

(15)-Apeal-575(1).doc.

Digitally
signed by
BALAJI
GOVINDRAO
PANCHAL
Date:
2024.02.14
11:08:38
+0530

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

CRIMINAL APPEAL NO.575 OF 2023

Shahaji Anandrao Patole

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Shashikant Damodarlal Chandak a/w Kanchan Shashikant Chandak, for the Appellant (Appointed by Legal Aid).

Mrs. M. R. Tidke, APP for the Respondent/State.

Ms. Jyotsna Kamble, Appointed Advocate for Respondent No.2.

CORAM : KISHORE C. SANT, J.

**RESERVED ON : 2nd FEBRUARY, 2024
PRONOUNCED ON : 13th FEBRUARY, 2024**

P C.

1. This Appeal is by original Accused No.1 who is held guilty for the offences under Sections 354, 354-B, 376(2)(d) of IPC, Sections 5(1)(d), 19 r/w 21 of POCSO Act and Sections 3(1)(iii), (xi)(xii), 3(2)(vi) of SC & ST (Prevention of Atrocities) Act. The Accused No.2 is however acquitted of all the charges. The judgment is passed by learned Additional Sessions Judge, Vaduj in Spl. POCSO Case No.25 of 2015.

2. The sentence imposed upon Appellant is 10 years and in

(15)-Apeal-575(1).doc.

default to suffer simple imprisonment for one month each for the offences under Section 376(2)(d) of IPC and Section 5(1)(d) r/w 6 of POCSO Act. For the offence punishable under Sections 354 and 354-B of IPC, Appellant is sentenced to suffer rigorous imprisonment for three years and fine of Rs.5000/-, in default to suffer simple imprisonment for one month. So far as offence under Section 3(1)(iii)(xi)(xii) of SC & ST Act, Appellant is sentenced to suffer six months and to pay fine of Rs.1000/-, in default to suffer simple imprisonment for 10 days.

3. The story of the prosecution in short is that an FIR came to be lodged by cousin aunt of a victim. She stated that the victim, her niece, daughter of her cousin sister aged about 12 years was taking education in Sant Gadge Maharaj Ashramshala, Gondavale Bk, Taluka Man, District Satara. She was staying in the hostel of said Ashramshala. Brother, one other sister of the victim were also taking education in 7th Standard in the said Ashramshala. On 13.09.2015 at around 04:30 p.m. she received a call from her brother Savata that niece Bharati told him on phone that victim was crying in the school. On receiving call she requested Savta to immediately go to school and take victim to home. Since it was late in the day and the school was at a long distance it was thereafter decided to go next day. The informant and her brother with some other relatives went on 14th to the school. On reaching there at Ashramshala they met

(15)-Apeal-575(1).doc.

victim. On seeing informant and other relatives, victim started crying. On making inquiry, victim told that on 11.09.2015 at around 02:00 p.m., when she was alone in the room as she was ill, Accused No.1, working as cook in the Ashramshala called her. On asking as to where he is taking, the Accused threatened the victim to follow him or else that he would assault her. Because of the fear, she went along with the Accused. Accused took her to the bathroom near kitchen of the hostel and committed rape on her. Since then there was pain in her stomach. She stated that the said incident was seen by one Bharati and Sonia, who were in the said hostel at that time. This incident was reported to Accused No.2, director of a school. However, Accused No.2 told the girls not to disclose this incident to anyone so as to avoid dis-reputation of the school. On making inquiry, it revealed that Accused No.1 was a cook. Accused No.2 is the director of the Ashramshala. One relative of the informant, Dadasaheb Dhavle spoke to Accused No.2. Accused No.2 told that though he was aware of the incident, but to save reputation of the school, he wanted the information not to be disclosed.

4. Upon lodging of an FIR Police conducted investigation and filed charge-sheet. The prosecution in all examined 15 witnesses. PW-1, PW-2, PW-3 and PW-7 are the main witnesses. On recording evidence, learned Trial Court found Accused No.1 guilty of the offences and awarded punishment against which the present

(15)-Apeal-575(1).doc.

Appeal is filed. As the appellant is not in a position to engage a lawyer, he sent an appeal through jail. Advocate came to be appointed through Legal aid center to represent the Appellant.

