

Bombay High Court

Rajkumar S/O Narayan Thakre vs State Of Maharashtra, Thr. Pso ... on 21 August, 2017

Bench: R. B. Deo

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apeal199.16

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 199 OF 2016

Rajkumar s/o Narayan Thakre,
Aged about 40 years, Pan Shop,
R/o Chandori, Tahsil - Tirora,
District Gondia.

.... APPELLANT

VERSUS

State of Maharashtra,
through PS0, Police Station Tirora,
District Gondia.

.... RESPONDENT

Shri S.P. Bodalkar, Advocate appointed for the appellant,
Smt. M.H. Deshmukh, Addl.P.P. for the respondent.

CORAM : ROHIT B. DEO, J.

DATE OF RESERVING THE JUDGMENT

: 07-08-2017

DATE OF PRONOUNCING THE JUDGMENT

: 21-08-2017

JUDGMENT :

The appellant seeks to assail the judgment and order dated 05-05-2016 delivered by the learned Sessions Judge, Gondia in Sessions Trial 82/2012 by an under which the appellant (hereinafter referred to as the "accused") stands convicted for offences punishable 2 apeal199.16 under Section 376(2)(f) and 506 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- for offence punishable under Section 376(2)(f) and rigorous

imprisonment for one year for offence punishable under Section 506 of the Indian Penal Code respectively.

2. The case of the prosecution is thus :

The accused visited the house of the complainant Ziblabai Kadav on 31-10-2010 at about 7-00 p.m. The complainant served the accused tea and went to the kitchen for cooking. The complainant's daughter-in-law was resting in her room as she was unwell. The accused was a regular visitor to the house of the complainant. The granddaughter of the complainant Payal then aged 11 years was in the courtyard. The accused lifted Payal and took her to a spot between Anganwadi and Samaj Mandir, accused gagged her mouth, removed her clothes, threatened her and did forcible sexual intercourse. The accused gave the victim Rs.20/- and threatened her that she shall be killed if the incident is disclosed. Payal returned her home and narrated the incident to the complainant. Blood was oozing from her private part. The complainant took Payal to the house of the police patil who was not present. The complainant went to the police station 3 apeal199.16 and lodged report Exhibit 10.

3. The prosecution further contends that on the report of the complainant offence was registered, investigation was conducted by A.P.I. Barayya. The victim girl was medically examined by Dr. Waindeshkar. The investigating officer prepared spot panchanama, seized clothes of the victim and arrested the accused on 17-11-2010. The accused was also sent for medical examination and was examined by Dr. Waindeshkar. The investigating officer sent victim's clothes to the chemical analyzer. Completion of investigation led to filing of charge-sheet before the Judicial Magistrate First Class, Tirora. The proceedings were committed to the sessions Court for trial.

4. The learned Sessions Judge framed charge at Exhibit 6. The accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial and false implication.

5. The complainant Ziblabai Kadav is examined as P.W.1. Her testimony is consistent with the oral report Exhibit 10. She deposes that the accused visited her house. Her two sons had gone to Nagpur for work and at the time of the incident the complainant, her 4 apeal199.16 daughter-in-law, father-in-law and Payal were present in the house. Payal was playing in the courtyard. Payal entered the chapri. The complainant was in kitchen for cooking. The accused lifted Payal, carried her to a spot between Balwadi and Samaj Mandir. The complainant states that when Payal returned, she was weeping. P.W.1 complainant deposes that she was informed by Payal that the accused took her near Balwadi, pressed her mouth and did sexual intercourse with her. P.W.1 states that blood was oozing from Payal's private part. P.W.1 proves the oral report and the printed first information report (Exhibit 10 and Exhibit 11 respectively). P.W.1 has been extensively cross-examined. It is suggested to her that the accused came to her house at 4-00 p.m. She admits that she served tea to accused and her husband. She denies the suggestion that her daughter-in-law was not present in the house. She denies the suggestion that accused left her house with his wife. She denies the suggestion that the sons of P.W.1 used to frequent the pan and tea stall of the accused and the accused came to her house to demand the unpaid amount of the bills. She denies the suggestion that the victim Payal was playing in the tractor trolley and the accused only lifted her and left her there and went to his house.

