



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.705 OF 2002

Rama @ Ramdas s/o Tukaram Borse,

Age : 38 years, Occu.: -

R/o.: Shelvad, Tq. Bodvad,

District : Jalgaon.

.... APPELLANT

VERSUS

The State of Maharashtra,

Through: P.S.O.

Bodvad Police Station,

Tq. Bodvad, District : Jalgaon

... RESPONDENT

.....

Advocate for Appellant : Mr. B. V. Dhage

Advocate for Respondent-State : Mr. R. D. Sanap

....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 16/10/2023

PRONOUNCED ON : 01/12/2023

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JUDGMENT :

1. The appellant / accused has challenged his conviction in Sessions Case No.181 of 2001 recorded by 2nd *Ad-hoc* Additional Sessions Judge, Jalgaon (hereinafter referred to as 'the learned trial court') for the offence punishable under Sections 376 & 506 of IPC under judgment and order dated 18/10/2002. The appellant / accused has been convicted for the offence under Section 376 of

IPC and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for 3 months. He is also sentenced to suffer rigorous imprisonment for one year for the offence punishable under Section 506 of IPC.

2. The prosecution story in nutshell is that the victim i.e. minor daughter of her parents, was residing in village Shelvad, Taluka Bodvad, District Jalgaon. Her mother used to sell grocery articles from her house. The appellant / accused was a neighbour of victim and he used to come to house of the victim occasionally for purchasing grocery. One Suganchand was also a neighbourer of father of the victim at the relevant time and he used to sell milk from his house. The victim used to visit house of Suganchand frequently for bringing milk.

3. On 09/08/2001 at about 1.00 p.m., brother of the victim told her to bring milk from the house of the Suganchand. After taking milk when the victim was returning home, the appellant / accused suddenly caught her and pressed her mouth. Then the appellant / accused took her to vacant and dilapidated house abutting to the house of Suganchand. He threatened the victim for not to raise shout. Then he kept a glass of milk aside and lifting

skirt of the victim and removing his pants, committed sexual intercourse with victim in standing position. After the incident, the appellant / accused again threatened victim for not to disclose the incident to her parents, otherwise he would kill her. The victim returned her home with a glass of milk, but after some time bleeding started from her private part. Despite such bleeding, she did not inform the incident to her mother.

4. Then on next day i.e. 10/08/2001 at about 10.00 a.m. wife of Suganchand i.e. PW-2 Basantbai Suganchand Bardiya told mother of the victim that she had seen the appellant / accused committing forcible sexual intercourse with the victim. When the mother of the victim asked the victim about the incident, she narrated the incident to her mother. Then mother of the victim called her husband and the victim also narrated the incident to her father. Then victim alongwith her parents and Police Patil of the village went to Police Station Bodvad and lodged report of the incident. The investigating officer i.e. PW-12 Himmat Jadhav conducted the investigation and then charge sheeted the appellant / accused for the offence punishable under Sections 376, 323 and 506 of IPC. The learned trial court then conducted the trial and convicted the appellant / accused as above.

5. The learned counsel for the appellant / accused vehemently argued that the learned trial court has definitely erred in convicting the appellant / accused. According to him, the learned trial court has ignored the vital contradictions in the evidence of the prosecutrix and her mother. According to him, the prosecution had not explained the delay properly and the act of the alleged incident of rape as claimed by the prosecution, was completely impossible. He pointed out that though the prosecution had cited wife of Suganchand i.e. PW-2 Basantbai Suganchand Bardiya as an eye witness, but she did not support the prosecution and therefore, the only evidence of prosecutrix was not at all reliable and trustworthy. He pointed out that the victim's clothes were not seized from her but the same were only produced by her mother. Moreover, the spot of incident was in a crowded place and therefore, it was highly impossible to commit forcible sexual intercourse with the victim at such place. Therefore, the learned counsel submitted that the conviction of the appellant / accused needs to be set aside as it is contrary to the evidence on record. In support of his submissions, the learned counsel for the appellants relied on following citations.

*1) Barla Joginadham vs. State, 1962(2)
C.R.L.J. 523;*

*II) Narender Kumar vs. State (NCT of Delhi),
(2012) 7 SCC 171 &*

*III) Jogi Dan and others vs. State of
Rajasthan, 2004 CRI. L.J. 1726*

6. On the other hand, the learned APP strongly supported the impugned judgment and order and pointed out that the learned trial court has rightly convicted the appellant / accused on proper appreciation of the evidence on record. The learned APP pointed out that the contradictions in the evidence of the victim as well as her mother, are not on material aspect and the evidence of the victim is well supported by medical evidence as well as scientific evidence since blood of the victim was found on the clothes of the appellant / accused. According to him, there is ample evidence on record that the victim was only 13 years of age at the time of incident and considering the age of the appellant / accused being of 38 years at the time of incident, it was not expected from him to perform such heinous act. As such, he prayed for dismissal of the appeal. The learned APP also relied upon the following judgment.

