
(2002) 03 BOM CK 0007

In the Bombay High Court

Case No : Criminal Appeal No. 663 of 1992

Hussain Mohammed Mujawar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 16-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 354, 376, 511

Citation : (2002) 104 BOMLR 445

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—Through this appeal, the appellant challenges the judgment and order dated 12.11.1992 passed by the Additional Sessions Judge, Sangli, in Sessions Case No. 186 of 1990, whereby he has been convicted and sentenced to undergo six months R.I. and to pay a fine of Rs. 500/-, in default to suffer two months S.I., for the offence punishable u/s 354 of the I.P.C.

2. Shortly stated the prosecution case runs as under:

The victim Sangeeta P.W. 3 who was aged 7 years at the time of the incident was the daughter of Shalan Mali P.W. 1. Shalan at the time of the incident along with Sangeeta and another daughter Pinky, was living in a room in the house of one Sitaram Balu Chavan situated in village Dafalpur, Taluka Jat, District Sangli. Adjacent to the house of Sitaram Balu Chavan was a boarding house known as Jehangir Boarding House, the owner of which was one Gulab Shaikh. The appellant - Hussain alias Balu Mohammed Mujawar was the nephew of Gulab Shaikh. In between the house of Sitaram Balu Chavan and Jehangir Boarding House, there was a common oata on which the appellant used to sleep at the time of the incident.

On the date of the incident (3.11.1989) at 9 p.m., after taking dinner, Shalan,

Sangeeta and Pinky slept inside their room. As bugs started biting Sangeeta and her sister Pinky, they came and slept on the oata. After sometime, Sangeeta woke up from her sleep. She saw that the appellant first removed his under wear and then her nicker (chaddi). He, thereafter kept his penis on her vagina and embraced her. She asked him to release her. He then pricked her on her left leg. Some wet substance fell on her legs. The appellant thereafter, went away. Meanwhile, Pinky woke up from her sleep and asked Shalan to give her food. At that time, Sangeeta started weeping. When Shalan asked her the cause for the same, she informed her about the incident.

3. The evidence of Shalan P.W. 1 shown that next morning (morning of 4.11.1989) she first went to her field and thereafter along with Sangeeta and Pinky proceeded to Jat police station where she lodged her F.I.R.

4. The evidence of Sangeeta shows that before proceeding to police station Jat, she had taken a bath.

5. The evidence of P.H.C. Narendra Ranjane P.W. 7 shows that on 4.11.1989, at about 5.45 p.m. while he was on duty at Jat police station, the informant Shalan came and lodged the F.I.R. (Exhibit 10) alleging therein that the appellant attempted to commit rape on her daughter Sangeeta. On the basis of the F.I.R., C.R. No. 139 of 1989, under Sections 354, 376 and 511 of the I.P.C. was registered.

The evidence of P.H.C. Narendra Ranjane also shows that the informant's daughter (Sangeeta) was sent to the hospital for medical examination.

6. The evidence of Dr. Tukaram Suryavanshi P.W. 2 shows that on 4.11.1989 at about 8 p.m. he medically examined Sangeeta at Primary Health Centre, Jat and found that pubic hairs were absent, there was no injury on the perineum, labia major and labia minor were normal, vestibule was normal, hymen was intact and there was no discharge.

It is pertinent to mention that these findings are recorded in the injury report of Sangeeta (Exhibit 12) prepared by him.

7. The investigation was conducted by P.H.C. Mohammed Desai P.W. 8. On the date of the incident itself, he arrested the appellant and sent him for medical examination.

During the course of interrogation, the appellant stated that he could produce the clothes. Consequently, a memorandum panchanama Exhibit 19 was prepared and thereafter, the appellant produced his clothes, namely a underwear and banian from his house. The said recovery was made under a panchanama Exhibit 20 in the presence of public panchas, one of whom namely Jayant Mali was examined as P.W. 5.

