
(2015) 04 BOM CK 0017
In the Bombay High Court
Case No : Criminal Appeal No. 553 of 2014

Kishan Surajmal Gehlot

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2015) ALLMR(Cri) 4160

Hon'ble Judges : P.V. Hardas, J; Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : Annu K. Moily, for the Appellant; H.J. Dedhia, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.V. Hardas, J.

1. The appellant, who stands convicted for offence punishable under Section 376 of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs. 3000/-, in default of which to undergo further RI for three months, by the Additional Sessions Judge, Greater Bombay, by judgment dated 10/09/2004, in Sessions Case No. 438 of 2003, by this appeal challenges his conviction and sentence.

2. The appellant had filed the present appeal after a delay of more than nine years and, therefore, this court, while admitting the appeal, directed that the record and proceedings be called for and the appeal be listed for final hearing without waiting for the preparation of a formal paper book. Accordingly, this appeal has been listed before us for final hearing.

3. Facts, as are necessary for the decision of this appeal, may briefly be stated thus:

PW 7 - Pradeep Rane, who, in April 2003, was attached to the Kurar Police

Station and was on duty on 16/4/2003, recorded the report of PW 1 - Victim (whose name is deliberately withheld) at about 10.30 a.m. The Victim was accompanied by her brother PW 3 - Pramod and PW 6 - Kantilal. On the basis of the report of PW 1 - Victim, an offence vide Crime No. 111 of 2003 was registered under Section 376 of IPC against the appellant. The FIR is at Exh. 6. The clothes of the Victim were seized under seizure memo at Exh. 13. The Victim led the police to the scene of the incident and in the presence of the panchas, a scene of the incident panchanama at Exh. 7 was drawn. From the scene of the incident, a bed-sheet and underwear of the appellant were seized. The appellant was arrested at about 3.30 p.m. on 16/4/2003 under arrest panchanama at Exh. 8. The clothes on the persons of the appellant were also seized under the said panchanama. Statements of witnesses were recorded and the Victim was referred for medical examination. Further investigation of the said crime was then transferred to PW 8 - API Dattatray Patil.

PW 8 - API Dattatray Patil, who was also attached to the Kurar Police Station, was entrusted with the investigation of the said crime. He accordingly recorded the statements of PW 2 - Leeladevi and PW 6 - Kantilal. Further investigation was then transferred to PI Rathod on 23/4/2003.

It appears that the seized clothes and the articles were then referred to the Chemical Analyzer under requisition at Exh. 23. Further to the completion of investigation, a charge-sheet was filed by PI Rathod against the appellant.

PW 5 - Dr. Shreedhar Patil, who was attached to the Hospital at Nagpada, had examined PW 1 - Victim, who had given the history of forcible sexual intercourse by the appellant for the last two years. On examination of the Victim, he noticed that the labia majora was hypertropied and labia minora was also hypertropied. The clitoris was also hypertropied. There was a tear to the hymen and the age of the tear was old healed. The hymenal orifice admitted two fingers easil vaginal smear was obtained and blood was collected for grouping. According to the ossification test, the age of the Victim was about 17 to 18 years. The report of examination of the Victim is at Exh. 15. The report of the C.A. at Exh. 16 disclosed that the blood group of the Victim is "B". The vaginal smear detected the presence of semen in the report of the C.A. at Exh. 17. According to PW 5 - Dr. Patil, therefore, the Victim girl was subjected to repeated sexual intercourse.

PW 5 - Dr. Patil also examined the appellant on 16/4/2013 at about 8 p.m. On examination, he noticed that the appellant had taken a bath after the incident. No injury was noticed. There was history of operation of Hernia/Hydrocele. Blood for blood grouping was collected and as per the Medical Officer, he found nothing abnormal to suggest that the said person was impotent. The report of examination is at Exh. 18. As per the report of the C.A. at Exh. 19, the blood group of the appellant is "B".

4. On the case being committed to the Court of Sessions, trial court framed charge against the appellant for offence punishable under Section 376 of the IPC.

The appellant denied his guilt and claimed to be tried. Prosecution, in support of its case, examined eight witnesses. The trial court upon appreciation of the evidence, convicted and sentenced the appellant as afore-stated. The trial court found that the evidence of PW 1 - Victim was corroborated by the testimony of the other witnesses as well as the medical evidence.

