

Bombay High Court

Ramesh S/O Raghoji Kulsange (In ... vs State Of Maharashtra, Through ... on 20 July, 2017

Bench: Z.A. Haq

1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 97 OF 2016

Ramesh S/o Raghoji Kulsange.
Aged about 32 years,
R/o : Walsara. Tah-Chamorshi,
District - Gadchiroli.

... APPELLANT.

- V E R S U S -

State of Maharashtra,
Through Police Station Officer,
Chamorshi, District : Gadchiroli.

... RESPONDENT.

Shri. N. H. Samundre, Advocate for the Appellant.
Shri. V. A. Thakre, A. P. P. for the Respondent/State.

CORAM : Z.A.HAQ, J.

DATED : 20 th JULY, 2017.

ORAL JUDGMENT.

Heard Shri N. H. Samundre, Advocate for the appellant/ accused and Shri V. A. Thakre, A. P. P. for the respondent/State. 02] The accused has filed this appeal to challenge the judgment passed by the Sessions Court by which he is convicted for offence punishable under Section 376 of the Indian Penal Code and is sentenced to undergo Rigorous Imprisonment for 10 years and to pay fine of Rs.1,000/- and in default of payment of fine to undergo further Simple Imprisonment for 1 month.

2

03] The case of the prosecution is :

The prosecutrix (aged about 14 years at the time of incident) lodged complaint on 12th October, 2011 at about 21.45 hours that an unknown person, aged about 30 to 35 years, had been to her house on 12th October, 2011 at about 11.00 a. m., that person told the mother of the prosecutrix that he is her relative from village Jamgiri, the mother of the prosecutrix had given water to him, that person told the mother of the prosecutrix that he has to withdraw amount of scholarship receivable by her daughter from Ashram Shala of Anantpur but her daughter had gone to some other place and

therefore, he requested the mother of the prosecutrix to send the prosecutrix alongwith him for withdrawal of amount. The prosecutrix contended that initially her mother was reluctant, however, on insistence of that person, the mother of the prosecutrix asked the prosecutrix to go alongwith that person, according to the prosecutrix that person had taken the prosecutrix on his bicycle, initially he had taken her to village Rekhegaon where he filled air in the tubes of bicycle, then he had taken the prosecutrix to village Bhadbhidi where he had gone to the house of one lady, had water and then he had taken the prosecutrix by Pettala road by the side of canal in forest. The prosecutrix contended that when she enquired why he had brought the prosecutrix to that place, he had threatened the prosecutrix and asked her to accompany him. According to the prosecutrix that person took her to a secluded place and committed the crime and then he took the prosecutrix farther in forest and again committed sexual intercourse with her and 3 appeal97.16.J then brought the prosecutrix back to her village and left her at a distance of 1 km. from the village from where she reached her house at about 4.00 p. m.. According to the prosecutrix, after reaching her house, she told about the incident to her mother and sister and then her mother took her to Chamorshi Police Station and lodged the report.

04] After receiving the report, crime was registered and the investigation was undertaken. The accused was arrested on 13 th October, 2011 and after completing the investigation and necessary formalities, charge-sheet was filed in the Court of Judicial Magistrate First Class. As the offence is triable by the Sessions Court, the case was committed to the Sessions Court, the charges were framed, read over and explained to the accused. The accused did not accept the guilt and claim to be tried. The Sessions Court conducted the trial and after conclusion of the trial held that the prosecution has failed to prove that the accused had taken away the prosecutrix alongwith him without obtaining consent of her lawful guardian. The Sessions Court held that the prosecution has proved that on 12th October, 2011, the accused committed rape on the prosecutrix and the accused had threatened the prosecutrix. With these findings, the Sessions Court convicted the accused and sentenced him as per the order. 05] The learned advocate for the appellant has submitted that the conviction of the accused is unsustainable as the learned Sessions Court has flawed by overlooking the fact that neither prosecutrix nor her 4 appeal97.16.J mother have identified the appellant/accused at the test identification parade. The memorandum of Test Identification Parade is referred and it is pointed out from the page Nos.84 and 85 of the paper book that the mother of the prosecutrix and the prosecutrix had not identified the appellant but had identified Pradip Vinod Dharde as the person who had committed crime against the prosecutrix. It is further argued that the Investigating Officer is not examined and therefore, the prosecution has not been able to prove the recovery/seizure of clothes of accused. It is pointed out that the panch witnesses who were present at the time of Test Identification Parade are also not examined. Relying on the evidence of Dr. Pravin (PW-2), it is argued that the prosecutrix had no injuries on her private parts and penetration is also not proved. It is submitted that the prosecution has failed to prove its case beyond reasonable doubt and therefore, the impugned judgment has to be set aside, conviction of the appellant/accused has to be quashed and the appellant has to be acquitted of the charge levelled against him. Alternate submission is made that looking to the age of the appellant and the fact that there is no adverse report regarding his conduct during the period he had been in jail, sentence be reduced and respondent be directed to release him, considering the period which he has undergone imprisonment as the period of sentence.

