

Bombay High Court

Anna Shankar Bhosale vs The State Of Maharashtra on 26 September, 2017

Bench: V.K. Tahliramani

13. cri apeals 510-12 8

RMA

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 388 OF 2014

Bajarang Tukaram Devkant  
C-5144, Age - 30 Years  
[ At present lodged in Kolhapur  
Central Prison, Kalamba ]

.. Appellant  
(Org. Accused)

Versus

The State of Maharashtra

Respondent

WITH

CRIMINAL APPEAL NO. 510 OF 2012

Anna Shankar Bhosale  
Age - 30 Years, Occ. : Labourer,  
R/o. Indiranagar, Patan,  
Tal. Paltan, Dist. Satara.

[ At present lodged in Kolhapur  
Central Prison, Kalamba ]

.. Appellant  
(Org. Accused)

Versus

The State of Maharashtra  
Through P.I. Patan Police Station,  
Tal. Patan, Dist. Satara

.. Respondent

Appearances

Mrs. Nasreen S.K. Ayubi Advocate (appointed) for Accused No. 1  
Mr. Balasaheb R. Deshmukh Advocate for Accused No. 2  
Mrs. G.P. Mulekar APP for the State

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13. cri apeals 510-12 & 388-14.doc

CORAM : SMT. V.K. TAHILRAMANI &  
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : SEPTEMBER 25 & 26, 2017.

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :

1. Criminal Appeal No. 388 of 2014 is preferred by the appellant-original accused No. 1 Bajarang Tukaram Devkant and Criminal Appeal No. 510 of 2012 is preferred by the appellant-original accused no. 2 Anna Shankar Bhosale against the judgment and order dated 29.11.2011 passed by the learned Addl. Sessions Judge, Karad in Sessions Case No. 46 of 2008. By the said judgment and order, the learned Sessions Judge convicted the appellants as under:-

Convicted	Sentenced to
u/S	
376(2)(f)	R.I. for 10 years and fine of Rs. 5000/- each, in default, to
&	suffer R.I. for 6 months.
376(2)(g)	
r/w	
IPC	

302 Imprisonment for life and fine of Rs. 5000/- each, in r/w default, R.I. for 6 months.

IPC 201 R.I. for 3 Years and fine of Rs. 1000/- each, in default, R.I. r/w for 3 months.

IPC

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The learned Sessions Judge directed that the

substantive sentences of imprisonment shall run concurrently.

Hereinafter, for the sake of convenience, we shall refer to the appellants as they were referred to before the Sessions Court i.e the appellant Bajarang Devkant will be referred as 'accused no. 1' and the appellant Anna Bhosale will be referred as 'accused no. 2'.

2. The prosecution case briefly stated, is as under:

(a) The victim girl was the daughter of PW 9 Rubina and PW 3 Jahangir. The victim girl was about 7 years old at the time of the incident. Rubina, Jahangir and their children including the victim girl were residing at Patan, Dist. Satara.

(b) Accused No. 1 Bajarang was working with Jahangir since about 6 to 7 years prior to the incident. Jahangir used to do the business of selling fruits.

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13. cri apeals 510-12 & 388-14.doc Jahangir had given one fruit trolley to accused No. 1 to do business. On account of this, accused No. 1 was acquainted with Jahangir and his family. Initially, while working with Jahangir, accused No. 1 used to stay in the house of Jahangir, however, about 3 to 4 years prior to the incident, accused No. 1 got married. After marriage, accused No. 1 started residing at Devkant Vasti. Accused No. 3 Dilawar was residing at Devkant Vasti along with his wife and children. Dipanjali was the daughter of accused No. 3. She was the classmate of the victim girl. The family of accused No. 3 was also known to Jahangir and his family.