6. P.W.2 Payal Kadav is the victim. She deposes that on

31-10-2010 at about 7-00 p.m. she was playing in the courtyard. Her mother was sleeping in the room as she was not well. Her grandfather was sleeping in the chapri. The accused came to her house, was served tea by her grandmother who then went to the kitchen for cooking. The victim states that when she entered the chapri, accused lifted her and took her to a spot between Balwadi and Samaj Mandir. The accused gagged her mouth by handkerchief and she could not, therefore, shout. She states that the accused did forcible sexual intercourse with her and then gave her Rs.20/- and threatened that if the incident is disclosed to anybody, he will kill the victim. She deposes that her clothes were stained with blood. She narrated the incident to her grandmother (P.W.1). She and her grandmother went to the police station and lodged report. She has identified the clothes seized from her. In the cross-examination, she admits that she alongwith Durga and Priyanka were playing near tractor trolley. She denies the suggestion that the accused and his wife were on way to their house and when she alighted from the tractor trolley, the accused caught her hands and lifted her. The suggestion that the victim lodged the report on the say of her mother and grandmother, is denied. She has denied the suggestion that her clothes were not torn and that she did not sustain 6 apeal199.16 any injury. She denies the suggestion that at the time of the incident she was having her menstrual cycle.

7. P.W.3 Rajkumar Kadav proves the spot panchanama Exhibit 14. P.W.4 Devendra Choudhari states that the police seized the clothes of the victim and took blood sample in his presence and proves seizure panchanamas Exhibits 16 and 17. P.W.5 Roshan Dongre states that the police seized clothes of the accused as per seizure panchanama Exhibit 20. P.W.6 Rahul Puri is examined to prove that he obtained blood samples from the medical officer and handed over the same to the investigating officer. P.W. 7 Vilas Ghodmare is examined, he took the seized property to Nagpur.

8. P.W.8 Dr. Kanchan Rahangdale has deposed that Dr. Waindeshkar is no more. She states that she knows and identifies the signature and handwriting of Dr. Waindeshkar. She has identified the handwriting and signature of Dr. Waindeshkar on the M.L.C. of the victim and accused which are Exhibits 30 and 31 respectively.

9. P.W.9 A.P.I. Arun Barayya has proved the covering letter sent to chemical analyzer, chemical analyzer report and has generally 7 apeal199.16 deposed about the investigation. P.W.10 Narhari Gharpande has proved the birth certificate (Exhibit 43) evidencing that the victim Payal was born on 23-12-1999.

10. The defence has examined Panchfulabai Shahare as D.W.1, Vandana Thakare, wife of the accused as D.W.2 and the accused himself as D.W.3. Panchfulabai Shahare deposes that on the day of the incident, she was cleaning rice in the courtyard at about 4-00 p.m. Payal was playing on the trolley. The accused was coming from the house of Sanjay Kadav. The accused was accompanied by

