

Bombay High Court

Rameshwar Shrawan Iwanathe (In ... vs State Of Maharashtra Through ... on 21 September, 2017

Bench: Ravi K. Deshpande

1

apeal129.16.odt

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

Criminal Appeal No.129 of 2016

Rameshwar Shrawan Iwanathe,
Aged 40 years,
Occupation - Labour,
R/o Kamthi (Khanapur), Tah. Arvi,
District Wardha.

... Appellant
(In Jail)

Versus

State of Maharashtra,
through Police Station Officer,
Kharangna, Tah. Arvi,
District Wardha.

... Respondent

Ms Sonali Saware, Advocate (Appointed) for Appellant.
Shri Nitin Rode, Additional Public Prosecutor for Respondent.

Coram : R.K. Deshpande & Manish Pitale, JJ.

Date of Reserving the Judgment : 18th September, 2017 Date of Pronouncing the Judgment: 21st September, 2017 apeal129.16.odt Judgment (Per R.K. Deshpande, J.) :

1. The appellant-accused was charged for the offence punishable under Section 376(2)(f)(n) of the Indian Penal Code (IPC) read with Sections 5(1)(n) and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The accused was also charged for the offence punishable under Section 506 of IPC. In Special (Child) Case No.25 of 2014, the learned Special Judge under POCSO Act, at Wardha, has convicted the accused for all the aforesaid offences and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer further rigorous imprisonment for a period of six months, for the offence under Sections 5(1)(n) and 6 of POCSO Act. The accused is also sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default, to suffer further rigorous imprisonment for a period of two months, for the offence under Section 506 of IPC. It is recommended that the District Legal Services Authority,

Wardha, to pay the compensation to the victim under Section 357-A of the Criminal Procedure Code.

apeal129.16.odt

2. The case of the prosecution in brief is as under :

A minor daughter Ku. Kavita, under the age of 18 years, is the victim of rape at the instance of her father, the accused. The mother of the victim died when she was one year old, and since then her father brought her up. In the year 2011, she was educating in 8th Standard and one day during night hours after taking meals when the victim was sleeping, her father came at about 10 O' Clock in the night and started outraging her modesty. She resisted and requested her father from doing it. However, the father forcibly ravished her. Since then this was the regular feature adopted by the father by using force till 8-11-2013, when she went to reside in the house of her aunt PW 2 Sumitra Uike, a real sister of the accused. It was noticed by PW 2 that the victim was pregnant, and on enquiry, the victim narrated the incident and told that she has conceived it from her father, who has threatened her not to disclose the incident to anybody. Thereafter the husband of PW 2 dropped the victim to apeal129.16.odt her house at about 8 p.m. The accused after an hour and half took the victim in the field of one Raju Bramhane and left her in the hut where there was complete darkness. At about 11.30 to 12 O' Clock in the night, the police persons came there and took her to the Police Station. The victim lodged the report on 9-11-2013, on the basis of which, the offences came to be registered vide Crime No.11 of 2013 at Police Station Kharangna.

3. During the investigation, the doctor collected the blood samples of the victim as well as the accused in a sealed condition, which was forwarded to the Chemical Analyzer. In January 2014, the victim gave birth to a child, whose blood sample was also collected and sent it to the Chemical Analyzer in a sealed condition. PW 6 Vaishali Mahajan, working as Assistant Chemical Analyzer with Forensic Science Laboratory, gave her opinion in the reports at Exhibits 42 and 43, concluding that the accused and the victim are the biological parents of the child. Victim Ku. Kavita entered the witness-box and was examined as apeal129.16.odt PW 1; her aunt Sunita Uike was examined as PW 2; one neighbourer Sindhubai Bawane was examined as PW 3; Raju Bramhane, in whose field the victim was left over by the accused, was examined as PW 5; Dr. Indrajit Khandekar, who examined the victim and submitted his reports about the pregnancy of the victim at Exhibit 37 and 38, was examined as PW 4; API Vaishali Totewar, who narrated the proceedings followed in the investigation, was examined as PW 7; and one Dharmapal Kamble, who was acting as a panch, was examined as PW 8.

4. The learned Judge of the Special Court records the finding that the prosecution has proved that in the year 2011, the accused committed rape on the victim and thereafter repeatedly and frequently committed the same till 8-11-2013 and has thereby committed the offence punishable under Section 376(2)(f)(n) of IPC read with Sections 5(1)(n) and 6 of POCSO Act. The Special Court also records the finding that the prosecution has proved that during the same period, time and place, the accused had committed the criminal intimidation by apeal129.16.odt putting her daughter (victim) in fear and threats of life and has thereby committed an offence punishable under Section 506 of IPC.