(c) The incident occurred on 10.2.2008. At about 11.00 a.m., accused No. 3 Dilawar who was the brother of accused No. 1 came to the house of PW 9 Rubina. Accused No. 3 told Rubina that on that day, there was birthday of his son and would the jfoanz vkacsj dj 4 of 22

13. cri apeals 510-12 & 388-14.doc victim girl like to come to his house to attend the birthday celebration. At that time, victim girl stated that she could not go alone. Thereupon, accused No. 3 stated that he would send his daughter Dipanjali and the victim girl should come along with Dipanjali. Thereafter, Dipanjali came to the house of Rubina at about 4.00 p.m. Rubina then sent her daughter i.e the victim girl along with Dipanjali. At that time, the victim girl had worn white top and yellow colour skirt. At about 7.00 p.m., accused No. 1 came to the house of Rubina. He had come to give the account of business for that day. He gave the amount to Rubina. At that time, Rubina told him that there was birthday celebration of the son of accused No. 3 in his house, therefore, after celebration was over, accused No.1 should bring her daughter to her house. Thereupon, accused No.1 Bajrang told her not to worry and after the birthday jfoanz vkacsj dj 5 of 22

13. cri apeals 510-12 & 388-14.doc celebration, he would bring her daughter back to her house. Thereafter, accused No. 1 Bajrang went away.

(d) At about 8.00 p.m., PW 3 Jahangir, the father of the victim girl came home. He saw that his daughter was not at home. When he asked his wife Rubina, she told him that their daughter had gone to the house of accused No. 3 Dilawar since there was birthday celebration of son of accused No. 3. Rubina told Jahangir that their daughter had gone along with Dipanjali to attend the birthday celebration, however, their daughter had not returned home. Rubina also told Jahangir that she had told accused No.1 Bajrang to bring their daughter back to the house. Jahangir and Rubina waited for their daughter but she did not come that night. Previously on 2-3 occasions, accused No. 1 Bajrang had taken the victim girl to his jfoanz vkacsjdj 6 of 22

13. cri apeals 510-12 & 388-14.doc house and used to bring her in the morning, therefore, they did not have any suspicion.

(e) On 11.2.2008 in the morning at about 7.00 a.m., accused No.1 Bajrang came to the house of Jahangir. He made inquiry whether the victim girl had come to his house. Jahangir told Bajrang that Bajrang was to bring the victim girl to his house and why Bajrang was making such inquiry. Thereupon, accused No. 1 Bajrang went away. Then Jahangir along with his wife Rubina went to the house of accused No. 1 Bajrang. He made inquiry with the mother and the wife of accused Nos. 1 and 3. They found that their daughter was not present in their house. The mother and wives of accused Nos. 1 and 3 told Jahangir that their daughter went to their house earlier day. Then Jahangir and his wife searched for their daughter, however, they did not find her, hence, they went to Patan Police Station and gave missing report.

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13. cri apeals 510-12 & 388-14.doc They searched for their daughter the entire day. On 11.2.2008, the dead body of the victim girl was found at about 7.15 p.m. It was kept in a water chamber which was in an isolated place. There was no water in the chamber. There was a pipe in the water chamber and in that pipe, the dead body of the victim girl was found. Injuries were found on the private part and other parts of the dead body of the victim girl. Jahangir then lodged FIR (Exh. 76). Thereafter, investigation commenced. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellants - original accused Nos. 1 and 2 under Sections 376 (2) (f) r/w 34 of IPC and 376(2)(g) r/w 34 of IPC, under Section 302 r/w 34 of IPC and under Section 201 r/w Section 34 of IPC. Charge also came to be framed against accused No. 3 under jfoanz vkacsjdj 8 of 22

13. cri apeals 510-12 & 388-14.doc Section 363 and 201 r/w 34 of IPC. All the accused pleaded not guilty to the said charge and claimed to be tried. Their defence was that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellants as stated in paragraph 1 above, hence, this appeal.

4. We have heard the learned Advocates for the appellants and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that accused No. 1 Bajrang committed rape on the victim girl and thereafter, caused her death and tried to cause disappearance of evidence by concealing the body in the pipe in the water chamber.

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13. cri apeals 510-12 & 388-14.doc

5. No doubt, there is no direct eye witness in the present case and the conviction of the appellants is based only on circumstantial evidence. The circumstances against accused No. 1 Bajrang are 'last seen', medical evidence, recovery of slippers of the deceased at the instance of accused No. 1 and C.A. report.

