

Bombay High Court

Chhotelal Kandhari Prajapati vs The State Of Maharashtra Thr. ... on 1 November, 2017

Bench: Ravi K. Deshpande

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.51 OF 2017

Chhotelal Kandhari Pajapati,
Aged about 55 years, Occ. Labour,
r/o. Anand Nagar, Wardha, Tq.
and District. Wardha. APPELLANT

// VERSUS //

The State of Maharashtra,
Through Police Station Officer,
Police Station, Wardha City,
Tq. and Distt. Wardha. RESPONDENT

Mr.R.P.Thote, Advocate (appointed) for the Appellant.
Mr.A.M.Deshpande, A.P.P. for the Respondent/State.

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CORAM : R.K.DESHPANDE
AND
M.G.GIRATKAR, JJ.

DATED : 1st November, 2017.

ORAL JUDGMENT (Per M.G.Giratkar, J) :

1. This is an appeal against the Judgment of conviction by Sessions Court, Wardha in Special Case No.54 of 2014, dt.27.6.2016, by which the appellant is convicted for committing an offence under Section 5(n) punishable under Section 6 of Protection of Children from the Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default to suffer rigorous imprisonment for six months. The appellant is also convicted for the offence punishable under Section 506 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default to suffer rigorous imprisonment for two months.

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2. The case of prosecution, in short, is as under :

Appellant is step-father of victim. The victim was aged about 15 years. She was studying in 7th Std at the time of incident in the year 2013. She had started her menstrual periods. She told her friend Shubhangi about the same. She also told about this fact to appellant/her step-father. Her mother died when she was 1½ years old. She was the only person, residing with her step-father in a rented house. When she disclosed to the appellant that she has started receiving menstrual periods, the appellant scolded her saying that her clothes were stained with blood because she might have slept with somebody. After 2-3 days, the appellant started sleeping with her. He used to undress her, threatening her and did sexual intercourse with her. He continued sexual intercourse with the victim till 25.2.2014.

3. The victim was not feeling well. Therefore, she informed Lata Ramesh Ramteke (PW-2), who was her neighbour. Lata Ramteke took her to Dr. Mohd. Shoeb 4 apeal51.17.odt Sheikh (PW-4). Dr.Shoeb examined the victim and found that she was pregnant. On inquiry, she told him that her step-father used to do sexual intercourse with her continuously since November, 2013 and therefore, she became pregnant. Lata Ramteke also inquired with her. She disclosed the same fact to her.

4. On 27.2.2014, the victim along with Lata Ramteke (PW-2) went to Police Station, Wardha and lodged report. Crime was registered for the offences punishable under Sections 376(f)(i)(k)(n), 323, 504, and 506 of the Indian Penal Code and Sections 3 and 4 of the Protection of Children from the Sexual Offences Act, 2012 (hereinafter referred to as "the POSCO Act").

5. Investigating Officer Murlidhar Pandurang Burade sent the victim for medical examination. Dr.Krushna Shende, Medical Officer examined her and issued Medico-legal Certificate. He observed the victim carrying pregnancy. Investigating Officer Murlidhar Burade arrested the accused, seized his clothes and sent 5 apeal51.17.odt him for medical examination. Investigating Officer Prabhakar Babare (PW-8) prepared spot panchanamam etc. Victim girl was sent to remand home. Seized

property was sent to the Chemical Analyser, Nagpur. Charge sheet was filed against the accused.

6. With the permission of Court, Police Inspector Murlidhar Burade obtained custody of the appellant. He requested the Chemical Analyser, Nagpur to supply DNA kit. After getting custody of the appellant, blood sample was taken by the Medical Officer and it was seized by Investigating Officer Murlidhar Burade. He has requested Medical Officer at Nagpur to collect blood sample of newly born child and victim. DNA kits were sent to Regional Forensic Scientific Laboratory ('RFSL'), Nagpur. Assistant Chemical Analyser Ms Neha Bhale examined the blood samples and came to the conclusion that the appellant is father of the newly born child.

7. Charge was framed by the trial Court at Exh.17. Same was read over and explained to the appellant, to 6 apeal51.17.odt which he pleaded not guilty. It appears from the cross- examination and suggestions given to the witnesses that defence of the appellant is of total denial.

8. Prosecution has examined in all total ten witnesses. They are :

- 1) Victim (PW-1) (Exh.28).
- 2) Lata Ramesh Ramteke (PW-2) (Exh.32).
- 3) Avdhut Damodhar Martode (PW-3) (Exh.35).
- 4) Dr. Mohd. Shoeb Sheikh (PW-4) (Exh.37).
- 5) Jivak Raju Dhekle (PW-5) (Exh.39).
- 6) Deorao Wamanrao Ingole (PW-6) (Exh.43).
- 7) Murlidhar Pandurang Burade, I.O. (PW-7)
(Exh.57).
- 8) Prabhakar Mangaldas Babare, I.O. (PW-8)
(Exh.94).
- 9) Neha Pravin Bhale, Assistant C.A. (PW-9)
(Exh.99).
- 10) Dr.Krushna M. Shende, Medical Officer
(PW-10) (Exh.101).