*I) Judgment in Criminal Appeal No. 255 of
2016 (Eknath Pandurang Koli vs. State of
Maharashtra) passed by Division Bench of
this court on 02/08/2019.*

7. Heard rival submissions. Also perused entire documentary and oral evidence on record in the light of judgments relied upon by the rival parties.

8. Admittedly the age of the appellant / accused at the time of incident, was of 38 years. So far as the age of the victim at the time of incident, is concerned the evidence on record shows that her birth date is 30/06/1989 as per the school leaving certificate produced on record by her father i.e. PW-7 Jagannath. Moreover, as per the evidence of mother of the victim the menstrual cycle of the victim had not begun on the date of the incident and it also had not started till the date of the victim's evidence before the court. Moreover, the medical evidence in respect of the age of the victim as per the report of radiologist was around 14 to 15 years. There is no documentary evidence from the side of the appellant / accused to show that the age of the victim was more than 16 years at the relevant time. Therefore, the opinion of the learned trial court that the victim was aged between 13 and 14 years at the time of incident appears proper.

9. It is settled that conviction in rape cases can be based on the basis of sole testimony of the prosecutrix if it inspires confidence. Further, it is also observed by this court as well as the Hon'ble

Apex Court in so many cases that only if court finds difficult to accept version of prosecutrix on its face value, it may look for corroboration by other evidence, direct or circumstantial. It is also observed that the court must appreciate evidence in its totality with utmost sensitivity while dealing with exploitation of woman and child. The learned counsel for the appellant / accused has challenged the conviction mainly on the ground that there were so many contradictions between versions of the victim and her mother while deposing before the court. He also pointed out that there was no support from the alleged eye witness PW-2 Basantbai Suganchand Bardiya. It is significant to note that the prosecution had posed this PW-2 Basantbai Suganchand Bardiya as an eye witness to the incident but while deposing before the court, she only stated that she saw the appellant / accused and the victim running at the time of incident. However, as stated earlier, the testimony of the victim can be a sole basis for conviction of the appellant / accused if it inspires confidence. Therefore, the evidence of prosecutrix needs to be scrutinized cautiously.

10. On going through the evidence of the victim it appears that so far as the main incident of forcible sexual intercourse is concerned, she has deposed as per the prosecution story and what

is important that her evidence on the actual incident remained intact even during her cross-examination. The contradictions which the learned counsel for the appellant / accused has pointed out appear to be in respect of another aspect i.e. behaviour or conduct of the victim after the incident. The evidence of the victim after the incident indicates that after returning to home, she handed over the glass of milk to her mother and she slept without informing her mother anything about the incident. According to her, when she was sleeping, bleeding started from her private part and though she reported the same to her mother, but did not tell anything about the incident. It appears that only on the next day when her mother got the information of incident from PW-2 Basantbai Suganchand Bardiya, victim disclosed the incident to her mother. The learned counsel for the appellant / accused pointed out this very fact and alleged that the conduct of the victim after the incident was not at all a normal one and therefore, there was suspicion about the entire story of the victim about the alleged incident. However, it is not the defence of the appellant / accused that the physical relationship between him and the victim was consensual. Therefore, the conduct of the victim not disclosing the incident to her mother immediately, cannot be treated as abnormal behaviour specially when the appellant /

accused had threatened her of dire consequences if she discloses the incident of forcible sexual intercourse to anybody. Further, the learned counsel for the appellant / accused also pointed out that the victim has deposed that she handed over glass of milk to her mother, but her mother in her own evidence is saying that she was out of the house. Moreover, it has also come in the evidence of the victim that her mother changed her nicker when bleeding was noticed from her private part, but her own mother is saying otherwise. However, these contradictions, which are on record, are not on the material aspect and therefore, when the victim remained firm on the main incident, not much significance can be given to such minor contradictions. These types of contradictions cannot render the story of prosecution completely unbelievable. It appears that after disclosing the incident by the victim to her mother on next day, she lodged the report on the same day and therefore, it cannot be said that the delay in lodging the FIR is not properly explained.