6. PW 3 Jahangir was the father of the victim girl. He has stated that the victim girl was 7 years old at the time of the incident and she was studying in 2nd standard. He has stated that he knew accused No. 1 Bajrang as accused No. 1 was working in his business i.e fruit business. He had given fruit trolley to accused No. 1 Bajrang for his business purpose. Initially, when accused No. 1 Bajrang was working with Jahangir, he was living in the house of Jahangir, hence, accused No. 1 Bajrang knew Jahangir and his family. 3-4 years prior to the incident, accused No. 1 got married. After marriage, accused No. 1 started residing at Devkant Vasti. Jahangir has stated that on 10.2.2008, he returned home at jfoanz vkacsjdj 10 of 22

13. cri apeals 510-12 & 388-14.doc 8.00 p.m. When he asked his wife Rubina, she told him that their daughter had gone to the house of accused No. 3 Dilawar since there was birthday celebration of son of accused No. 3. Rubina told Jahangir that their daughter had gone along with Dipanjali to attend the birthday celebration, however, their daughter had not returned home. Rubina also told Jahangir that she had told accused No.1 Bajrang to bring their daughter back to the house. Jahangir and Rubina waited for their daughter but she did not come that night. Previously on 2-3 occasions, accused No. 1 Bajrang had taken the victim girl to his house and used to bring her in the morning, therefore, they did not have any suspicion.

Jahangir further stated that on 11.2.2008 in the morning at about 7.00 a.m., accused No.1 Bajrang came to the house of Jahangir. He made inquiry whether the victim girl had come to his house. Jahangir told Bajrang that Bajrang was to bring the victim girl to his house and why Bajrang was making such inquiry. Thereupon, accused No. 1 Bajrang went away. Then Jahangir along with his wife Rubina jfoanz vkacsjdj 11 of 22

13. cri apeals 510-12 & 388-14.doc went to the house of accused No. 1 Bajrang. He made inquiry with the mother and the wife of accused Nos. 1 and

3. They found that their daughter was not present in their house. The mother and wives of accused Nos. 1 and 3 told Jahangir that their daughter went to their house earlier day. Then Jahangir and his wife searched for their daughter, however, they did not find her, hence, they went to Patan Police Station and gave missing report. They searched for their daughter the entire day. On 11.2.2008, the dead body of the victim girl was found at about 7.15 p.m. It was kept in a water chamber which was in an isolated place. There was no water in the chamber. There was a pipe in the water chamber and in that pipe, the dead body of the victim girl was found. Injuries were found on the private part and other parts of the dead body of the victim girl. Jahangir then lodged FIR (Exh. 76).

7. PW 9 Rubina was the mother of the victim girl. She has stated that her daughter was 7 years old at the time of the jfoanz vkacsjdj 12 of 22

13. cri apeals 510-12 & 388-14.doc incident and was studying in 2nd standard. She knew accused No. 1 Bajrang because he was working with her husband since 6 to 7 years prior to the incident. Accused No.3 Dilawar was the brother of accused No. 1. At the time of the incident, accused No. 1 and accused No. 3 were residing at Devkant Locality. Dipanjali, the daughter of accused No. 3 Dilawar was studying in the same class as the daughter of Rubina, therefore, the family of accused Nos. 1 and 3 were known to their family.

PW 9 Rubina further stated that at about 11.00 a.m. accused No. 3 Dilawar who was the brother of accused No. 1 came to the house of PW 9 Rubina. Accused No. 3 told Rubina that on that day, there was birthday of his son and would the victim girl like to come to his house to attend the birthday celebration. At that time, victim girl stated that she could not go alone. Thereupon, accused No. 3 stated that he would send his daughter Dipanjali and the victim girl should come along with Dipanjali. Thereafter, Dipanjali came to the house of Rubina at about 4.00 p.m. Rubina then sent her jfoanz vkacsjdj 13 of 22

13. cri apeals 510-12 & 388-14.doc daughter i.e the victim girl along with Dipanjali. At that time, the victim girl had worn white top and yellow colour skirt. At about 7.00 p.m., accused No. 1 came to the house of Rubina. He had come to give the account of business for that day. He gave the amount to Rubina. At that time, Rubina told him that there was birthday celebration of the son of accused No. 3 in his house, therefore, after celebration was over, accused No.1 should bring her daughter to her house. Thereupon, accused No.1 Bajrang told her not to worry and after the birthday celebration, he would bring her daughter back to her house. Thereafter, accused No. 1 Bajrang went away.

