

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 327 OF 1997

Nimba Hiranman Ahire .. Appellant
Versus
The State of Maharashtra .. Respondent
...

Mr. Somanth Thengal for the appellant.
Mr. S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 15th SEPTEMBER, 2023

JUDGMENT:-

1 The victim girl aged 12, working as a labourer on Forest scheme along with her entire family woke up to an unfortunate incident on 16/10/1993.

 In the morning, her mother asked her to take tea and sugar to the house of her grandfather and accordingly, she abided by the instructions. While she was returning back, she came across to the accused, who was present on the boundary of the field, who inquired with her, where she had been and when she started walking ahead, she was followed by him. He caught hold of her and lifted her and carried her in the pomegranate garden of the Sarpanch.

 Thereafter, he threw her on the ground in the field, removed her undergarment and attempted to penetrate his organ into her private part. He also pressed her chest and held her by

her shoulder.

Fortunately for this little girl, some stranger noticed the movement in the field, and the accused ran away, leaving the act midway.

2 As per the prosecution, the above incident was narrated by the victim to the sister of her mother, who accompanied her, to her sister and mother of the girl, when the incident was narrated.

Thereupon, all the three visited the house of the accused to confront him, but his father who was present, shoed them away by saying that his son cannot commit such an act. Therefore, they approached the Sarpanch, who was not present in the house and hence the Police Patil was approached, who gave a chit and directed them to Police Station.

This is how the complaint was lodged by PW-2, the mother of the victim in Vadner- Khakurdi Police Station.

3 The victim was sent for medical examination and the spot panchnama was prepared. On necessary investigation, the charge-sheet was filed before the Competent Court and the accused faced the charge of attempting to commit the offence under Section 376 r/w 511 of IPC and alternatively, by attempting to penetrate the penis into her private organ, the charge was framed under Section 354 along with Section 506 of IPC as the accused was charged for threatening the victim and asking her to keep mum.

4 The accused pleaded not guilty and therefore he was subjected to trial in Sessions Case No. 90 of 1994 by the Additional Sessions Judge, Malegaon, sitting at Nashik .

To establish the guilt, the prosecution examined 9 witnesses, and the victim was also examined and the prosecution rely upon the evidence, which has surfaced on record, through the said witnesses.

Since the informant (PW-2), who was not conversant with Marathi language, her evidence was recorded through interpreter PW-1.

PW-2, the mother proved the report lodged by her (Exhibit 13). She deposed about the incident that occurred on 16/10/1993, when her daughter was sent to her parents house in Kajvade, whereas, it is deposed by her that she was residing in Bhilati locality of village Kajvade. When her daughter returned back weeping and on being inquired, she narrated about the act committed by the accused upon her by removing her undergarment and she was told that he attempted to penetrate his penis in her private part and she had informed about this incident to Rajabai, her own sister.

It was also informed that while the accused was committing the bad act somebody had seen it and therefore he fled from the spot.

The mother also deposed about the steps taken by her, before she lodged the report.

In her deposition, she also spoke about the father of the accused sitting on the Maruti Car, who threatened that they are free to do whatever they want to do and on taking the chit, she along with the victim and her sister Rajabai approached the Police Station and lodged the complaint.

In her cross-examination, she was confronted with certain questions in her statement given during investigation but the omissions are not any material aspect, affecting the prosecution case at all, but they are only as regards the peripheral aspect i.e. whether they had approached the house of the accused or whether his father was sitting in the Maruti Car and had threatened them etc.

5 The victim herself stepped into the witness box and was administered oath and her deposition has remained unshattered despite an attempt to thoroughly cross examine her and she corroborate PW-2, when she say that she was returning from her grandfather's house after giving tea and sugar and she deposed about the actual happenings, which had occurred in the morning hours. She deposed that, she was taken into pomegranate garden and the accused committed the bad act with her and asked her not to shout and threatened her.

She remain firm on her version that accused ran away in the midway of the act and denied the suggestion that she was falsely reporting the incident, which has resulted in registration of the crime against him. She is only confronted with one part of her statement that the accused held her shoulder at the time of incident and even this omission is not proved by

putting it to the Investigating Officer.

6 In order to corroborate the version of the victim even Rajabai is examined as PW-5, who admit that on the date of the incident in the morning, the victim came to her house weeping and narrated the incident to her which is the exact version which was given to her mother. She also deposed that clothes of the victim were soaked with wet mud and she accompanied the victim to her sister and she corroborate on all material aspects of how they reported the matter to the police station.

The minor contradictions in the testimony of these three witnesses in no case affect the credibility of the prosecution case and in particular, the consistent version of the victim girl, which has gone unchallenged.

7 The prosecution has also examined the Police patil, (PW-6), who talk about the visit of the informant and her daughter around 9:00 a.m, when the incident was narrated to him and he advised her to report the same to the Police Station and accordingly, they had filed the complaint.

