

Bombay High Court

Raju S/O. Madhav Kasture (In Jail) vs The State Of Maharashtra Thr. ... on 19 September, 2017

Bench: Swapna Joshi

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Judg 190917 a

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

Criminal Appeal No.104 of 2017

Raju Madhav Kasture,
aged about 26 years, Occ.- Cultivator,
R/o.-Somanpalli, Tq. Chamorshi,
District Gadchiroli

-Versus-

The State of Maharashtra,
through P.S.O. Chamorshi, District Gadchiroli Respondent.

Mr. I.G. Meshram, Counsel for appellant.

Mr. S.B. Bissa, Additional Public Prosecutor for respondent/State.

Coram : Mrs. Swapna Joshi, J.

th Dated : 19 September, 2017.

ORAL JUDGMENT This appeal has been preferred by the appellant (hereinafter will be referred as 'the accused') against the judgment and order passed by the learned Sessions Judge, Gadchiroli in Sessions Trial No.2 of 2014 on 24-07-2015, whereby the learned trial Judge had convicted the accused for the offence punishable under Section 376(2)(k)(l) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.1000/-, in default, to suffer rigorous imprisonment for three months.

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Judg 190917

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I have heard Mr. I.G. Meshram, the learned counsel for the

appellant and Mr. S.B. Bissa, the learned Additional Public Prosecutor for the respondent/State. With their assistance, I have carefully gone through the record of the prosecution case.

3] The facts leading to prefer this appeal can be summarised as under :-

The victim was aged about 19 years mentally retarded girl and daughter of the complainant Vishwanath (PW-13), resident of Somanpalli. She was residing along with her family members i.e father, mother and sister at Somanpalli, Tq. Chamorshi, District Gadchiroli. It is the case of the prosecution that, on 30-09-2013, at about 3.00 pm, complainant PW-6-Ganpati was in his field

situated behind his residential house. Since 12 o' clock in the noon he was sitting below the tree and taking care of his field and he was expelling parrots from his field. At that time his wife was with him. When he was expelling parrots in his field, he heard somebody's voice "to lie down properly". On this, the complainant went ahead and he noticed that in his field where Maize crops were there, accused was committing sexual intercourse with the prosecutrix, on pressing her mouth. On this PW-6 called PW-7-Police Patil Smt. Mangalabai Bhendare whose house was adjacent to his house. PW-6-Ganpati called PW-7-Smt. Mangalabai and asked her to come to his field. In the meantime, wife of complainant PW-8-Shewantabai also came to that place. The complainant narrated the incident to his wife. PW-7- Smt. Mangalabai and her husband also came to that place and they all 3 Judg 190917 apeal 104.17.odt rushed to the field of the complainant. They all saw that the accused was committing sexual intercourse with the prosecutrix. On seeing the incident, PW-7-Smt. Mangalabai called the accused. On hearing this, the accused immediately got up and started running away by holding his pant. The accused was asked to put on his pant. Thereafter, the accused was brought in front of the house of Chakradhar Bhendare. Similarly, the prosecutrix was also asked to put on her clothes and she was also brought in front of the house of Chakradhar. Thereafter, PW-7-Smt. Mangalabai called the Police and handed over the accused to the Police. PW-6-Ganpati, PW-7-Smt. Mangalabai and her husband Chakradhar proceeded to the Police Station along with the victim and the accused. PW-6-Ganpati lodged his complaint (Exhibit-40). On the basis of the said complaint, the offence was registered.

4] During the course of investigation, the prosecutrix was referred to District Hospital, Gadchiroli for her medical examination. The Police visited the place of incident and prepared the spot panchanama (Exhibit-60) in the presence of the panch witnesses. The Police also referred the accused for his medical examination. The clothes of the victim as well as the accused were taken charge by the Police under seizure panchanama (Exhibit-20). The samples of blood, pubic hair of the accused and the victim were collected (Exhibits-19 and 21 respectively) and sent to CA office for analysis. Similarly, the samples of vaginal swab of the victim and the semen of the accused were also collected and sent to the CA for analysis. The CA reports were collected (Exhibits-82 and 83 4 Judg 190917 apeal 104.17.odt respectively). The statements of the witnesses were recorded and on completion of the investigation, the chargesheet came to be filed in the Court of learned JMFC, Chamorshi. The case was committed to the Court of Sessions. The learned trial Judge framed the charge. The accused pleaded not guilty to the charge levelled against him and claimed to be tried. On conducting the trial, on appreciation of the evidence and hearing both the sides, the learned trial Judge convicted the accused as aforesaid. Hence, this appeal.

