

Bombay High Court

Pravin Nayankumar Jaiswal And ... vs State Of Maharashtra Thr. Police ... on 28 July, 2017

Bench: Z.A. Haq

1

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

CRIMINAL APPEAL NO.108/2016

Jitendra S/o Dayaram Jangam,
aged about 46 Yrs., Occu. Rickshaw Puller,
R/o Awastinagar, Shrivasti Nagar,
Warpakhad, Nara Road, P.S. Jaripatka,
Nagpur.

..Vs..

State of Maharashtra,
through Police Station Officer,
Police Station Jaripatka, Nagpur.

Ms. Sonali Khobragade, Advocate for the appellant.
Shri N.R. Patil, A.P.P. for the respondent / State.

CORAM : Z.A.HAQ, J.

DATE : 28.7.2017.

ORAL JUDGMENT

1. Heard Ms. Sonali Khobragade, learned Advocate for the appellant / accused and Shri N.R. Patil, learned A.P.P. for the respondent / State.

2. The appellant / accused has challenged the judgment passed by the learned Additional Sessions Judge by which the appellant / accused is convicted for the offence punishable under Section 376(2)(k)(l) of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.2,000/- (Rs. Two Thousand) and in default of payment of 2 appeal108.16 fine to undergo further rigorous imprisonment for 3 months.

3. The case of the prosecution is that on 9th May, 2013 at about 11 p.m. Chhaya / wife of accused returned to her home and she found the accused with an unknown lady in naked condition, on seeing Chhaya the accused eloped, Chhaya took that lady to police station and on enquiry it was found that she is able to understand only Telgu language, a member of Mahila Dakshata Committee

Smt. Vijaylaxmi Hajare knowing Telgu language was called, however, except for stating her name the lady had not stated anything, then medical examination of that lady was carried out and on the basis of statement of Chhaya and medical examination of that lady (hereinafter referred to as "prosecutrix") F.I.R. was registered on 30 th May, 2013. The investigating agency had undertaken the investigation and after completing the necessary formalities, filed charge-sheet before the Judicial Magistrate First Class and as the offence punishable under Section 376 of the India Penal Code is triable by the Sessions Court, case was committed to the Sessions Court. The Sessions Court framed charge, read over and explained it to the accused, the accused did not accept the guilt and claimed to be tried and, therefore, the trial was conducted. After conducting the trial, the learned Additional Sessions Judge recorded that the prosecution has proved that prosecutrix suffered mental disability and that the accused committed rape on the prosecutrix. With the above findings the learned Additional Sessions Judge convicted the 3 appeal108.16 accused and sentenced him as per the order.

4. The learned Advocate for the appellant / accused has argued that the prosecutrix is aged about 30 years and the prosecution has not brought any material on record to show that the prosecutrix suffered any injuries, therefore, it cannot be said that the accused forcibly committed sexual intercourse. Relying on the report of medical analysis, the learned Advocate for the appellant / accused has argued that the claim of the prosecution that the blood group 'A' which is of the prosecutrix is detected on pubic hairs and nail clippings of the accused is not proper. The judgment given by the Division Bench of this Court in the case of Vijay S/o Shriram Thakre V/s. The State of Maharashtra reported in 2017 ALL MR (Cri) 1501 is relied upon and it is submitted that as there is no evidence of any injury on the person of the prosecutrix the conviction of the appellant / accused is unsustainable. It is prayed that the impugned judgment be set aside and the appellant / accused be acquitted.

5. The learned A.P.P. has supported the impugned judgment.

6. With the assistance of the learned Advocate for the appellant and learned A.P.P. I have examined the record.

4

7. The prosecutrix had been patient of Psychosis. In the

cross-examination of Dr. Pravin Nilkanth Navkhare (P.W.10) it is recorded that the prosecutrix was not aware of herself or her existence and was unable to respond to any command. This had been the consistent case of the prosecution right from the beginning and the cross-examination of Dr. Pravin substantiates the claim of the prosecution in this regards. The F.I.R. was registered on the statement of Chhaya / wife of accused. In the cross-examination of Chhaya (P.W.1) it has come on record that when she returned to her house alongwith her children she saw that people had gathered near her

house and then she was told that her husband was with a lady in naked condition and, therefore, she had gone to the police station and given her statement. The report of medical examination of accused conducted by Dr. Avinash Harishchandra Waghmode (P.W.8) shows that anything was not found suggesting that the accused was incapable to perform sexual intercourse. The report of medical examination of accused (Exh. No.49) shows that the accused had external injuries which were about 4 days old.

8. I find that the learned Additional Sessions Judge has exhaustively considered the relevant evidence and has rightly recorded the findings on the basis of which the accused is convicted. It cannot be said that there is any mis-appreciation of evidence on record or any material evidence has not been 5 apeal108.16 considered by the learned Additional Sessions Judge.

9. In view of the above, the appeal is dismissed.

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

JUDGE Tambaskar.