his wife. The accused talked with D.W.1. The accused was in hurry and when D.W.1 asked him the reason, he replied that his mother-in-law was serious and therefore, he was going. Accused alighted Payal from the trolley. She states that accused returned to the village after four to five days. In her cross-examination, she has denied the suggestion that due to good relations with the accused, she is stating falsehood. D.W.2 Vandana Thakare states that her husband/accused has a tea stall at Chandori. Her mother was not well on 31-10-2010. She states that she returned to her house from the field at about 4-00 p.m. Her family members told her that the accused had gone to the house of Kadav to bring money. She states that she went to the house of Kadav 8 appeal199.16 to call the accused. Her husband was taking tea with Payal's grandfather. The complainant did not pay money to her husband. She alongwith her husband returned to their house and on the way they passed the house of Panchfulabai. Payal was on the tractor with small children. Her husband went to Nagpur to see her mother and after four days, he returned back. In the cross-examination, Vandana states that, the accused went to Nagpur by train. She has not produced the railway ticket. She says that her mother was admitted in Government Hospital. She admits that she has not produced any document to show that her mother was admitted in Government Hospital. She denies the suggestion that her mother was unwell and that her husband had not gone to Nagpur to visit her mother. She denies the suggestion that she has falsely stated that her husband went to the house of the complainant to bring money. She denies the suggestion that she is uttering falsehood in order to save her husband. The accused has examined himself as D.W.3. He states that on 31-10-2010 he visited the house of Payal's father Sanjay Kadav to demand an amount of Rs.1,210/- which was due and payable. He states that he has filed on record a photocopy of the credit register. He states that he went to Sanjay Kadav's house since Sanjay Kadav himself asked him to come. The accused states that Sanjay Kadav was not present, the father of 9 appeal199.16 Sanjay Kadav was sitting in the chapri. He was served tea by Ziblabai and he was told by Ziblabai that her daughter-in-law was unwell and that they did not have the money to give the accused. The accused deposes that her wife Vandana came to the house of Sanjay Kadav and told him that her mother was ill and she admitted in Nagpur. He states that the accused while returning from the house of Sanjay Kadav, Payal was playing on the tractor trolley. The accused alighted her from the tractor trolley as per the say of Panchfulabai. The accused and his wife thereafter went to their house and on the same day he left for Nagpur. He says that after ten to twelve days, he returned from Nagpur. He was arrested by the police. He claims innocence and states that he has brought original register evidencing the entry in respect of the credit amount due and payable by the father of the victim. In cross-examination, he admits that there is overwriting in the name and denies the suggestion that he has written the word Kadav later on. He denies the suggestion that he did not take Payal down from the trolley as per the say of Panchfulabai. He denies that his mother-in-law was not ill and he did not go to Nagpur. He denies the suggestion that he had forcible sexual intercourse with Payal and has taken a false defence of having gone to Nagpur at the relevant time.

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11. I have heard learned Counsel Shri S.P. Bodalkar who is appointed to represent the accused and learned Additional Public Prosecutor Smt. Deshmukh for the respondent.

12. The learned Counsel for the accused contends that the testimony of the prosecutrix is absolutely untrustworthy and unreliable. The learned counsel would submit that the testimony of the prosecutrix is not supported by the medical evidence on the record. He would further contends that the witnesses examined in defence have probabalized the defence and the accused is, therefore, entitled to the benefit of doubt.

13. The learned Additional Public Prosecutor would urge that the testimony of the prosecutrix who then was 11 years old is consistent and confidence inspiring. The testimony is corroborated by medical evidence and that there is no material on record to suggest that the accused is falsely implicated. She invites my attention to the settled legal position that if the testimony of the prosecutrix is found reliable, conviction can be based even on the basis of her uncorroborated testimony.

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14. The learned Additional Public Prosecutor is right in contending that conviction can be based on uncorroborated testimony of the prosecutrix. The Court, however, must rule out any possibility of false implication. I have given my anxious consideration to the evidence on record including the testimonies of the three defence witnesses. The evidence on record, in my opinion, rules out any real possibility of false implication. It is not the case of the accused that there was any prior enmity or rivalry between the family of the prosecutrix and the accused prior to the incident. Indeed it has come on record in the cross-examination of the complainant that when the accused visited the house of the complainant, he was treated well and offered a cup of tea. The defence that the accused went to the house of the complainant to demand certain amount due and payable by the father of the prosecutrix, is hardly confidence inspiring. It is not even the version of the defence, that when such amount was allegedly demanded, there was any dispute or altercation. It is difficult to believe that the 11 years old prosecutrix could have been used as a tool to falsely implicate the accused. The notions and prejudices of the Indian society, unfortunately view rape as a stigma and the prosecutrix and her family have to bear the burden for the entire life. I am convinced that there was no motive for false implication. Moreover, 12 apeal199.16 the testimony of the prosecutrix is consistent and confidence inspiring and is corroborated by medical evidence and the testimony of the complainant.