5] I have heard Mr. I.G. Meshram, the learned Counsel for the appellant and Mr. S.B. Bissa, the learned APP for the State. I have carefully gone through the record and proceedings of the case. 6] Mr. I.G. Meshram, the learned Counsel for the appellant vehemently argued that the learned trial Judge has committed an error on relying upon the testimony of the alleged eye witnesses and has erroneously come to the conclusion that the accused has committed the offence of rape. According to the learned Counsel for the appellant, the appellant has been falsely implicated in the case. The Ld. APP Mr. Bissa contended that the Ld. trial Judge has relied upon the evidence of the eye witnesses & the medical evidence & has rightly convicted the accused. 7] In order to verify the rival contentions of both the sides, it would be advantageous to go through the evidence led by the

prosecution. The prosecution has mainly relied upon the testimony of the alleged eye witnesses i.e. PW-6-Ganpati, PW-7-Smt. Mangalabai and PW-8-

Shewantabai. Apart from that the prosecution has relied upon

testimony of PW-1-Dr. Pravin and PW-14-Dr. Purushottam who are the Medical Officers. The prosecution has not examined the prosecutrix for the reason that the prosecutrix was brought in the Court for examination however she was not found fit to be examined and the said fact was observed by the learned Sessions Judge and he passed order below Exhibit-1 in respect of the incapacity of the victim to depose before the Court. Looking to the case of the prosecution that the prosecutrix was mentally retarded girl and she was incapable to depose before the Court, considering this aspect, the prosecution case is to be scrutinized carefully.

8] PW-6- Ganpati, the complainant deposed that, at the time of incident he was present in his field (Sandwadi). He was expelling the parrots which had come to his field. His wife was also present with him. At that time, he heard the voice of one person. Hence, he went ahead towards the place where he heard the voice. At that time he saw that, accused Raju was committing sexual intercourse with the prosecutrix on pressing her mouth. PW-6 returned back and informed about the same to his wife. He informed his wife to bring the Police Patil as the house of the Police Patil was near his field. Accordingly, PW-7-Smt. Mangalabai, the Police Patil and her husband Chakradhar came to that place. Thereafter, they all went to the place of incident. The accused was seen committing sexual intercourse with the prosecutrix. On noticing this, PW-7-Smt. Mangalabai called the accused. The accused tried to put on his pant and run away from the spot. However, Chakradhar caught hold of 6 Judg 190917 appeal 104.17.odt him. Thereafter, the wife of complainant PW-8-Shewantabai and PW-7- Smt. Mangalabai put on the clothes of the prosecutrix. The accused and the prosecutrix were brought to the house of the Police Patil. Thereafter, PW-7-Smt. Mangalabai called the Police. PW-7-Smt. Mangalabai took the accused and the prosecutrix to the Police Station at Chamorshi. The complainant lodged the complaint (Exhibit-40). In the cross examination PW-6 failed to state as to where from the accused and the prosecutrix had come to his field. PW-6-Ganpati categorically stated that the prosecutrix being of unsound mind was escaping attention of her parents and she used to move in the village. Finally it was suggested to PW-6- Ganpati that he had committed sexual intercourse with the prosecutrix and at that time his wife was not present in the field and to conceal the said fact he has falsely implicated the accused in this case. PW-6-Ganpati has denied the said suggestion. On careful scrutiny of the testimony of PW-6- Ganpati, it is found that, his testimony is not shattered in the cross examination and his testimony is supported by the testimony of PW-7-Smt. Mangalabai.

9] PW-7-Smt. Mangalabai, the Police Patil of the village stated that on the date of incident at about 2.00 to 3.00 pm, when she was present in the courtyard of her house PW-6-Ganpati called her in a low tone. At that time her husband and wife of PW-6-Ganpati were also present there. PW-6-Ganpati told her that accused Raju is committing sexual intercourse with the prosecutrix in his field and asked her to come to his field and see the same. Accordingly, they all went to the field and 7 Judg 190917 appeal 104.17.odt saw that accused Raju was committing sexual intercourse with the prosecutrix by pressing her mouth. PW-7-Mangalabai called the accused. The accused got up and tried to run away from that place along with his clothes. However, Chakradhar caught hold of him. The accused was directed to put on his clothes, so also the prosecutrix was also asked to put on her clothes. Thereafter, they all came to the house of PW-7-Smt. Mangalabai. PW-6-Ganpati informed the Police about the said incident on telephone and at about 6.00 pm, the Police visited her house. The Police apprehended the accused. It was suggested to PW-7-Smt. Mangalabai that the prosecutrix is mentally retarded and she wanders in the village and goes with any person who offers her 'Kharra' or tobacco. PW-7-Smt. Mangalabai denied the said suggestion given to her. It was suggested to her that due to cordial relations with PW-6-Ganpati, she falsely implicated the accused in the offence. PW-7-Smt. Mangalabai denied the said suggestion given to her. Nothing has been elicited from the cross examination of PW-7-Smt. Mangalabai and her testimony is not shattered in cross examination on the material aspect. 10] The testimony of PW-8-Shewantabai, who is the wife of PW-6-Ganpati reveals that on the date of incident she along with her husband was present in the field. Her husband was expelling the parrots from the field. Her husband called her and asked her to accompany him to the field. Her husband informed her that Raju is committing sexual intercourse with the prosecutrix in their field and asked her to call the Police Patil. PW-8-Shewantabai then gave a call to Police Patil and 8 Judg 190917 appeal 104.17.odt Police Patil along with her husband came to the field of PW-8- Shewantabai. PW-8-Shewantabai was declared hostile by the prosecution. However, during the course of cross examination she admitted that, she had visited the place of incident and had seen the incident. She had seen accused Raju committing sexual intercourse with the prosecutrix. She admitted that PW-7-Smt. Mangalabai called the accused. Accused Raju got up and ran away along with his clothes. Chakradhar caught hold of Raju and then Raju was taken to the Police Station. She stated that as she did not remember all these facts earlier, she had not stated those facts before the Court. A suggestion was also put to her that her husband had committed sexual intercourse with the prosecutrix and to conceal the same, she is deposing falsely before the Court. PW-8- Shewantabai denied the said suggestion. It was suggested to PW-8-Shewantabai that she had not seen the accused committing sexual intercourse with the prosecutrix. PW-8-Shewantabai denied the said suggestion. On careful scrutiny of PW-8-Shewantabai she has supported the case of the prosecution on the material aspects. 11] As regards the testimony of PW-13-Vishwanath, who is the father of prosecutrix, he has deposed that the prosecutrix is his daughter and she is mentally retarded. He further stated that on the date of incident he had gone for labour work in the field. On that day, in the noon time, his daughter Sangita came to the field and informed about the incident. 12] The testimony of PW-9-Sangita who is the sister of prosecutrix shows that on the date of incident at about 12 o'clock in the 9 Judg 190917 appeal 104.17.odt noon, accused Raju was wondering near their house. As she was frightened, she had gone alone out of the house and returned back at about 2.00 pm. At that time there was no one present in the house. She stated that the prosecutrix was not present in the house. She searched the prosecutrix in the village. At about 2.30 pm, she heard the commotions near the house of PW-6-Ganpati. Therefore, she went

