

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

CRIMINAL APPEAL NO. 112 OF 2022

Yogesh Prakash Bhole

..Appellant.

Versus

The State of Maharashtra

..Respondent

Mr. Shailesh A. Chavan (Appointed Advocate) for Appellant.
Mr. S. R. Agarkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 7 JANUARY 2023

JUDGMENT :

1. The Appellant has challenged the Judgment and order dated 15/10/2020, passed by learned Additional Sessions Judge & D.J.-1, Islampur, in Sessions Case No.20 of 2019. The Appellant was convicted for commission of offence punishable U/s.376(2)(f) of the I.P.C. and was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.1000/- and in default of payment of fine to suffer S.I. for two months. He was also convicted for commission of offence punishable U/s.506 of the I.P.C. and was sentenced to suffer R.I. for one year and to pay a fine of Rs.500/- and in default

of payment of fine to suffer S.I. for one month. Both the substantive sentences were directed to run concurrently. The Appellant was granted set off U/s.428 of the Cr.p.c. The Appellant was acquitted from the charges of commission of offence punishable U/s.342 of the I.P.C.

2. Heard Shri. Shailesh Chavan, learned appointed Advocate for the Appellant and Shri. Agarkar, learned APP for the State/Respondent.

3. The prosecution case is that the Appellant was the maternal cousin of the prosecutrix's husband. The incident took place on 01/11/2018 in the afternoon. The prosecutrix was staying with her mother in law, her husband and two sons. On the date of incident her husband was not present. He had gone to a different city to attend his job. He was a cleaner on the truck, therefore, he used to go for his job at least 8 to 10 days in a month. On the date of incident, her mother in law had gone out. The Appellant came to the prosecutrix's house. He gave some money to her son to buy something. Her sons went out. At that

time, the prosecutrix was alone in the house. The Appellant took advantage of the situation and committed rape on her.

4. In the meantime, the prosecutrix's son returned home. The Appellant then went away; but before going he threatened her. When her mother in law returned, the prosecutrix told her about the incident. But she advised the prosecutrix to keep quiet and not to disclose this incident to any one else, to avoid loss of reputation. In that night, the prosecutrix was having pain in her abdomen. On the next day, she went to a Doctor, but she did not get herself admitted in the hospital. Then she went to her parent's house on the advise of her brother. Her sister and brother gave her support and courage and after that, she approached the police station and gave her complaint. The F.I.R. was lodged vide C.R.No.63 of 2018 at Kokrud police station. It was lodged in the midnight of 03/11/2018 and 04/11/2018. The Appellant was arrested on 04/11/2018. The Appellant and the victim were sent for medical examination. Their clothes were seized. The spot panchanama was conducted. Statements of the witnesses were recorded. The articles were sent for chemical analysis. At the

completion of the investigation the charge-sheet was filed.

5. During trial, the prosecution examined seven witnesses including the prosecutrix, her son, the panchas, the Medical Officers and the Investigating Officer. The defence of the Appellant was of total denial. According to him, on the day of incident he was not present in the village of the prosecutrix. In his written statement, he mentioned that his family was having dispute with the prosecutrix's husband's family in respect of an agricultural land, therefore, this false complaint was lodged on 04/11/2018. No such incident had taken place.

6. Learned Trial Judge considered the evidence and the defence taken by the Appellant. After considering the submissions, learned Judge recorded his finding of guilt against the Appellant.

7. PW-1 was the prosecutrix herself. She has deposed that, she used to stay with her husband, son, daughter and other family members. Her husband was working as a Cleaner. On 01/11/2018, her mother in law had gone to an agricultural field. Her husband was in Mumbai. She was not feeling well and, therefore, she was

in her house. The Appellant came to her house at around 3.00p.m. She gave him water and tea. He then requested for some snacks. Thereafter, he gave money to the prosecutrix's children. They went away. After that he bolted the door from inside and forcibly committed rape on the prosecutrix. Since she was sick, she could not resist; but she raised shouts. There was nobody in the vicinity. The Appellant threatened to commit her murder. After that, PW-1 was feeling pain in her abdomen and there was bleeding. Therefore, she went to sleep. Her mother in law returned in the evening. PW-1 told her about the incident, but her mother in law told her not to disclose this incident to her husband. On the next day, her husband returned. He took PW-1 to the hospital. The Doctor advised her to get admitted in the hospital, but she refused because she had to look after her small child. They returned home at 4 O'clock in the afternoon. She called her brother and requested her to take her to her parent's house. But her brother was busy and he told her to come to his village by an S.T. bus. She went there. Her mother and sister inquired with her. She told them everything. On the next day, she went to Kokrud police station with her

brother and sister and with their support she could lodge the F.I.R. The F.I.R. is produced on record at Exhibit 14. Then she was referred for medical examination. Her statement was recorded U/s.164 of the Cr.p.c. Her statement is produced on record at Exhibit 16.