During the course of investigation, P.H.C. Desai prepared the spot panchanama Exhibit 16 and seized the clothes of Sangeeta namely a skirt and a nicker under

a panchanama, which were produced by the informant Shalan. During the course of it, P.H.C. Desai also recorded statements of witnesses and sent the seized clothes to the Chemical Analyst.

Some investigation was also carried out by some other officers and after completion of the investigation, the appellant was charge-sheeted.

8. The case was committed to the Court of Sessions in the usual manner where the appellant was charged for offences punishable under Sections 354 and 376 of the I.P.C. r/w 511 of the I.P.C.

He pleaded not guilty to the charges and claimed to be tried.

His defence was that of denial.

During trial, in all the prosecution examined 8 witnesses. The solitary eye witness of the incident, Sangeeta was examined as P.W. 3.

The learned Trial Judge believed the evidence of Sangeeta and convicted and sentenced the appellant in the manner stated in para 1 above.

Hence, this appeal.

9. I have heard learned Counsel for the parties and I am constrained to observe that I do not find any merit in this appeal because, I see no reason to disbelieve the credible ocular account furnished by Sangeeta P.W. 3.

In para 2 of this judgment, I have set out the prosecution story on the basis of the recitals contained in the examination-in-chief of Sangeeta and do not want to burden my judgment by adverting to all the details.

In short, Sangeeta's evidence shows as under : On the date and time of the incident, she, her sister Pinky and the appellant were sleeping on the oat ;the appellant got up from his sleep; removed his underwear; removed her nicker (chaddi) put his penis on her vagina; when she asked him to release her, he scratched her; and some wet substance fell on her legs. After the appellant left, Pinky woke up and asked her mother Shalan to give some food. At that time, Sangeeta was crying and on being asked by her mother as to what had happened, told her the incident.

Sangeeta's evidence shows that next day, they went to lodge the F.I.R. and prior proceeding to the police station, she had taken a bath.

10. I have gone through the evidence of Sangeeta and have no reservations in observing that I find her to be a perfectly truthful witness.

In my view, had the said incident not taken place, Sangeeta and Shalan would not have manufactured it whereby tarnishing their honour and destroying the prospects of the marriage of the former.

It is pertinent to mention that although Sangeeta was cross-examined but, her

credibility could not be impeached in any manner.

I find no reason which would have prompted Sangeeta to falsely implicate the appellant. It is true that in her cross-examination, she was suggested that since a quarrel had taken place between her mother and the paternal aunt of the appellant, she had falsely implicated the appellant at the instance of her mother but, she emphatically denied the said suggestion.

11. Learned Counsel for the appellant strenuously urged that Sangeeta's evidence should not be accepted because, according to her during the course of the incident some wet substance fell on her legs but, the medical evidence does not corroborate this claim of hers. I am constrained to observe that I do not find any merit in this submission, in view of Sangeeta's statement that prior to proceeding to the police station, she had taken a bath. In my view, the said substance would have been washed during the bath.

12. Learned Counsel for the appellant also urged that since Sangeeta was aged 7 years, at the time of the incident and 11 years at the time of her deposition and was a child witness, her evidence should not be accepted. I am afraid that this submission is also not legally tenable. The law only requires that the testimony of a child witness should be evaluated with caution and not mechanically rejected. I have exercised the said caution and make no bones in observing that I find it to be credible.

13. In my view, Sangeeta's evidence is absolutely reliable and by itself is sufficient to confirm the conviction of the appellant for the offence u/s 354 of the I.P.C.

14. Assurance to the ocular account furnished by Sangeeta is forthcoming from, the evidence of her mother Shalan P.W. 1. The evidence of Shalan shows that immediately after the incident when she woke up to give food to her daughter Pinky, she found Sangeeta crying and on asking her as to what had happened, Sangeeta informed her about the incident.

It is pertinent to mention that although Shalan was extensively cross-examined but, her credibility could not be shaken.