06] The learned A. P. P. has submitted that the argument that prosecutrix or her mother have not identified the appellant in Test 5 apeal97.16.J Identification Parade is not correct. The memorandum of Test Identification Parade (page No.82) is referred and it is pointed out that the Executive Magistrate has recorded that the prosecutrix and her mother identified the appellant as the person, who has committed the crime, within 2 minutes. It is pointed out from the evidence of Kamlakar

- Executive Magistrate (PW-12) that the prosecutrix and her mother had identified the appellant as the accused by holding his hand and this is reflected at page Nos.84 and 85 of the paper book i.e. annexure to the memorandum of Test Identification Parade in which it is recorded that the prosecutrix and her mother identified the accused by touching him. It is pointed out that the accused came to be arrested after thorough investigation and search and on getting clue from Shriniwas Shankar Khairwar, owner of cycle repairing shop, at whose shop the accused had filled air in tubes of the bicycle. It is submitted that though Shriniwas Shankar Khairwar is not examined as a witness, his statement was recorded during investigation and going by the clue given by him, further investigation/search was conducted and the accused was arrested. It is submitted that the learned Sessions Judge has rightly convicted the appellant/accused and the impugned judgment need not be interfered with.

07] With the assistance of the learned advocate for the appellant / accused and the learned A. P. P., I have examined the record, have gone through the evidence of the witnesses and have also gone through the 6 apeal97.16.J impugned judgment.

As far as the identification of appellant by the prosecutrix and her mother is concerned, I find that the submission made on behalf of the appellant on the point cannot be accepted. Though in the annexure to the memorandum of Test Identification Parade (page Nos.84 and 85), the entry shows that the mother of the prosecutrix and the prosecutrix identified Pradip Vinod Dharde as the accused, it is an apparent error, as rightly pointed out by the learned A. P. P. from the second page of memorandum of Test Identification Parade (page No.82 of paper book), it is mentioned that the prosecutrix and her mother identified Ramesh Raghoji Kulsange within 2 minutes by touching him. Moreover, I find that there is no cross-examination of any of the concerned witnesses i.e. the prosecutrix, her mother or Kamlakar - Executive Magistrate on this point. The accused has not been able to bring anything on record in the cross-examination of these witnesses to show that the claim made by the prosecution that the prosecutrix and her mother identified the appellant as accused within 2 minutes by touching him, is not correct. 08] From the evidence of Dr. Pravin (PW-2), it is clear that he had certified that penetrating sexual act had taken place. The attempts on behalf of the defence to shatter the testimony of this witness in cross- examination failed.

09] I find that the learned Sessions Judge has dealt with the

evidence on record exhaustively. The learned advocate for the appellant has not been able to point out any perversity in the conclusions of the learned Sessions Judge. The appellant / accused has not been able to create any doubt regarding the claim made by the prosecutrix (aged about 14 years) that the appellant/accused has committed crime against her. I see no reason to interfere with the conclusions of the learned Sessions Judge holding appellant guilty of the offence and convicting him. 10] I have examined the alternate submission made on behalf of the appellant/accused and it appears to be appealing, however, looking to the nature of the incident and the fact that the victim was aged about 14 years, I am not inclined to consider the alternate submission.

11] The Appeal is dismissed.

12] The muddemal property be dealt with according to law, after
the period of appeal is over.

JUDGE

PBP