5. We have heard Mr. Moily, learned counsel appointed for the appellant and the learned APP. In order to effectively deal with the submissions advanced before us by the learned counsel appointed for the appellant, it would be useful to refer to the evidence of the prosecution witnesses.

6. The evidence of PW 1 - Victim discloses that the appellant is her father. Mother of PW 1 - Victim was residing separately on account of the disputes between the appellant and the mother of the Victim i.e. PW 2 - Leeladevi. According to the Victim, in September 2001, the appellant had made initial advances towards her and had attempted to commit forcible sexual intercourse with her. PW 1 - Victim resisted the said attempt and the appellant thereafter assaulted her. After a few days, the appellant then committed forcible sexual intercourse with her. PW 1 - Victim did not disclose the incident to anyone as she was afraid that her character and reputation would be tarnished as well as in the light of the fact that the appellant is her father. The appellant used to commit forcible sexual intercourse with the Victim once or twice in six months, but thereafter increased his frequency. PW 1 - Victim did not disclose this fact to anyone as according to her, her character would be tarnished. On 16/4/2003, PW 3 - Pramod, brother of PW 1 - Victim, left home at about 6.30 a.m. for attending the Summer Camp organized by his school. PW 1 - Victim was going through her menstrual cycle and the said day was the fourth day of the cycle. The appellant forcibly committed sexual intercourse with PW 1 - Victim at about 6.45 a.m. At about 7.30 a.m. the appellant was dressed and was about to go outside. PW 3 - Pramod, however, returned home as he was complaining of pain in the legs. PW 1 - Victim, who had sustained severe pain, was crying at that time and, therefore, PW 3 - Pramod enquired from her. PW 1 - Victim confided the history of forcible sexual intercourse to PW 3 - Pramod. PW 3 - Pramod, therefore, went to the residence of PW 6 - Kantilal, who was the uncle of the Victim. PW 6 - Kantilal came to the house of the appellant and enquired from PW 1 - Victim about the same. PW 1 - Victim, PW 3 - Pramod and PW 6 - Kantilal thereafter went to the Kurar Police Station, where a report was lodged by PW 1 - Victim against the appellant. She has identified her signature on the report at Exh. 6. She has also identified her clothes as well as the clothes of the appellant.

7. In cross-examination, she has admitted that she had not informed her mother before lodging the report on 16/4/2003. She has admitted that the room, in which she was staying, along with the appellant and Pramod, was a partitioned room and behind the partition, one Mr. Gangaram Gawali used to reside. She has denied the suggestion that she, along with her mother and brother, used to reside with Mr. Jogaram Pawar in the year 2000. She has also denied the

suggestion that her mother, PW 2 - Leeladevi used to reside with Mr. Jogaram Pawar. She has admitted that there used to be quarrels between the appellant and PW 2 - Leeladevi as the appellant used to demand money from PW 2 - Leeladevi. PW 2 - Leeladevi was, therefore, residing separately with her brother. The appellant also used to assault PW 2 - Leeladevi. She has further admitted that after September 2001, she did not inform PW 2 - Leeladevi on telephone about the assault by the appellant and that the appellant used to look at the Victim with an evil eye. She has admitted that neither she met PW 2 - Leeladevi nor Leeladevi had come for meeting the Victim. She has admitted that she had not instructed her mother, PW 2 - Leeladevi, to inform the incident to the maternal uncle of the Victim. An omission has been elicited that she had not stated that in September 2001, the appellant attempted to wake her up in the night.

8. Prosecution has examined PW 2 - Leeladevi, mother of PW 1 - Victim, who deposes that she was married to the appellant and since 2003 was residing at Kokani Pada, Malad, Mumbai. She has admitted that she was married to the appellant when she was nine years and was residing with the appellant after she had attained 18 years of age. According to her, PW 1 - Victim was born on 23/5/1986 and she, along with her husband and the Victim, came to Mumbai in 1986. In 1988 she gave birth to PW 3 - Pramod. According to her, the appellant used to quarrel with her and demand money from PW 2 - Leeladevi and, therefore, PW 2 - Leeladevi began to reside separately along with her brother. The Victim and PW 3 - Pramod, however, were residing with the appellant. According to her, in September 2001, PW 1 - Victim had telephoned her that the appellant used to assault and used to look at her with an evil eye and had also attempted physical advancement towards her. She further deposes that in 2003, the appellant, PW 1 - Victim and Pramod, came to reside at Malad. She then deposes that on 16/4/2003 at about 12 noon, PW 3 - Pramod and Kantilal had come to call her and had informed her that the appellant had committed forcible sexual intercourse with PW 1 - Victim. According to her, she went to the Kurar Police Station and met PW 1 - Victim and enquired from her. She has admitted that her statement was recorded on the next day of the incident.

