

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 232 OF 2018

Namdeo Dattu Belote

Age : 46 years, Occu. Agriculture,
R/o. Belote Vasti, Devibhoyare-phata,
Taluka – Parner, District – Ahmednagar.
(Presently in Jail)

... Appellant

Versus

The State of Maharashtra
Through Police Inspector,
Parner Police Station,
Taluka – Parner, Dist. Ahmednagar.

... Respondent

.....

Mr. Amol K. Gawali, Advocate for the Appellant.

Mr. S. D. Ghayal, APP for the Respondent-State

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 06.11.2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. Appellant is aggrieved by the judgment and order of conviction passed by learned Additional Sessions Judge, Ahmednagar dated 24.03.2016 in Sessions Case No. 216 of 2016 thereby holding him guilty of offence punishable under Sections 376(2)(f)(k) of the Indian Penal Code [IPC] and sentenced him to suffer rigorous imprisonment for 15 years and to pay fine.

2. PW2 prosecutrix i.e. daughter of accused, implicated her own father for above offence accusing that in the month of August when her mother PW1 went to her brother's place at Nandur Pathar, prosecutrix herself, her brother and father remained in the house. Her brother attended school whereas her father went for work and they both returned in the evening. She cooked meal for them and after having dinner, they retired by spreading quilt on the floor. Her version is that in between herself and her father, her brother was sleeping. In the night her father removed her undergarments and committed rape on her. She resisted and questioned him but he apologized and requested her not to inform anyone. After she missed her menstrual cycle, her mother took her to doctor, who, on examination, declared her to be pregnant, after which her mother made inquiries and she narrated the occurrence with her. Thereafter, she went to Parner police station along with her mother, lodged report Exhibit 17 which was investigated by PW7 PSI Pawar and on gathering evidence, accused was chargesheeted.

3. Learned Additional Sessions Judge, who was assigned with the case, allowed prosecution to adduce evidence and thereafter, incriminating material was brought to the notice of accused and his answers were duly recorded and thereafter, hearing both sides,

learned trial court held that prosecution has established the charge and thereby convicted accused as above.

Now exception is taken to the above judgment of conviction by filing appeal under Section 374 of the Code of Criminal Procedure [Cr.P.C.]

4. Learned counsel for the appellant would submit that it is apparently a false implication. There was no prompt reporting. At the instance of mother, there is false implication. He would question the version of prosecutrix by raising a question as to how is it possible to commit rape during presence of younger brother sleeping next to her. He submitted that said brother is not examined and therefore, material witness is withheld. He further submitted that even there is inordinate delay in lodging the FIR. He pointed out that only on receipt of some information from a stranger, police had approached the prosecutrix and only thereafter report has been lodged. Therefore, possibility of false, concocted, fabricated story cannot be ruled out. He would point out that prosecutrix delivered a child but DNA examination has clearly ruled out appellant to be father of the child and therefore, with such evidence, the entire case and charge gets falsified. Attacking the judgment under challenge, he would submit

that there is improper appreciation of evidence. Except so called testimony of prosecutrix, there is no other evidence. That learned trial court has not considered the delay aspect and therefore, such findings cannot be allowed to be sustained and so he prays to allow the appeal.

5. Per contra, learned APP, while favouring the judgment under challenge, submitted that it is unfortunate case wherein father has ravished his own daughter and had impregnated her. Only because of relations and due to shame, prosecutrix did not disclose the occurrence initially to her mother or police. That, however, though late, she has lodged complaint against him. That, apart from testimony of prosecutrix, there is evidence of very mother. That due to fear of father, the prosecutrix has not mustered courage. The sole testimony of prosecutrix when inspires confidence, is sufficient to record guilt and according to learned APP, learned trial court has exactly done the same and therefore, no fault can be found in the appreciation and so he prays to dismiss the appeal as it lacks merits.

6. The prosecution has, to establish its case, examined in all seven witnesses. Their role and status can be summarized as under:

PW1 - mother of prosecutrix.

PW2 - prosecutrix.

PW3 - Dr. Bhondave, who examined accused, collected and handed over samples to police for sending it to Forensic lab alongwith prescribed form Exhibit 24.