5. Heard learned advocate for the Appellant. Learned advocate mainly argued that there is no sufficient evidence on record to connect the accused with the alleged incident. Witnesses are not consistent about the time and date of the incident. There is delay in lodging FIR. The FIR is lodged at the instance of one Dadasaheb Dhavle, who happened to be leader of Republican Party of India. He submits that the Accused No.1 is made a scapegoat. The real culprits are not before the Court. The Accused No.1 is in fact innocent person. Nothing incriminating is found against him. Trial Court has committed error by relying on sole testimony of the witnesses. Learned advocate for the Appellant submits that on looking to such evidence, it is clearly seen that the prosecution has failed to prove guilt of the accused in this case. Medical evidence does not support the case of the prosecution. From the evidence, there is no any significant past medical/surgical history is seen. Labia majora, labia minora and clitoris and hymen were found to be intact. There was no history of injury to the genital parts and there is no clear evidence to suggest the rape on the victim. He submits that even though injuries are found on the person of the victim those are not sufficient to prove rape, he has also shown some

(15)-Apeal-575(1).doc.

discrepancies about the distance between Ashramshala and the hostel. His endeavour was to show that there was no reason for the victim to be in hostel at the relevant time. Even the presence of Bharati and another girl was unnatural. Statement under Section 164 of CrPC of the victim and her mother is not on record. The mother of the victim is not examined as witness, though she was present in the Police Station. The doctor who examined the victim, namely Dr. Dombe is also not examined. Learned advocate ultimately submits that the impugned judgment deserves to be quashed and set aside by acquitting the Appellant. Learned advocate for the Appellant relies upon the following judgments :-

- i) *Gurupada Das Vs. State of West Bengal*¹
- ii) *Gokul Vs. State of M.P.*²
- iii) *State of Sikkim Vs. Jigme Bhutia*³
- iv) *Abbas Ahmad Choudhary Vs. State of Assam*⁴
- v) *Lalliram & Anr. Vs. State of M.P.*⁵
- vi) *Navin Dhaniram Baraiye Vs. State of Maharashtra*⁶

6. Learned Advocate appointed for Respondent No.2 and

¹ 2020 CRI.L.J. 2001.
² 2020 CRI.L.J. 2713.
³ 2022 CRI.L.J. 2507.
⁴ 2010 AIR SCW 1917.
⁵ 2008 AIR SCW 6046.
⁶ AIRonline 2018 Bom 986.

(15)-Apeal-575(1).doc.

learned APP vehemently argued the case stating that the statement of sole prosecutrix is sufficient to prove guilt of the Accused person. In this case, age of the victim is only 12 years. There is an eye witness, who is also a student of the similar age. The incident was immediately reported by the girl students. The girls have no reason to falsely implicate the Accused. The evidence is consistent in so far as the alleged incident is concerned and supports the judgment.

7. The evidence of following witnesses is material. PW-1 is the informant/maternal aunt of the victim. She deposed that on 13.09.2015, it was informed by her brother Savta that he received a phone call from Bharati informing that the victim was crying, therefore, they decided to visit Ashramshala. So on 14.09.2015, they went to the Ashramshala at about 10:30 a.m. On reaching to Ashramshala, Bharati and prosecutrix/victim started crying, wherein victim narrated the incident that took place on 11.09.2015. Thereafter she deposed that prosecutrix was initially sent to Government Hospital, Dahiwadi and from Dahiwadi to Satara. In the cross-examination she accepted that Dadasaheb Dhavle, her brother-in-law was present in the school along with other relatives. She also accepted that many persons from their community had gathered in the police station. Some minor omissions are brought on record. She further accepted that the contents of the FIR were narrated by Dadasaheb Dhavle. He was present when the statement

(15)-Apeal-575(1).doc.

under Section 164 of CrPC was recorded of the victim. Though he pointed out, the cross-examination by the Accused No.2 is of no use.

8. PW-2/victim deposed in the Court about the incident in detail. She clearly stated that her friend Sonia saw the incident and thereafter sister Bharati took her to hospital of Dr. Dombé. On the next day of the incident, she made a phone call to the maternal uncle/Savta. She did not tell this incident to anyone except two teachers. Those teachers intimated the incident to the Principal. It is thereafter the sister of the victim informed the said incident on mobile phone to family members. In the cross-examination certain omissions are brought on record, however, same are not material.

9. PW-3/Sonia, who is friend of the victim deposed that she saw the incident by giving details of the incident. She also stated that her statement was recorded under Section 164 of the CrPC. These three are the material witnesses. Other witnesses are also examined i.e. Superintendent and teachers of the school, who supported the case of the prosecution. PW-7 i.e. Superintendent also stated that she had received call from one Sargar madam on 12.09.2015 calling her to the school. On reaching to the school, victim and her friends narrated the incident to her. Her statement under Section 164 of CrPC was also recorded. In the cross-

(15)-Apeal-575(1).doc.

examination, discrepancies about the timing, as to who exactly passed on information are taken, however, there is nothing to shatter the case of the prosecution.

10. In the case of ***Gurupada Das (cited supra)***, the Calcutta High Court considered the effect of delay in lodging FIR in a rape case. In the said case, the FIR was lodged after five days of the incident. The delay was explained as the informant was busy with treatment of victim. However, the version was contradicted by the injury report and testimony of Medical Officer. The Court in such facts of the case held that the delay was not properly explained. On this ground and other grounds, the Appeal of the Accused was allowed.