15. The testimony of P.W.2 victim and P.W.1 Ziblabai is corroborated not only by the medical evidence but further by the report of the chemical analyzer Exhibits 35 to 37 which evidences that the petticoat of the victim was torn and had several blood stains spread across the petticoat. Human blood and semen is detected on the clothes of the victim. The M.L.C. Exhibit 30 evidences injuries to the private part of the victim caused due to forcible sexual intercourse. The lower part of vagina is torn and lacerated. The bleeding from the vaginal wound is seen in the examination.

16. The defence is that the victim Payal was playing on the tractor trolley and the injury is caused while the victim was playing on the tractor trolley. D.W.1 Panchfulabai claims to have met the accused and his wife coming from the house of the complainant at around 4-00 p.m. on the date of the incident. She claims that the accused talked with her, was in a hurry and upon being asked the reason to him, he replied that his mother-in-law was serious and therefore, he was 13 apeal199.16

leaving. She claims that the accused alighted Payal from the tractor trolley. She admits in the cross-examination that she has close relations with the accused and denies the suggestion that she is attempting to help the accused. D.W.2 who is wife of the accused only states that while returning from the house of the complainant she and the accused passed the house of D.W.1. She has not referred to any conversation between D.W.1 and the accused. She states that the victim was on the tractor trolley alongwith other children. She then states that the accused went to Nagpur to see her mother and returned after four days. In the cross-examination, she admits that she has no proof of the train journey which the accused allegedly undertook to reach Nagpur. She says that her mother was admitted to the Government Hospital. She admits that she has not produced any documentary evidence to show that her mother was admitted in Government Hospital. The accused is examined as D.W.3. He states that he had gone to the house of the complainant to demand the credit amount due and after consuming a cup of tea, he left the house upon the complainant informing him that it would not be possible to make the payment as her daughter-in-law was ill. The accused claims that his wife came to the house of the complainant and told him that her mother was ill. He further claims that alongwith his wife he left the 14 appeal house of the complainant and while on way to their house he alighted Payal from the tractor trolley as per the say of Panchfulabai D.W.1. The inconsistencies and inter se contradiction between the testimonies of D.W.1, D.W.2 and D.W.3 are far to glaring to give any credence to the testimony. There is not even whisper in the testimony of D.W.1 that she asked the accused to bring down from the tractor trolley. D.W.2 who is the wife of the accused does not mention this incident at all. She does not state in her evidence that her husband and Payal had interaction muchless that her husband/accused brought down Payal from the tractor trolley. D.W.3 claims that he alighted Payal from the trolley as per the say of D.W.1. An integral part of the story is the alleged illness of the mother-in-law of the accused. D.W.2 wife of the accused is alleged to have come to the house of the complainant only to tell the accused that her mother was ill and thereupon the accused claims to have hurriedly left the house of the complainant and then left for Nagpur. The defence is of alibi. However, documentary evidence which in the ordinary course would have been readily available, if the story were to be true, is not produced. The mother-in-law of the accused was admitted to Government Hospital, Nagpur, according to D.W.2. Nothing is produced on record to substantiate this version. The accused is said to have gone to Nagpur by train, again no 15 appeal documentary evidence of the train travel is produced. The accused could have examined 'n' number of witnesses vouching for the presence of the accused in Nagpur at the relevant time. No attempt is made by the defence to probablize the defence of alibi. It can be concluded with certainty that the defence version that the accused was not in the village when the incident occurred, is unbelievable. I have no hesitation in discarding the defence evidence since the same is wholly unreliable.

17. The judgment and order impugned of the learned Sessions Judge, Gondia in Sessions Trial 82/2012 is unexceptionable on facts and in law and no interference by this Court is warranted.

18. The appeal is without substance and is rejected.

The fees of the learned Advocate appointed for the appellant is quantified at Rs.5,000/-.

JUDGE adgokar