PW 9 Rubina further stated that at about 8.00 p.m., PW 3 Jahangir, the father of the victim girl came home. He saw that his daughter was not at home. When he asked Rubina, she told him that their daughter had gone to the house of accused No. 3 Dilawar since there was birthday celebration of son of accused No. 3. Rubina told Jahangir that their daughter had gone along with Dipanjali to attend the birthday celebration, however, their daughter had not jfoanz vkacsjdj 14 of 22

13. cri apeals 510-12 & 388-14.doc returned home. Rubina also told Jahangir that she had told accused No.1 Bajrang to bring their daughter back to the house. Jahangir and Rubina waited for their daughter but she did not come that night. Previously on 2-3 occasions, accused No. 1 Bajrang

had taken the victim girl to his house and used to bring her in the morning, therefore, they did not have any suspicion. On 11.2.2008 in the morning at about 7.00 a.m., accused No.1 Bajrang came to their house. He made inquiry whether the victim girl had come to his house. Jahangir told Bajrang that Bajrang was to bring the victim girl to his house and why Bajrang was making such inquiry. Thereupon, accused No. 1 Bajrang went away. Then Jahangir along with his wife Rubina went to the house of accused No. 1 Bajrang. He made inquiry with the mother and the wife of accused Nos. 1 and 3. They found that their daughter was not present in their house. The mother and wives of accused Nos. 1 and 3 told Jahangir that their daughter went to their house earlier day. Then Jahangir and his wife searched for their daughter, however, they did not find her, hence, they jfoanz vkacsjdj 15 of 22

13. cri appeals 510-12 & 388-14.doc went to Patan Police Station and gave missing report. Thereafter, on the next day, the dead body of her daughter was brought to the house. PW 9 Rubina saw injuries on the body of her daughter.

8. The first circumstances against the appellant is last seen. PW 10 Abid has deposed on this aspect. He has stated that on 10.2.2008 at about 8.00 p.m., he along with his friend Shabbir went to Cottage Hospital, Patan. While going to the hospital at Devkant Vasti Road, he found accused No. 1 along with the victim girl and one unidentified person along with them. PW 10 Abid stopped his motorbike and asked accused No. 1 Bajrang where he was taking the victim girl. At that time, accused No. 1 Bajrang stated that the victim girl had come to his house to attend the birthday, therefore, he was taking the victim girl back to her house. Abid told accused No. 1 that he will be returning home from the hospital and he would take the victim girl to her house, however, accused No. 1 told Abid that the mother of the jfoanz vkacsjdj 16 of 22

13. cri appeals 510-12 & 388-14.doc victim girl had given the responsibility of reaching the victim girl to her house to him (Bajrang) and therefore, he would take her to her house. Thus, the evidence of PW 10 Abid shows that the victim girl was last seen with accused No. 1 Bajrang.

9. That the victim girl was subjected to rape is seen from the evidence of PW 6 Dr. Yadav who conducted the postmortem on the dead body of the victim girl. Dr. Yadav has stated that on the external genitals, he noticed the following injuries:-

i. Watery discharge from vaginal opening. Laceration on left side labia major. 1 x 1 c.m. Hymen torn. Left lateral of 2 o'clock position. Fourchette tear posteriorly; ii. Multiple abrasions over both thighs on medial and anterior aspect ranging from 0.5 x 2.0 c.m.;

iii. Abrasion over shin (between knee and ankle) over right leg. Bruising anteriorly on neck bluish blackish, multiple abrasion over both buttock and back;

iv. Bruising neck anteriorly muscle blackish blood on opening of anterior. There was evidence of fracture of hyoid bone.

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13. cri apeals 510-12 & 388-14.doc Dr. Yadav has stated that injuries noticed in larynx trachea and bronchia are corresponding to external injuries of neck with fracture of hyoid bone. According to Dr. Yadav, the cause of death was due to asphyxia due to throttling. Dr. Yadav has stated that the injuries seen on the victim girl were possible due to forcible sexual intercourse. Similarly multiple abrasion on thighs and skin may be possible during forceful sexual intercourse.

10. The next circumstance against the accused No. 1 is recovery of slippers of the victim girl at the instance of accused No. 1 Bajrang. PW 4 Panch Witness Borate has deposed on this aspect. He has stated that he was called by the police to Patan Police Station. In his presence, accused No. 1 Bajrang made a statement that show the spot where he threw the slippers of the victim girl. Accused No. 1 Bajrang then led the police and panchas to the spot and showed the place where he had thrown the slippers of the victim girl. They saw that the slipper was entangled in jfoanz vkacsjdj 18 of 22

13. cri apeals 510-12 & 388-14.doc thorny branch of Babul tree. Thereafter, accused No. 1 took them to the bank of stream where he had thrown the other slipper of the victim girl. Police seized the slippers. PW 9 Rubina, the mother of the victim girl has identified the footwear as that of her daughter.