PW4 - Dr. Manisha Undare, who examined prosecutrix on 16.03.2016 and executed papers Exhibits 26 and 27.

PW5 - Santosh Dharmadhikari, attached to NGO Snehalay, an institution where custody of the girl child delivered by prosecutrix was given.

PW6 - Sunanda Bhingardive, Lady Police Head Constable who recorded complaint (Exhibit 17) and registered offence.

PW7 - PSI Rajendra Pawar is the Investigation Officer.

7. Here, going by the story of prosecution, evidence of prosecutrix **PW2** is primarily of much significance. Her evidence is at Exhibit 16. In her testimony, she gave her date of birth as 25.06.1997. In further evidence, she has stated that in August 2015, her mother had been to Nandur Pathar to her maternal uncle's place. She herself, her father and brother were present in the house. In the evening, her brother and father returned from school and work respectively. She cooked food for both of them. They all had dinner. She testified that they

spread quilt on the floor. Then she herself, her father and brother slept on the quilt. Her brother was sleeping besides her and beside him, her father was sleeping. After some time i.e. at 11.00 p.m., electricity supply was restored. She stated that she was wearing a maxi. Her father lifted it upwards and removed her undergarments. He had already stripped himself and then he committed rape on her. She stated that she resisted and questioned him but he accepted his mistake and sought her pardon and therefore, she did not inform the incident to anyone as she granted pardon to her father. She further stated that four months thereafter, she missed her menstrual cycle and so her mother took her to the hospital of Dr. Supekar, who examined and informed about her pregnancy. Then her mother inquired about it and she informed it to be due to her father. On 16.03.2016, she went to Parner Police Station with her mother and informed the incident to police. That, she delivered a female child and she handed over its custody to Snehalay.

Defence has subjected her to cross-examination wherein she has answered that near their house there are no residential houses. She admitted that there was no electricity meter but she volunteered and stated that electricity equipment such as light was there. She is unable to give exact date of the incident in the month of August but she

admitted that the incident had happened during the time between 11.00 p.m. to 11.30 p.m. She admitted that at the time of incident, it was dark. She denied that as it was dark, she could not notice the person who committed assault with her. She is unable to assign reason as to why she did not woke up her brother. She admitted that she did not shout. She stated that she was consenting to the act committed with her and therefore she has not gone and lodged complaint. She further stated that she has no grievance or complaint against her father. Then questions are put regarding her visit to Parner court for recording her statement under Section 164 of Cr.P.C. Rest is all denial.

8. Another witness, who is also important, is her mother **PW1**. At Exhibit 15, she has deposed that her daughter had passed 10th standard and accused sitting in the court to be her husband. She stated that when her daughter missed her menstrual cycle, she took her to doctor who examined and informed that she was pregnant by four months. When she inquired with daughter, she informed that she was pregnant from her father. Therefore, this witness, after returning home, questioned her husband and he too sought pardon and assured that he will not behave in such manner or commit such mistake.

In cross, she has admitted that prior to going to the hospital, her daughter did not inform anything regarding the incident with her by her father and further admitted that even after receiving information, she did not lodge complaint as well as her daughter also, on her own, never lodged complaint in police station. She admitted that she has no personal knowledge as to from whom her daughter was pregnant.

9. Apart from above two witnesses, another witness, who is important is **PW4** Dr. Manisha Undare, to whom prosecutrix was forwarded for medical examination on 16.03.2016. This medical expert deposed that history was given about sexual intercourse by father in the month of August. Doctor also noticed pregnancy and she executed papers Exhibits 26 and 27.

10. **PW6** is the Lady Police Constable Sunita Bhingardive who recorded complaint (Exhibit 17) lodged by PW2 prosecutrix.

11. **PW5** Santosh Dharmadhikari was working with NGO Snehalay and it has come in his evidence that on 17.03.2016, PW2 was brought and admitted in Snehalay as her mother was not in a position to bear the expenses of delivery. On 27.03.2016, prosecutrix delivered a girl child whom she left in the said institution as per procedure.