In the cross-examination, she deposed that, before her marriage she had no relation with the Appellant. Her parent's house was about 5 Km. distance from her husband's village. The Appellant's mother used to reside at prosecutrix's mother in law's native place. The prosecutrix's mother in law had an agricultural land at that place. The Appellant's mother used to visit the prosecutrix's family some times. Before the incident, the Appellant had visited their house one year ago. When she was cross examined about the locality around her house; she stated that, there were other houses near her house. There was one more house adjoining to the prosecutrix's house. She admitted that, in the incident she did not suffer any injury. She tried to resist and at that time even the Appellant did not suffer any injuries. There were some minor contradictions from her statement recorded

U/s.164 of the Cr.p.c., but those contradictions are not really material. She further stated that, on the next day of the incident, her husband had not returned home and she was in the hospital for the entire day. She met her husband on the 3rd day in the same hospital. From the hospital, she went to her parent's house and then she lodged the F.I.R. The F.I.R. mentions that, she had gone to hospital on 02/11/2018 with her husband. On 03/11/2018, again they went to the hospital and then they returned home at around 4.00p.m. After that she called her brother and then went to her parent's house by an S.T. bus at 5.30p.m.

8. PW-2 was the son of PW-1. He has deposed that, he had returned home from school at 1.00p.m. on 01/11/2018. At around 3.00p.m. the Appellant came to their house. PW-2 was playing with his younger brother. The Appellant gave him Rs.10/- to buy biscuits. Therefore, PW-2 and his brother went to a shop. After some time they returned. The door was closed. He gave a call to his mother. The Appellant opened the door. He was wearing his clothes. The Appellant threatened PW-1 in presence of this witness and then went away. PW-1 was crying. She told PW-2 that she was

suffering from pain in her stomach. On the next day, PW-1 went to her parent's house.

In the cross-examination, he stated that, his other relative was residing near their house, but they were not on talking terms. He knew the Appellant since many days. On the date of incident his own father had gone to attend his work. He denied the suggestion that, PW-1 herself gave him money and sent him out to buy biscuits. According to him, his father had not returned on the next day. He met his father only after 2 to 3 days. He admitted that the police recorded his statement as told by PW-1.

9. PW-3 Subhash Khilare is a pancha for spot panchanama which is produced on record at Exhibit 20. PW-4 Devendra Dhas was a pancha for the panchanamas under which the clothes of the prosecutrix and the Appellant were seized. These panchanamas are produced on record at Exhibit 22 and 23.

10. PW-5 Dr. Salma Inamdar was attached to the Rural Hospital of the prosecutrix's village. On 04/11/2018, at about 2.00p.m., she had examined the prosecutrix. She was having pain

in the abdomen and, therefore, as it was a case of rape, PW-5 referred her to Civil Hospital, Sangli. She had taken blood samples, vaginal swab and nail clippings etc. and handed them over to a police constable.

In the cross-examination, she admitted that, she had not seen any external injuries on the prosecutrix. The medical papers in respect of her examination are produced on record at Exhibit 28.

11. PW-6 Dr. Mahananda Hubale was attached to Civil Hospital, Sangli. The prosecutrix was brought to her at 5.25p.m. on 04/11/2018. She examined her. She took down her history of the incident. She was complaining of the pain in her abdomen. She was referred to the gynecology department and then to Surgery department, but she was not willing to get admitted in the hospital. There was some tiny calculi in her kidney.

In the cross-examination, she stated that, during forceful assault possibility of external and internal injuries could not be ruled out. During the menstruation period, there can be

abdominal pain and general weakness. She was not in a position to comment whether rape was committed. According to her, she could not opine about that, as she was not from the gynecology department. But she admitted that the gynecology department also did not mention that rape was committed on the prosecutrix.

12. PW-7 Shivaji Gawade, P.S.I. was the investigating officer. He has deposed that, he conducted the investigation of C.R.No.63 of 2018 registered at Kokrud police station. He had arrested the appellant on 04/11/2018. He then conducted the spot panchanama. He sent the prosecutrix for medical examination. The articles were sent for chemical analysis. He recorded the statements of the witnesses and at the completion of the investigation he had filed the charge-sheet.

13. In the cross-examination, she deposed that there was one house adjoining to the house of the Appellant. The other houses were situated around 5 to 10 feet from the prosecutrix's house. According to him, he did not record the statements of the witnesses from the locality because they were not present around

the time of incident. The shop where the prosecutrix's son had gone was about 10 minutes walking distance from her house.