In the case of ***Gokul (cited supra)***, the conviction was recorded on the basis of sole testimony of the prosecutrix. No internal or external injuries on the person of the victim were found. There was no definite opinion expressed about commission of rape. In the said case, the prosecutrix was found to be habituated to sex. In the said case, prosecutrix was not minor. The facts are not similar to the case in hand.

In the case of ***State of Sikkim (cited supra)***, the Sikkim High Court considered the reliability of the sole testimony of the

(15)-Apeal-575(1).doc.

prosecutrix. In that case, it was found that the evidence of the prosecutrix was not reliable, trustworthy and of sterling quality inspiring confidence of the Court. In that case, Sessions Court had already acquitted the Accused. The State had filed Appeal against acquittal. On facts also the case was different. The reliance on the said case is of no use to the Appellant in the present case.

In the case of *Abbas Ahmad Choudhary (cited supra)*, it was found that the prosecutrix had changed her story time and again. The prosecution had failed to prove its case beyond reasonable doubt. The Court held that there cannot be absolute presumption that prosecutrix would always tell the entire story truthfully. In the present case, it is not only the prosecutrix who deposed before the court and her evidence is corroborated by PW-3 an eye witness. Nothing has come on record to disbelieve the version of the prosecutrix and the eye witness.

In the case of *Lalliram and Anr. (cited supra)*, the prosecutrix was a married lady. In the facts of the said case, no external injuries were found on the body of the prosecutrix. Her deposition was not consistent with the story of the prosecution. There were allegations that the prosecutrix was dragged by catching her bunch of hair for a considerable distance. When these were the allegations no external injuries were found on her person. For that

(15)-Apeal-575(1).doc.

reason, the story of the prosecutrix was not considered as reliable and the Accused were acquitted.

In the case of *Navin Dhaniram Baraiye (cited supra)*, this Court had considered that the prosecution had not even examined victim No.2. This Court had considered the effect of presumption under Section 29 of the of the POSCO Act. It was held that the presumption would operate only upon the prosecution first proving foundational facts against the Accused beyond reasonable doubts. The evidence of the witnesses was hearsay evidence hit by section 60 of the Evidence Act. As already stated, victim No.2 was not examined, although the statement of rape victim was recorded by the Police. Thus, on these grounds the Appeal was allowed and Accused was acquitted.

11. This Court finds that in the present case, there is sufficient evidence on record to show the guilt of the Accused. Looking to the age of the victim, there is no reason for her to falsely implicate the Accused. To prove the offence of rape, it is not always necessary to have injuries on the person of the victim to establish penetration. Looking to the evidence of the victim and PW-3/Sonia, it is clear that their evidence is consistent and inspiring confidence. Victim and Bharti both had immediately informed the incident to the teachers in the school, teachers also called Superintendent of

(15)-Apeal-575(1).doc.

the school. Unfortunately still FIR could not be lodged. Looking to the conduct of the victim and her friend, who were residing in Ashramshala, it is clear that they had immediately reported incident. Though the informant had received information on 13.09.2015 in the evening, she could not rush immediately to the Police Station because of distance to school. The informant along with her brother went to school on 14.09.2015 in the morning and after that the FIR was lodged. This Court finds that delay is properly explained. So far as presence of Dada is concerned this court is not much impressed by the submission of the appellant. It is unfortunate that common man still needs support to go to police station. Though he happens to be a leader of some party he was there as relative of the victim. No motive is alleged against said person. The age of the victim is not disputed. The caste of the victim is also not disputed. Since the victim happens to be of Scheduled Caste, Trial Court has rightly convicted the Appellant even for the offence under the SC & ST (prevention of atrocities) Act.

12. Though it is tried to show that Panchanama is not proved, this Court finds that same is duly proved by PW No. ??? Though in the cross-examination of the Investigating Officer, it has come on record that there is no positive medical evidence, however, it is sufficient to prove the case of the prosecution. Though there is no entry in the visitors' book of mother of the victim and her

(15)-Apeal-575(1).doc.

maternal uncle, it is not sufficient to conclude that they did not visit the Ashramshala on that day.

13. This Court finds substance in the argument of Respondent No.2. While looking to the present case, one has to see the mental condition of the victim girl as she was staying away from her parents and even other girls who were witnesses also staying away from their parents. Looking to their age, it is natural for them not to immediately rush to the Police Station. They rightly approached to the teachers of the school. There was no reason for the victim girl to falsely implicate the Accused in such crime. Even the Rector has supported the prosecution story and there is evidence corroborated by the evidence of Rector.

14. For all these reasons, this Court finds that no interference is called for in the impugned judgment and order.

15. The Appeal stands dismissed.

16. Pending interim Application, if any, stands disposed of.

[KISHORE C. SANT, J.]