ANALYSIS

12. On analyzing the entire evidence discussed above, here, what we noticed is that accused is the father of prosecutrix PW2. Evidence of PW2 inspires confidence. There is nothing in her cross to suggest that there is false implication. Father seems to have taken disadvantage of absence of PW1 mother, who had been to her brother's place. He had raped his own daughter in the house. No doubt brother is also shown to be present, but taking the night time into consideration, he might not have realized the act. Prosecutrix must have been under shock and out of shame, she might not have resisted or woke up her brother. Taking into account the fiduciary relationship, she was in total control of her father and therefore she must not have put up resistance. Father sought her pardon and she herself claims to have tendered it, which might be because at that time she was unaware about consequences in future. She has further deposed that on his request, she did not inform anyone including her mother. The offence came to light after the victim was diagnosed with pregnancy.

13. As regards the objection of appellant, that evidence of prosecutrix does not inspire confidence and except the same, there is no other evidence, we do not find any substance in it for the simple

that it is fairly settled that if the sole testimony of the prosecutrix inspires confidence, the same can be relied and acted upon too, for recording the guilt. Here, the evidence and testimony of prosecutrix does inspire confidence. Only because of her relation with accused, who was her father, she has not reported or resisted and she has given plausible explanation for not doing so.

As stated above, sole testimony of prosecutrix here is inspiring confidence. The Hon'ble Apex Court in the case of ***Dola alias Dolagobinda Pradhan and another v. State of Odisha*** ; (2018) 18 SCC 695, has extensively dealt with the aspect of conviction on the basis of sole testimony of prosecutrix. We propose to reproduce para 6 of the said judgment which is as under:

“6. It is well settled law that if the version of the prosecutrix is believed, basic truth in her evidence is ascertainable and if it is found to be credible and consistent, the same would form the basis of conviction. Corroboration is not a sine qua non for a conviction in a rape case. The evidence of a victim of sexual assault stands at par with the evidence of an injured witness and is entitled to great weight, absence of corroboration notwithstanding. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities

factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration, except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. When a grown up and married woman gives evidence on oath in Court that she was raped, it is not the proper judicial approach to disbelieve her outright.”

14. The sexual act is further confirmed because of she conceiving, becoming pregnant and even delivering a child. Only when the prosecutrix missed her menstrual cycle, PW1 seems to have taken her to doctor and thereafter the fact of her pregnancy seems to have come to light. It is thereafter on being questioned by her, prosecutrix has narrated the ordeal with her to her mother and even when mother questioned her husband, he seems to have accepted the act and sought pardon. It is in such circumstances, complaint seems to have been not lodged promptly. As discussed above, there is no other specific defence raised by appellant, either in his statement under Section 313 of Cr.P.C. or in appeal, in support of his case. Even no specific suggestion is given to the prosecutrix that she is falsely implicating, rather the manner of cross itself shows that sexual intercourse has not at all been doubted.

15. Learned counsel for the appellant also raised a question about DNA report to be negative and that itself exonerates him. We are afraid whether mere negative DNA report in itself would be sufficient to claim innocence. The Hon'ble Apex Court in the case of ***Sunil v. State of Madhya Pradesh*** ; (2017) 4 SCC 393 and the Hon'ble High Court at its Principal Seat at Bombay in the case ***Abbas Asmat Ali v. State of Maharashtra and another*** ; 2022 SCC OnLine Bom 3388, have categorically held that positive result of DNA would constitute as a clinching evidence against the accused, however, if the result is in negative i.e. favouring the accused or if the DNA profiling has not been done in a given case, the weight of the other evidence on record will still have to be considered.

Here, there is evidence of very wife of accused who is mother of prosecutrix. Medical expert, who is independent witness, too deposed regarding history given by victim herself.

16. Here also, taking into account the nature of offence and the status of the perpetrator of crime, prosecutrix may have out of shame not promptly approached police. Therefore, in such cases, there is bound to be delay and the same should not affect the other incriminating evidence. She is a girl who lives in rural area where

society is predominantly gripped with traditional culture. Due to fear of being looked down for being victimized by her own father, child did not report against her own father and such aspect contributes to the delay which definitely needs to be ignored. Hence, the above submissions and arguments are, according to us, of no value.

17. We have gone through the judgment under challenge. No fault can be found in the appreciation. Findings are supported by reasons and therefore no case being made out for interference, we proceed to pass the following order:

ORDER

The appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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