9. Case of prosecution is solely based on the evidence of victim, DNA test report and other medical evidence adduced by Dr.Shoeb (PW-4), Assistant Chemical Analyser Ms Neha Bhale (PW-9) and Medical Officer Dr.Krushna Shende (PW-10).

10. Now it is a settled law that, in a case of rape, the sole testimony of victim can be relied on by the Court. No further corroboration is necessary. If the testimony of victim is found to be truthful and reliable, conviction can be based only on the basis of sole testimony of victim. Further corroboration is necessary if there is some discrepancy found in the evidence of victim. Hon'ble Supreme Court in the case of State of Himachal Pradesh vs. Asha Ram reported in AIR 2006 SC 381 has observed as under :

"Conviction for rape can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is 8 apeal51.17.odt more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case."

11. Hon'ble Supreme Court in the case of Rameshwar vs. State of Rajasthan, (1952) 3 SCR 377 (AIR 1952 SC 54) has declared that "corroboration is not the sine qua non for a conviction in a rape case. The utterance of the Court in Rameshwar may be replayed, across the time-gap of three decades which have whistled 9 apeal51.17.odt past, in the inimitable voice of Vivian Bose, J, who spoke for the Court -

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge... .. The only rule of law is that this rule of prudence must be present to the mind of the Judge or the Jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

12. Keeping in mind the above observations of the Supreme Court, we have to decide the present appeal as to whether the evidence adduced by prosecution is sufficient for conviction of the appellant. PW-1/victim was a minor girl, aged about 15 years residing with her step-father. She was

studying in 7th Std. at the time of incident in the year 2013. She had started her menstrual period. She disclosed to her friend Shubhangi about the same. She also informed to her father/appellant. Appellant/step father is the only person residing with her in a tenanted room.

13. Mother of victim died in her early age when she was aged about 1 ½ years. Instead of listening properly, appellant scolded the victim saying that she might have slept with any other person and therefore, her clothes were stained with blood. After 2-3 days, appellant started sleeping with her in the night. He used to undress her and used to commit sexual intercourse with her. As per her evidence, appellant used to threaten her and therefore, she could not dare to disclose to anybody. She was helpless. She was in the custody of the appellant and therefore, could not disclose to her neighbour also. But, when nature compelled her to disclose since she started vomiting and was not feeling well, she disclosed to her neighbour Lata Ramteke (PW-2).

14. Lata Ramteke took the victim to Dr. Shoeb (PW-

4). Dr. Shoeb examined the victim and found that she was 11 weeks pregnant. He inquired with her. She disclosed him that the appellant/her step-father is responsible for her pregnancy. She also disclosed the same fact to Lata Ramteke (PW-2) saying that, from the month of November, 2013, appellant used to do sexual intercourse with her continuously in every night and therefore, she became pregnant.

15. Nothing is brought on record in the cross-examination of victim (PW-1) to disbelieve her evidence. Her evidence is well supported by the evidence of Lata Ramteke (PW-2). She has stated in her evidence that victim came to her and told that she was not feeling well. Therefore, she took her to Dr. Shoeb.

16. Dr. Shoeb (PW-4) has stated in his evidence that he examined the victim brought by Lata Ramteke (PW-2). He found that she was pregnant. He inquired with the victim. She told that she became pregnant due to sexual intercourse by the appellant. He advised her further treatment in the Government hospital. After two days i.e. on 27th February, 2014, the victim along with Lata Ramteke (PW-2) went to Police Station and lodged report (Exh.29). She was medically examined by Medical Officer Dr. Krushna Shende (PW-10). He issued Medico-Legal Certificate (Exh.103). He found that the victim was carrying pregnancy.

17. The evidence of victim is well supported by the medical evidence. DNA report was submitted by Ms Neha Bhale (PW-9). DNA reports are at Exh. Nos.84 and 85. As per DNA report (Exh.85), "Interpretation : 1) For all the 15 different genetic systems analyzed with PCR, putative father Chotelal Kandharilal Prajapati matched obligate paternal alleles present in B/o. Sonali Chotelal Prajapati at all 15 STR Loci.

2) Similarly, for all the 15 different genetic systems analyzed with PCR, mother Sonali Chotelal Prajapati matched obligate maternal alleles present in B/o Sonali Chotelal Prajapati at all 15 STR Loci".

"Opinion :- 1) Chotelal Kandharilal Prajapati and Sonali Chotelal Prajapati are concluded to be the biological parents of B/o. Sonali Chotelal Prajapati."

18. It is clear from the evidence of victim and the medical evidence and DNA report (Exh.85) that appellant did sexual intercourse with the victim and therefore, she remained pregnant and delivered a child on 1.6.2014.