9. In cross-examination, she has admitted that she never used to meet her daughter, PW 1 - Victim and her son, PW 3 - Pramod after she left the house of the appellant. She has also admitted that her children had also not met her. She has admitted that she had not instructed the victim to lodge a report against the appellant.

10. The evidence of PW 1 - Victim is amply corroborated by the evidence of PW 3 - Pramod, who deposes about going for attending the Summer Camp, but could not attend the Camp as he was suffering from pain in his legs. He further deposes that on 16/4/2003, he had returned as he could not attend the Camp and thereafter had noticed PW 1 - Victim crying. He, therefore, enquired from her the reason as to why she was crying and PW 1 - Victim then confided him

that the appellant had committed forcible sexual intercourse with her. He deposes about bringing PW 6 - Kantilal and about Kantilal also enquiring from PW 1 - Victim. He then deposes about accompanying the Victim and Kantilal to the Police Station, where a report was lodged by PW 1 - Victim.

11. In cross-examination, he has admitted that presently he was residing along with PW 1 - Victim and his mother PW 2 - Leeladevi. He has admitted that he had never visited his mother PW 2 - Leeladevi prior to the incident. He has admitted that he did not consider it necessary to inform his mother about the incident.

12. Prosecution has examined PW 6 - Kantilal, who also corroborates the evidence of PW 1 - Victim and PW 3 - Pramod. In cross-examination, he has admitted that PW 3 - Pramod and PW 1 - Victim used to visit his house frequently. An omission is elicited that he had not stated that he was informed about the incident by PW 3 - Pramod when he had come to his house.

13. Learned counsel appointed for the appellant has urged before us that evidence of PW 1 - Victim is insufficient for sustaining the conviction of the appellant as there is practically no corroboration to the evidence of PW 1 - Victim. The learned APP has supported the findings arrived at by the trial court.

PW 1 - Victim is not an accomplice to the crime, but is a Victim of sexual assault by the appellant. PW 1 - Victim is the daughter of the appellant, who was subjected to forcible sexual intercourse repeatedly spread over nearly two years. The medical evidence corroborates that PW 1 - Victim was accustomed to sexual intercourse as the hymenal orifice admitted two fingers easily. Evidence of PW 1 - Victim is corroborated by the evidence of PW 2 - Pramod as well as PW 6 - Kantilal to whom the disclosure was made by the Victim on 16/4/2003. We do not find any ground whatsoever for discarding the evidence of PW 1 - Victim as well as the evidence of PW 3 - Pramod and PW 6 - Kantilal. It is difficult to imagine that PW 1 - Victim would make false accusation against the appellant, who is her father. Nothing has been elicited in the cross-examination, which would lead us to record a finding that the appellant has been falsely implicated in this crime. The evidence of PW 2 - Leeladevi will have to be left out of consideration as the evidence of PW 2 - Leeladevi is not corroborated either by PW 1 - Victim or by PW 3 - Pramod, who, in terms, have stated that they have not informed PW 2 - Leeladevi about the incident. The evidence of PW 1 - Victim amply corroborated by the evidence of PW 3 - Pramod, PW 6 - Kantilal and the medical evidence, though corroboration is not a necessity, proves the offence against the appellant beyond reasonable doubt. In our opinion, therefore, the trial court has rightly convicted and sentenced the appellant for the offence punishable under Section 376 of the IPC.

14. Learned counsel for the appellant has urged before us that the sentence of imprisonment for life is extremely harsh and the sentence be accordingly reduced. The learned APP has opposed the said submission.

The appellant is the father of PW 1 - Victim, who had taken advantage of the relationship and had committed forcible sexual intercourse with the Victim repeatedly for two years. The trial court has dealt with the aspect of imposing the sentence of imprisonment for life. We do not think that the facts in the present case warrant any reduction in the said sentence. In our opinion, the appellant has been rightly convicted and has been rightly sentenced for a term of imprisonment for life.

15. We thus find that there is no merit in the appeal and the appeal filed by the appellant is, therefore, dismissed, confirming his conviction and sentence.

Fees payable to the learned counsel appointed for the appellant is quantified at Rs. 5000/-.