to that place and she came to know from PW-7-Smt. Mangalabai that accused committed rape on prosecutrix. PW-8-Shewantabai asked her to bring her parents and accordingly she went to her parents. 13] As far as the medical evidence is concerned, PW-1- Dr. Pravin stated that on 01-10-2013, he examined the prosecutrix. According to him, the prosecutrix was mentally retarded lady with history of Epilepsy. On examination he found that the hymen of the prosecutrix was torn and it was bleeding to touch. Her vagina was admitting two fingers. In his opinion, sexual intercourse had taken place with the prosecutrix at least before 24 hours of examination. Therefore, PW-1- Dr. Pravin issued medical certificate of prosecutrix (Exhibit-12). It is noticed that the medical evidence corroborates the ocular testimony of the complainant as well as the other eye witnesses i.e. PW-7-Mangalabai and PW-8-Shewantabai. On careful scrutiny of the testimony of all the witnesses, their testimony is found cogent, reliable and trustworthy. Their testimony is not shattered in cross examination. Apart from that it is suggested to the witnesses that the complainant had committed sexual intercourse with the prosecutrix. All the witnesses denied the said 10 Judg 190917 apeal 104.17.odt suggestion. No material has been brought on record by the defence to shake the case of the prosecution.

14] It is significant to note that, in the testimony of PW-14- Dr. Purushottam he states that, on 26-11-2009, he was medically examined the prosecutrix. On examination he found that, she was not in a position to talk, she was not acquainted with the social environment. PW-14-Dr. Purushottam came to the conclusion that the prosecutrix is having severe mental retardation. He advised that someone should always remain with her and her special care should be taken. He issued certificate (Exhibit-72). PW-14-Dr. Purushottam categorically stated that prosecutrix was 80% disabled. From the testimony of PW-14- Dr. Purushottam, it is amply clear that, the prosecutrix was mentally retarded lady and she was treated by PW-14 since 26-11-2009. 15] Exhibit-71 is the identity card of the disabled person supported the case of the prosecution that the prosecutrix was mentally retarded. The accused had taken undue advantage of the said situation and he committed sexual intercourse with her. The injuries mentioned by the Medical Officers make amply clear that the injures to the private part of the prosecutrix were fresh and they were bleeding on touch. Thus, the prosecution has established the case beyond reasonable doubt. 16] In my opinion, the learned trial Judge had properly appreciated the facts brought on record by the prosecution. In view of the fact that, the learned trial Judge has rightly appreciated the evidence brought on record and rightly passed the order, consequently, the appeal 11 Judg 190917 apeal 104.17.odt fails and it is liable to be dismissed. Hence, the following order is passed:-

O r d e r

(a) Criminal Appeal No. 104 of 2017 is dismissed.

(b) The judgment and order delivered by the learned Sessions Judge, Gadchiroli in Sessions Trial No.2 of 2014 stands confirmed.

(c) The judgment and order delivered by the learned Sessions Judge, Gadchiroli in Sessions Trial No.2 of 2014, thereby convicted the appellant for the offence punishable under Section 376(2)(k)(l) of the IPC and sentenced to suffer rigorous

imprisonment for ten years and to pay a fine of Rs.1000/-, in default, to suffer rigorous imprisonment for three months, is maintained.

(d) Muddemal property be dealt with as directed by
trial Court after the appeal period is over.

JUDGE

Deshmukh