5. We have heard Ms Sonali Saware, the learned counsel appointed to represent the appellant-accused; and Shri Nitin Rode, the learned Additional Public Prosecutor for the respondent-State.

6. PW 1 Ku. Kavita is the prosecutrix, and her date of birth is 6-3-1997. Her mother died when she was aged about two years. She states that her father brought her up in early days and thereafter her paternal aunt PW 2 Sumitra Uike brought her up. PW 1 is resident of Kamthi. At the time of incident in the year 2011, she was studying in 8th Standard. She is the informant of the incident, and the crime was registered on 8-11-2013 at 21.30 hours against the accused, who is her real father. She has entered the witness-box as PW 1 and stated that since the year 2011, the accused has been ravishing her to satisfy apeal129.16.odt his sexual desire. The accused started outraging her modesty since 2011, and in spite of her resistance, the accused had been forcibly committing the act of sexual intercourse, as a result of which she became pregnant. She states that she had told about the incident to Sindhu Aji. When the prosecutrix went to the house of her paternal aunt PW 2 Sau. Sumitra Uike at Kharangana (sister of the accused), she asked her upon seeing the physical appearance, as to who committed the sin. At that time the prosecutrix narrated the story. The paternal aunt told this fact to her paternal uncle, as a result of which there was a quarrel between both of them. The paternal uncle took her along with him and dropped at her house at about 8 p.m. on 8-11-2013. After about half an hour, the accused came and took the prosecutrix with him and left her in the field of one Raju Bramhane at about 9 p.m. with an assurance that he would be back with a quilt. The prosecutrix stayed in the hut where there was complete darkness. At about 11.30 to 12 'O Clock in the night, the police came and took her to the police station. The offence was accordingly registered on 9-11-2013, upon her oral apeal129.16.odt complaint at Exhibit 25.

7. PW 2 Sau. Sumitra, the paternal aunt (real sister of the accused) of the prosecutrix is the resident of Kharangana and has also entered the witness-box and she corroborates the story putforth by the prosecutrix. She states that in June 2013, she had gone to the house of victim after dropping her son in the School at Pulgaon. At that time, PW 1 told her that she does not want to stay with the accused and wanted to accompany her and, therefore, she was taken to Kharangana. At that time, PW 2 found the victim pregnant and made inquiries with her. The victim told her that she had conceived from the accused. The accused used to consume liquor and established physical relations with her and if it is disclosed, threatened her. The victim lived with her for about four and half months. Except stating that whenever she went to the house of the accused, the victim did not make any complaint, there is nothing in the cross-examination to shatter her version in the examination-in-chief.

apeal129.16.odt

8. PW 3 Sindhubai Bawane, the neighbourer, who states that the victim was in 10th Standard. On one day, she was sitting on a rock and crying. When she made an enquiry with her, the victim told that her father used to remove her clothes and forcibly establish physical relation with her and if she shouted, he used to gag her mouth. This witness states that the victim told her that her father had threatened her that if she says something, he would kill her. This witness also corroborates the theory putforth by the paternal aunt of the prosecutrix.

9. PW 5 is Raju Brahmane, who kept the accused as Watchman in his field during night hours. He states that on 8-11-2013, he returned from his field at about 3.30 p.m. The victim was brought to Kamthi by the husband of PW 2, and at that time, the accused was not in the house. He saw that the stomach of the victim had bulged and when he made enquiry, the victim did not say anything. The husband of PW 2 went away. PW 5 further states in his examination-in-chief as under :

apeal129.16.odt "... The accused returned to his house between 7.30 to 8.00 pm. The accused asked the victim from whom she had conceived. The accused took the victim along with him to my field. He returned at about 9.30 pm. He was in inebriated condition. The accused then told me that the victim had defamed him therefore he would kill her and himself. Therefore I had a phone call to PS. Kharangana but the call could not be connected therefore I telephoned the control room at Kharangana. After some time the police came to our village. There were some lady police officer also. Then we went to my field. We saw that the victim was sleeping alone. As it was dark the torch light was turned on. The lady police officers took the custody of the victim. The victim was taken to the police station Kharangana where she disclosed that when she was in 8th standard the accused committed forceful intercourse with her and thereafter he use to commit such regularly."

This witness has also not shattered in the cross-examination.

apeal129.16.odt

10. Considering the evidence of all the witnesses, the learned Judge of the Sessions Court has held that the prosecution has established that since the year 2011, the accused had forcible sexual intercourse with the victim and thereafter he used to regularly ravish her and also threatened her with the consequences if she discloses about the incident to anybody. The Court holds that though the victim had not given the exact date when she was ravished, this will not affect the story of the prosecution and of the incident narrated by the victim.