11. The learned counsel for the appellant / accused heavily relied on the evidence of PW-2 Basantbai Suganchand Bardiya i.e. wife of Suganchand, who did not support the case of the prosecution. He pointed out that the said witness was also not declared hostile

though she hid the main incident while deposing before the court. However, it is normal tendency of people to stay away from such complicated situations and therefore even though she was not declared hostile but her statement that she has seen that the victim and the appellant / accused were running at the time of incident, has at least established their presence on the spot. Further, there is also medical and scientific evidence on record in addition. The recovery of clothes of the appellant / accused is already proved by recovery panch PW-4 Pandit Motiram Mali. PW-8 Dr. Ulhas Balwantrao Taskhedkar, who had examined the victim after 32 hours of the incident also found her hymen ruptured and also found fresh red colour blood in vulva. He also found periurethral tear on the right side about 1/2 cm. X 1/4 cm., alongwith tenderness over forchette region. This evidence of doctor clearly indicated that the victim had undergone sexual intercourse before 30 to 35 hours of her examination. Thus, the medical evidence is also suggestive of sexual intercourse with the victim. It is extremely important to note that the appellant / accused was also medically examined and it has come in the evidence of PW-9 Dr. Udaykumar Dinkarrao Patil, who had examined him after about 30 hours of the incident that there was abrasion on the shaft of penis of the appellant / accused which was possible by

masturbation and rubbing of penis on any hard substance or sexual intercourse. Thus, this type of medical evidence in respect of the victim as well as the appellant / accused definitely corroborates the version of the victim in respect of alleged act of forcible sexual intercourse.

12. Further, the defence of the appellant / accused also appears improbable since he claimed that false complaint lodged was against him as he did not pay the dues of grocery which he had purchased from the house of the victim. It is significant to note that nobody will put future of his or her own daughter on stake by reporting the false incident and that too on the meager amount of dues towards grocery. It is extremely important to note that even the clothes of the appellant / accused i.e. his shirt and pants, were found stained with B-group blood which is admittedly of the victim as per the CA report on record.

13. The learned APP also relied on the judgment dated 02/08/2019 in Criminal Appeal No. 255 of 2016 (Eknath Panduranj Koli vs. The State of Maharashtra) passed by this court, wherein this court has referred observations of the Hon'ble Apex Court.

14. The Hon'ble Apex Court in the case of ***State of Maharashtra versus Chandraprakash Kewalchand Jain, reported in (1999) 1 SCC 550*** has held that :-

"The prosecutrix of a sex offence cannot be put on par with an accomplices. She is in fact a victim of the crime. The evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Evidence Act and her evidence must receive the weight as is attached to an injured in cases of physical violence."

Similarly, the Hon'ble Apex Court in the case of ***State of Punjab Versus Gurmit Singh, reported in (1996) 2 SCC 384*** also observed that :-

"In cases involving sexual harassment, molestation etc, the Court is duty bound to deal with such cases with utmost sensitivity. The minor contradictions or insignificant discrepancies in the statement of prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. The evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are any compelling

circumstances for seeking corroboration. The Court may look for some assurance of her statement to satisfy judicial conscience."

By referring the aforesaid observations in the light of facts of that case this court has made following observations :-

"The Hon'ble Apex Court, time and again, enunciated that- In the traditional non-permissive bounds of our society, no girl or woman of self-respect and dignity would depose falsely, implicating somebody else for allegation of ravishing her chastity by sacrificing and jeopardising her future prospect of getting married with a suitable match. In addition, it would invite the warth of being ostracised and cast and cast out from the society she belongs to and also from her family circle. In the matter in hand, it would be reiterated that prosecution has proved the case of sexual assault by appellant-accused on the minor victim beyond all reasonable doubt. In totality the circumstances on record adumbrates that prosecutrix does not have any strong motive to falsely implicate the appellant - accused in this case. In such circumstances, we do not find any impediment to accept the evidence of the prosecution witness in regard to sexual

*assault by the appellant-accused on victim
minor girl."*

15. It is significant to note that in the instant case also the observations of this court as well as the Hon'ble Apex Court as mentioned above, squarely apply. In the instant case, though the alleged eye witness refused to state the material part of the incident, but the testimony of the victim coupled with medical as well as scientific evidence on record does inspire confidence in the case of the prosecution and therefore, considering the entire material on record, the finding of the learned trial court that the appellant / accused is guilty for the offence as mentioned above, appears appropriate. The appellant / accused was of 38 years at the time of the incident and the victim was only aged about 13 to 14 years. Thus, the appellant / accused also cannot be shown any leniency. Therefore, considering all these aspects, no substance is found in the appeal and the same stands dismissed. The appellant / accused - Rama @ Ramdas s/o Tukaram Borse is directed to surrender before the learned trial court within a period of four weeks from today. The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)