19. Whether victim was a child as defined under Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 is to be seen. Victim has stated her age in her report as 15 years. When she was examined after two years before the Court, she has stated her age as 17 years. Investigating Officer Murlidhar Burade has proved Bona fide Certificate of School of victim (Exh.61). As per the Bona fide Certificate (Exh.61), her date of birth is 3rd September, 1998. When the question was asked to the accused/appellant under Section 313 of the Code of Criminal Procedure, the appellant himself has stated the date of birth of victim as '3rd September, 1998'. Incident took place in the month of November, 2013. Therefore, it is clear that the victim was aged about 15 years at the time of incident. Therefore, she was a child as defined under Section 2(d) of the POSCO Act.

20. Heard Mr.R.P.Thote, learned Counsel for the appellant. He has submitted that the blood samples of victim and the newly born child were seized by the Investigating Officer as per seizure panchanama (Exh.80). But prosecution has not examined any of the panch witnesses to prove seizure panchanama (Exh.80). It is pertinent to note that no such suggestion of denial was given to the Investigating Officer Murlidhar Burade during the course of cross-examination. It appears from the cross- examination that there is no denial of seizure of blood which was seized as per seizure panchanama (Exh.80) and therefore, the argument advanced by the learned Counsel that panch witnesses are not examined cannot be considered at this stage. Moreover, there is no reason to disbelieve evidence of I.O. Shri Burade

21. Learned Counsel for the appellant raised another ground that there is delay in lodging report. It is pertinent to note that victim was a helpless child who was alone residing with the appellant. She was threatened by the appellant. In such circumstances, it cannot be expected from such a minor child to come forward and go to the Police Station and lodge report. She might not have disclosed to anybody, but nature compelled her to disclose because she was not feeling well and she was vomiting and therefore, she disclosed to Lata Ramteke (PW-2), who then took the victim to Dr.Shoeb and thereafter to Police Station. Therefore, delay, as pointed out, is not material in this situation.

22. Hon'ble Supreme Court in the case of Tulshidas Kanolkar .vs. State of Goa reported in AIR 2004 SC 978 has observed that " Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the Court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactory explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other

hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. In the present case, the victim was totally unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of first information report does not in any way render prosecution version brittle."

23. Reliance is also placed on the case of Siddharth Dagadu Sonde .vs. State of Maharashtra reported in 2017 ALLMR (Cri) 4192. In the said case, rape was committed on a minor female child by her paternal uncle while she was in his custody for a period of one year. There was a delay of five days caused in lodging the First Information Report. It was held that the testimony of mother of prosecutrix coupled with the evidence of her 17 apeal51.17.odt mother-in-law gives satisfactory explanation of delay and hence, case of prosecution does not suffer from any delay in lodging the F.I.R.

24. Mr.A.M.Deshpande, learned Additional Public Prosecutor has strongly supported the Judgment of trial Court. He has submitted that the evidence of victim is well supported by DNA Reports Exh. Nos. 84 and 85. She was minor at the time of incident, aged about 15 years. Learned trial Court has rightly convicted the appellant. Hence, the appeal is liable to be dismissed.

25. Prosecution has proved beyond reasonable doubt that the victim aged about 15 years was the only person residing with the appellant. Appellant is step-father of the victim. When appellant noticed that she has matured physically, he started sexual intercourse with her. Therefore, offence under Section 5 of the POSCO Act is proved by the prosecution without any reasonable doubt and therefore, he is rightly convicted u/s.6 of the said Act.

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26. At this stage, the learned Counsel for the appellant has submitted that punishment of the appellant be reduced as there is discretion with the Court as per the provisions of Section 6 of the POSCO Act.

27. Learned A.P.P. Mr.Deshpande has strongly opposed to show leniency and submitted that the offence of sexual assault is committed by the appellant/step-father on helpless victim. She could not disclose the crime because of fear of the appellant. She delivered a child on 1.6.2014. He has destroyed the whole life of the victim. Hence, the appellant should not be shown any leniency.

28. The case in hand is of a serious nature. When a protector becomes perpetrator and the victim, who is a minor girl solely dependent upon him is ravished by such a person, the victim is left with no other option but to surrender mutely. Appellant, who was supposed to have protected the victim and was expected to have brought her up as a good child, provide eduction and search a suitable match as a life partner for her, has himself established 19 apeal51.17.odt sexual relations with his daughter under a wrong belief that she might be indulging in sexual relations with some other person and completely destroyed her life. The mental agony and pain the victim could have gone through each time when the appellant abused her physically, in the circumstances the victim finding herself alone and helpless, without being in a position to disclose the same to anyone, does not entitle the

appellant for any leniency. Leniency shown in such cases by the Courts would not only defeat the very purpose of the POSCO Act, but would encourage a criminal mind to commit such offences further. As per Section 6 of the POSCO Act "whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine."

29. Learned trial Court, looking to the seriousness of offence, has recorded it's correct findings and has rightly convicted the appellant for the offence punishable under Section 6 of the POSCO Act and under Section 506 of the 20 apeal51.17.odt Indian Penal Code. Hence, we do not find any merit in the appeal. Therefore, we pass the following order.

// ORDER // The appeal is dismissed.

Fees of the learned Counsel for the appellant is quantified at Rs.5,000/-.

Record and proceedings be sent back to the trial Court.

JUDGE

JUDGE

[jaiswal]