15. Learned Counsel for the appellant strenuously urged that since Shalan lodged the F.I.R. of the incident at about 5.45 p.m. on 4.11.1989 i.e. nearly 18 years after the incident not only her evidence become suspicious but, also that of Sangeeta. He contended that this delay of 18 hours in not lodging of the F.I.R. was occasioned by the circumstance that Shalan wanted to make out a false case against the appellant.

I have reflected over the submission of the appellant's counsel and am constrained to observe that I do not find any merit in it.

It is common knowledge that in cases pertaining to sexual violence; particularly those wherein the victim is an unmarried girl, as in the case here, mothers are

loathe to lodge an F.I.R. because, the same Garnishes the reputation of the daughter and detrimentally affects the prospects of her marriage. It is from such an angle, that the delay in lodging the F.I.R. has to be examined and I dare say, having done so, I find it was perfectly understandable.

I make no bones in observing that unless the incident would have taken in the manner alleged by Sangeeta, Shalan would not have lodged a false F.I.R. The reason for false implication suggested by the appellant's counsel namely that there was a quarrel between Shalan and the paternal aunt of the appellant is neither here nor there. Even if it is assumed that a quarrel had taken place between them, I find it difficult to comprehend as to why in the first place Shalan would have falsely implicated the appellant instead of his paternal aunt and secondly mentioned in the F.I.R. gory details which would tarnish the character of Sangeeta and destroy the prospects of her marriage.

For the said reasons, in my view, no capital could be made from the circumstance that there has been some delay in the lodging of the F.I.R. by Shalan P.W. 1.

16. For the aforesaid reasons, in my judgment, the learned Trial Judge acted correctly in convicting the appellant for the offence punishable u/s 354 I.P.C.

17. Learned Counsel for the appellant finally urged that the statement of the appellant recorded u/s 313 of the Cr.P.C. shows that at the time of commission of the offence the appellant was aged about 17 years and in view of his impressionable age, when he committed the offence and the circumstance that the offence was committed nearly 13 years ago, it is a fit case wherein the sentence of the appellant should be reduced to the period already undergone by him and instead some fine be imposed on him which should be directed to be paid as compensation to the victim Sangeeta.

I make no bones in observing that this submission is untenable. Accepting it, would be adding insult to injury. The compensation would bring back in Sangeeta's mind the traumatic humiliation which she suffered at the hands of the appellant, nearly 13 years ago, an experience which she may have forgotten or was desperately trying to forget. In my view, compensation would make her feel that the loss of her honour is being monetarily compensated.

I have no reservations in observing that compensation is an appropriate relief in cases of victims of violence, other than sexual; in the former because it covers up expenses incurred by the victim in treatment/hospitalisation, in the latter not for it makes the victim feel humiliated.

I am afraid that the learned. Trial Judge by imposing a sentence of six months R.I. had let the appellant go with a pat on his cheek. In my view, this was a case wherein the appellant should have been awarded the maximum substantive sentence provided for the offence u/s 354 of the I.P.C. i.e. 2 years.

18. Before proceeding to the operative part of the judgment, I would like to

mention that Section 354 of the I.P.C. should be amended, as its provisions have become effete. In the year 1860, when the Indian Penal Code was enacted, the offence of outraging the modesty of a woman, which is punishable under this section was not as rampant as it is today and neither was it committed in the same brazen - faced manner as these days. Hence, the maximum substantive sentence of two years R.I., which was initially commensurate with the said offence, is no longer sufficient today. As the commission of the said offence has gone up by leaps and bounds to curb its recurrence, a stiffer maximum sentence is called for today. It should be remembered that in order to thwart the commission of an offence punishment has to be exemplary because, then and then alone, people on account of fear of it would refrain from committing it. And this dictum in my view, is wholly applicable to the offence u/s 354 of the I.P.C. It is high time that the Parliament looked at the sentence provided in Section 354 of the I.P.C. from this perspective; amended Section 354 of the I.P.C.; and incorporated in it a stiffer sentence.

19. In the result, I maintain the conviction and sentence of the appellant for the offence u/s 354 of the I.P.C. and dismiss this appeal. The appellant is on bail and shall be taken into custody to serve out his sentence.