11. PW 5 panch witness Tanaji has stated that early in the morning of 12.2.2008, he was called to Patan Police Station. Police informed him that they were going to seize the clothes on the person of accused No. 1 Bajrang. Thereafter, police seized Tee shirt and pant of accused No. 1 Bajrang in presence of PW 5 Tanaji. The evidence of Investigating Officer shows that these clothes were sent for chemical analysis. The clothes of the deceased came to be seized under panchnama Exh. 84. They were white colour top and yellow colour skirt. These clothes were also sent to C.A. As per C.A. report Exh. 113, sample of earth found on the top and skirt of the victim girl tallied with the sample of earth found on the Tee shirt and Pant of accused No.1 Bajrang. In jfoanz vkacsjdj 19 of 22

13. cri apeals 510-12 & 388-14.doc addition, the C.A. report Exh. 116 shows that blood group of accused No. 1 Bajrang was "A" group. The C.A. report Exh. 118 shows that the top and skirt of the deceased victim girl was stained with blood and in addition, the skirt of the victim girl was stained with semen of "A" group. This is a strong incriminating circumstance against accused No. 1 Bajrang.

12. One more circumstance which points out to the complicity of accused No.1 Bajrang is the evidence of PW 8 Dr. Jadhav. Dr. Jadhav has examined accused No. 1 Bajrang on 12.2.2008 at about 11.30 a.m. On examination, he found following injuries on the person of accused No. 1 Bajrang:-

i. Abrasion over glans penis proximal to urethral meatus on superior surface of size 0.5 c.m. x 0.3 c.m. bluish brown in colour.

In the opinion of Dr. Jadhav, considering the colour of the said injury, it was aged more than 24 hours and considering the location of injury on the part of the body, it was due to trying of penetration of penis into vagina. Thus, looking to the circumstances proved by the prosecution jfoanz vkacsjdj 20 of 22



13. cri apeals 510-12 & 388-14.doc against accused No. 1 Bajrang, we are of the opinion that the prosecution has proved its case against accused No. 1 - Bajrang beyond all reasonable doubt.

13. As far as accused No. 2 Anna Bhosale is concerned, the only circumstance against him is that his blood group was "O" and on the skirt of the victim girl, semen of "O" group was found. There is no other circumstance against accused No. 2 Anna Bhosale. Even as far as the circumstance of last seen is concerned, though PW 10 Abid has stated that when accused No. 1 Bajrang was taking the victim girl along with him at 8.00 p.m. and at that time, one other person was with accused No. 1 Bajrang, PW 10 Abid has not identified accused No. 2 Anna Bhosale as the person who was with accused No. 1 Bajrang and the victim girl at that time. Looking to the fact that the only circumstance against accused No. 2 Anna Bhosale is that there was semen of "O" group on the skirt of the deceased victim girl, in our opinion, we do not find this circumstance by itself to be sufficient to jfoanz vkacsjdj 21 of 22

13. cri apeals 510-12 & 388-14.doc prove beyond reasonable doubt that accused No. 2 Anna Bhosale is involved in this case. Thus, as far as accused No. 2 Anna Bhosale is concerned, we are inclined to set aside his conviction under Sections 372(2)(f), 376(2)(g), 302 and 201 r/w 34 of IPC. However, as far as accused No. 1 Bajrang is concerned, we are inclined to dismiss his appeal. Hence, we proceed to pass the following order:-

#### ORDER

1. Criminal Appeal No. 388 of 2014 is dismissed.

2. Criminal Appeal No. 510 of 2012 is allowed.

3. The conviction and sentence of accused No. 2 - Anna Shankar Bhosale under sections 376(2)(f) and 376(2)(g) r/w 34 of IPC, 302 r/w 34 of IPC and 201 r/w 34 of IPC is hereby set aside. His bail bond shall stand cancelled.

[ DR. SHALINI PHANSALKAR-JOSHI, J ] [ SMT. V.K. TAHILRAMANI, J. ] jfoanz vkacsjdj 22 of 22