was on good terms with the victim, despite that he has committed this offence, therefore, no undue leniency could be shown to him. I am also in agreement with this reasoning of learned trial Judge. This is not the case where leniency can be shown to the Appellant.

13. In this view of the matter, the Appeal fails and, therefore, is dismissed.

(SARANG V. KOTWAL, J.)