14. The Appellant examined the defense witness Dr. Namdeo Khade. He was having a hospital at Bambavade. On 02/11/2018, the prosecutrix had come to his hospital as an outdoor patient. She told him that she was having epigastric pain. He advised her to get admitted in the hospital, but she refused. Then she was treated as an outdoor patient. On 03/11/2018, again she had come to his hospital. She was again treated as an outdoor patient.

15. Apart from this oral evidence, the C.A. reports are produced on record, but those C.A. reports do not throw light on the case at all.

16. Learned counsel for the Appellant submitted that the Appellant is implicated falsely because of dispute between the prosecutrix's husband's family and the Appellant's family in respect of agricultural lands. The Appellant was not present in the prosecutrix's village at the time of the incident and he is falsely implicated. The F.I.R. was not lodged immediately and the delay is

inordinate. The delay is not explained. No independent witness is examined who could have seen the Appellant entering the house of the prosecutrix. The medical evidence does not suggest commission of rape. He submitted that, learned Trial Judge did not take into account the defence of the appellant and the evidence of defense witness.

17. Learned APP opposed these submissions. According to him, the prosecutrix's evidence is reliable and based on that evidence itself, the conviction can be recorded. He further submitted that, there was no reason for the prosecutrix to implicate the Appellant falsely. Her evidence is corroborated by her son's evidence. The absence of injuries on the prosecutrix was not very material because she was a married lady. He further submitted that, though there is some confusion as to on which date her husband had returned, it is not very material, because the fact remains that her husband had not supported her in registering the F.I.R. She had gone to her parent's house and with support of her brother and sister, she had registered the F.I.R. Her clear case is that, there was no consent. Her mother in law had stopped her

from telling about the incident to her husband and, therefore, because of that pressure, she had not told about this incident; even to her husband.

18. I have considered these submissions. In this case, the evidence of PW-1 is the most important piece of evidence. Therefore, her evidence is required to be scrutinized carefully. She had described the incident with sufficient clarity and detail. The defense has not brought on record any reason as to why the Appellant would have been falsely implicated by PW-1. The dispute as alleged by the Appellant himself in his statement was between PW-1's husband's family and the Appellant's family. However, significantly, the mother in law did not support PW-1 and did not help her in lodging the F.I.R. In fact, she had stopped PW-1 from telling this fact to others. PW-1's husband was not told about the incident and she had gone to her parent's house to seek support. With the support of her brother and sister she had approached the police station and had lodged the F.I.R. All these factors show that, there is no substance in the submission that the appellant is implicated falsely because of enmity between PW-1's

husband's family and the Appellant's family.

19. PW-1's evidence is corroborated by her son PW-2's evidence on material particulars. PW-2 was sent out by the Appellant to buy biscuits. While PW-2 and his brother were away and when PW-1 was alone in the house, the Appellant had committed this offence. When PW-2 returned home, he saw that the Appellant was wearing his clothes and he had threatened PW-2's mother i.e. PW-1. Though, in the cross-examination he has deposed that, he had given his statement before the police at the instance of his mother, but there is nothing to indicate that his deposition in the Court was a result of tutoring from his mother. Therefore, evidence of PW-2 lends corroboration to the evidence of PW-1 on material aspects as mentioned earlier.

20. Though, there are no other corroborating pieces of evidence in the form of C.A. reports or medical examination; as rightly submitted by learned APP and as is rightly discussed by learned Trial Judge in paragraph 36 of the impugned Judgment; absence of injuries in this particular case did not indicate that the

offence had not taken place. Learned Trial Judge had rightly relied on the presumption U/s.114-A of the Indian Evidence Act. Even DW-1's evidence does not help the defense. It only indicates that the prosecutrix had gone to his hospital on the next day i.e. on 02/11/2018 and also on 03/11/2018. Whether PW-1's husband had accompanied her on those occasions was not mentioned by him, but his evidence was restricted only to the fact that on those two days the prosecutrix had gone to his hospital for treatment. The defence wanted to take advantage of this evidence to submit that PW-1 had not made any grievance before this doctor. But, as is discussed earlier, her mother in law had prevented her from disclosing this incident. Only after her brother and sister had given her courage on her returning to her parent's house, she had lodged the F.I.R. In this background, it cannot be said that there was delay in lodging the F.I.R. The prosecutrix had approached the police station on 03/11/2018 itself. The F.I.R. was lodged in the midnight and, therefore, the date of F.I.R. appears to be 04/11/2018. PW-1 has given acceptable reasons for not approaching the police on the very day of occurrence. Considering

all these aspects, there is no circumstance which makes PW-1's deposition doubtful. Therefore, in this case, the prosecution has proved its case beyond reasonable doubt against the Appellant. Learned Trial Judge has considered all these aspects properly. Minimum sentence is imposed upon the Appellant and there is no scope to reduce it further. Hence, I do not find any merit in the Appeal.

21. The Appeal is dismissed.

(SARANG V. KOTWAL, J.)