In the cross-examination, it was suggested to him that in his police statement he has stated that the informant was accompanied with the victim, but it was not so recorded by the police. However, this omission is not at all put to the Investigating Officer and therefore, cannot be said to be proved.

Pertinent to note that, he categorically deny the suggestion in the cross-examination that the informant and her sister were prosecuted by the police in a police case.

8 As far as the spot panchnama is concerned, which is admitted by accused under Section 294 of Cr.P.C is exhibited at Exhibit-20 and 21 and the panchnama also corroborate the version of the prosecution, about the place located in the pomegranate garden, where the incident is alleged to have taken place as per the version of the victim and she led the Investigating Officer to the said place and on the basis of her showing the spot, the panchnama was prepared.

The spot panchnama clearly records that there are pomegranate trees and the spot where the act was committed is at the distance of 25 feet from the main road and there is a lane to pass through and the spot is located at distance of 1 km from Kanvade jurisdiction, i.e. the area, where the parents of the informant were residing, where the victim had visited in the morning hours for delivering some goods.

9 In order to strengthen the case of the prosecution, the Medical Officer, at Wadia Municipal Dispensary, Malegaon, is examined as PW-4. He had examined the victim at 11:30 p.m, when she was brought for medical examination by the PSO , along with the requisition (Exhibit 16).

On examination, he noticed the *labia majora* and *minora* to be inflamed and swollen. He also noticed presence of fluid over it and also on hymen, though there was no bleeding but her nicker was also seen to be stained with some fluid.

On examining her, he issued the certificate, which is proved by him and marked as Exhibit-17.

PW-4 also examined the accused, who was produced before him and issued a certificate upon the examination, where he was certified that he was capable to perform sexual intercourse and was aged 20 at the relevant time.

Though in the cross-examination, he agreed that he had not mentioned the age of the injury and the injury noted by him could be possible due to rubbing generally, he also clarified that it would depend upon the force which is applied. As far as injury no.8 in the certificate i.e. the injury to the chest is concerned, he admit that it could be caused due to fall on the ground or in such a way, when the chest come in contact with the floor.

The Chemical Analyser's report do not give any positive result, as the clothes of the victim being forwarded for analysis, the result of the analysis, reveal that neither blood nor semen is detected on it.

10 The evidence brought on record by the prosecution, establish the occurrence of the incident and though the learned counsel for the appellant would attempt to argue the inconsistency in the version of the three witnesses, i.e. PW-2, PW-3 and PW-5, and submit that there is variation, I am not convinced to accept the said submission, as the three witnesses are consistent about the primary incident of attempt to commit rape and the inconsistencies are not of such nature, which would effect the veracity and truthfulness of the prosecution case.

The accused being resident of the village is known to the victim as well as PW-2 and PW-5.

As regards the argument that, the F.I.R. is lodged at 8:30 p.m in the evening and therefore, the delay has affected the case of prosecution, the said submission also deserve rejection, as it is the version of PW-1 that on the incident being reported to her by her daughter, she went to the Sarpanch, thereafter to the police patil and thereafter she had approached police station. The scenario, where the incident had taken place is a rural background, and it can be very well assumed that some time is required to reach the police and lodge a report. In any case, the report is lodged in the evening hours on the same day and even the victim is medically examined on the same date and the medical examination corroborate her version, that there was an attempt to ravish her at the hands of the accused.

Since the prosecution has established its case beyond reasonable doubt and based upon the evidence placed before the Additional Sessions Judge, Malegaon, he has rightly convicted the appellant for the offence punishable under Section 376 r/w 511 of IPC and has imposed sentence of Rigorous Imprisonment for 5 years and to pay fine of Rs. 3000/-. He is also sentenced to suffer R.I for 3 months, but it is not very clear from the impugned judgment as to on what count the said sentence is imposed.

In any case, since the substantive sentences were directed to run concurrently, the appellant shall undergo sentence of rigorous imprisonment for 5 years, by way of penalty.

Finding no legal infirmity in the impugned judgment, passed by the Additional Sessions Judge, in Sessions Case No.

90 of 1994, the judgment dated 15/04/1997 is upheld and the Appeal is dismissed.

11 The learned counsel for the appellant when particularly asked as to within what period of time the appellant shall surrender, make a request that 6 months time may be granted. He would also pray for some leniency to be shown to the appellant.

The above argument fail to impress me, in any way as the appellant stood convicted in the year 1997 and the sentence was imposed upon him but for the pendency of the appeal and for suspension of sentence and upon his release on bail, the sentence imposed could not be implemented. In any case, now the appeal having been dismissed, the conviction and sentence being upheld, he must face the consequences.

The appellant shall surrender before the Additional Sessions Judge, Malegaon, who shall take further necessary steps for committing him to the concerned prison to undergo the sentence imposed upon him. If the appellant fails to surrender on or before 30/10/2023, the Sessions Judge Malegaon, shall direct his arrest, for committing him to the prison, for undergoing the remaining sentence with the assistance of the concerned Police Station.

(SMT. BHARATI DANGRE, J.)