11. The Sessions Court takes into consideration the defence raised by the accused that in the case of rape, the victim would suffer inflammation or redness or bleeding from her private part and there is such no evidence on record which raises a suspicion. After referring to the medical evidence, it is held that the absence of inflammation or redness or bleeding from the private part of the victim is of no consequence.

apeal129.16.odt

12. The Court thereafter refers to the evidence of PW 4 Dr. Khandekar, who medically examined the victim, and on external examination, he noted that the victim was pregnant. On internal examination, he found that the hymen was ruptured on multiple sides and possibility of sexual assault could not be ruled out. He opined that the victim was pregnant by 27 to 28 weeks as on 9-11-2013. The forensic medical reports of the victim at Exhibits 37 and 38 were proved. The forensic medical report of the accused at Exhibit 39 also proved that no abnormality was detected,

hampering the capacity of the accused to perform the sexual intercourse.

13. The Sessions Court also deals with the delay caused in lodging the report and it is held that the same would not be fatal to the case of the prosecution. It holds that the delay puts the Court on guard to search for and consider if any explanation has been offered for the delay. In para 33 of the judgment, the Sessions Court holds that the accused has been ravishing the victim from the year 2011 till 9-11-2013, i.e. the date of lodging appeal129.16.odt the report and, therefore, it cannot be said that there was any delay. The reliance is placed upon the evidence of PW 5 Raju, with whom the accused was employed as Chowkidar. The Court also considers the threats given by the accused to the victim.

14. Relying upon the evidence of PW 6 Vaishali Mahajan, who submitted the parentage test results at Exhibit 43, it is held that accused Rameshwar and victim Kavita are concluded to be the biological parents of the baby of Kavita. It is urged by Ms Sonali Saware, the learned counsel appointed for the appellant-accused that there is no evidence on record to show that the blood sample of the accused was collected for DNA test. Exhibits 46 and 48 are the letters issued to the Medical Officer for collection of blood samples of the victim and the accused. Exhibit 47 is the invoice challan under which the samples were received for DNA test by the Regional Forensic Science Laboratory through Police Constable Dilip, Buckle No.1134, examined as PW 12. PW 7 Vaishali, the Investigation Officer, states in her cross-examination that "The blood samples of the appeal129.16.odt accused and the victim were collected in my presence". She further states that "It is true to say that in the present case the blood samples of accused and the victim is taken by the concerned nurse".

15. In a recent decision of the Apex Court in the case of Mukesh and another v. State (NCT of Delhi) and others, reported in (2017) 6 SCC 1, it is held in para 228 as under (by Hon'ble Shri Justice Dipak Misra, J.) :

"228. From the aforesaid authorities, it is quite clear that DNA report deserves to be accepted unless it is absolutely dented and for non-acceptance of the same, it is to be established that there had been no quality control or quality assurance. If the sampling is proper and if there is no evidence as to tampering of samples, the DNA test report is to be accepted."

Hon'ble Smt. Justice R. Banumathi, J., who wrote the concurring judgment, has held in para 461 as under :

appeal129.16.odt "461. As discussed earlier, identification by DNA genetic fingerprint is almost hundred per cent precise and accurate. The DNA profile generated from the bloodstained clothes of the accused and other articles are found consistent with the DNA profile of the victim and DNA profile of PW 1; this is a strong piece of evidence against the accused. In his evidence, PW 45 Dr. B.K. Mohapatra has stated that once DNA profile is generated and found consistent with another DNA profile, the accuracy is hundred per cent and we find no reason to doubt his evidence. As pointed out by the courts below, the counsel for the defence did not raise any substantive

ground to rebut the findings of DNA analysis and the findings through the examination of PW 45. The DNA report and the findings thereon, being scientifically accurate clearly establish the link involving the accused persons in the incident."

In view of the aforesaid law laid down by the Apex Court and after rejecting the challenge to the blood sample of the accused, there is hardly any scope for us to accept the contention raised and we reject the same.

apeal129.16.odt

16. For the reasons stated above, we do not find any fault with the view taken by the learned Special Judge under POCSO Act holding the accused guilty of the offence punishable under Section 376(2)(f)(n) of IPC read with Section 5(1)(n) of POCSO Act and also for the offence punishable under Section 506 of IPC. The findings are based upon the appreciation of evidence and we do not find any reason to take a different view of the matter except to maintain the conviction recorded by the learned Special Judge under POCSO Act.

17. The appeal is, therefore, dismissed.

18. The fees of the learned counsel appointed for the appellant are quantified at Rs.5,000/-

[Rupees Five Thousand].

(Manish Pitale, J.)

(R.K. Deshpande, J.)

Lanjewar, PS