
(2010) 09 BOM CK 0145
In the Bombay High Court
Case No : Criminal Appeal No. 158 of 2008

Nitin @ Chotu Shankar Govardhan	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 363, 366, 375, 376, 506

Citation : (2010) 09 BOM CK 0145

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : O.K. Masurke, for the Appellant; C.N. Adgokar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—This appeal is directed against the judgment and order dated 28.1.2008 passed by learned Ad-hoc Additional Sessions Judge, Chandrapur in Sessions Case No. 68/2007 convicting and sentencing the appellant for offences punishable under Sections 376, 366, 363, 506 of the Indian Penal Code (in short, "IPC") as below:

All sentences were to run concurrently with benefit of set off u/s 428 of the Criminal Procedure Code, 1973 and out of fine, if realised, Rs. 1,500/- was directed to be paid to Pranali as compensation.

2. Brief facts of the prosecution story are:

On 31.3.2007 at about 1 o'clock, the prosecutrix-Pranali, aged about 12 years had gone with her friends to Ramala Talao Garden. The appellant had threatened her and her friends and compelled the prosecutrix to go along with him by scooty, threatened her at the point of knife that if she raise shouts she would be killed. She was taken to Junona forest and at the backside of temple, forced her to remove her clothes. He too removed his clothes and ravished her by having

forcible sexual intercourse under threat that if the prosecutrix disclose the incident to anybody, her parents would be killed. Later the prosecutrix after returning home narrated the incident to her parents and thereafter lodged complaint of rape against the appellant.

3. The appellant was charge-sheeted and prosecuted. The charge (Exh.8) was framed, to which the accused pleaded not guilty and claimed trial. In support of the prosecution case, a total of 12 witnesses; whereas in the defence as many as four witnesses, were examined. The trial Court upon evidence led, found the accused guilty and punished him as stated supra.

4. It is undisputed that prosecutrix-Pranali was born on 7.8.1995 and, as such, was a minor, at the time of the incident. Pranali (PW 2) knew the accused since prior to the date of the incident i.e. 31.3.2007. On the date of incident, she had gone with her friends to Ramala Talao Garden. The appellant had come there and asked her friends, by name, Pooja and Sunita to go away. Due to fear they went away; while accused had stopped the prosecutrix and threatened her to stop. The accused had snatched key of scooty from her friend Sangharsha (PW 3), started it and asked the prosecutrix to sit behind him on it ; whereas asked Sangharsha also to sit behind them and after driving the scooty for some time, he asked her friend Sangharsha to get down and took the prosecutrix to a house of a woman relative, quenched his thirst and then drove the scooty to Junona forest near temple of Lord Mahadeo, stopped the scooty, asked the prosecutrix to get down from it and parked the scooty near the temple. It is alleged that at the point of knife, the appellant asked the prosecutrix to remove her clothes and finding stubborn refusal, gave her 2/3 slaps and removed her clothes. He too removed his clothes and then had carnal pleasure with her. The appellant thereafter threatened her that in case of disclosure of the incident to anybody, he would kill her parents. After the incident, the appellant brought her to the Main Road and returned the scooty to Sangharsha and asked him to drop the prosecutrix to her house. The prosecutrix had narrated the incident to her friends, Sangharsha, Puja and Sunita and then to her parents on the following day as she was threatened by the accused that her parents would be killed. Thereafter report (Exh.27) was lodged. The prosecutrix was cross-examined at length. She denied the suggestion that she had a love-affair with her boy-friend Sangharsha (PW 3), aged 16 years. In the course of cross-examination, an admission was elicited from her that she did not receive any injury marks on her back, thigh, waist and buttocks; but she stated about bleeding at the time of sexual intercourse and her inability to walk comfortably due to pains for 2/3 days. She denied that she had any sexual relations prior to the incident. Her boy friend Sangharsha (PW 3) aged 16 years, corroborated the testimony of prosecutrix about the day of incident and the happenings on that day and the fact that the prosecutrix had narrated the incident to him. Ajay (PW 4), aged about 17 years, also corroborated the prosecutrix in respect of happenings on the day of the incident prior to and after the rape incident, as narrated by the prosecutrix. Saroj (PW 5), mother of the prosecutrix, deposed that Pranali had

narrated the incident of rape to her and her husband before they decided to lodge report to the Police. Dr.Pallavi Ingle, Medical Officer, Chandrapur (PW 6) found on examination of the person of prosecutrix, that hymen was ruptured at 4 and 8 o'clock position, with mild tenderness present. Her genital organs were till in the stage of development and she was not capable of sexual intercourse. Dr. Pallavi stated that due to forcible intercourse mild tenderness was possible and also rupture of hymen. Except the suggestion that rupture might have been old, there was nothing in the cross-examination to demolish the corroborative medical evidence of Dr. Pallavi. Learned Advocate for the appellant/accused questioned Dr. Pallavi as to whether tender aged girl like the victim, if subjected to forcible intercourse there would be difficulty in walking particularly if sexual intercourse is for the first time; while from victim Pranali 's admission was elicited that due to aforesaid incident, she was not able to comfortably walk and said pain lasted for 2/3 days. Puja (PW 7), girl-friend of Puja was won over by defense inasmuch as she turned hostile to the prosecution case and was disowned by the prosecution. Prosecution has examined Headmistress Sau. Jambhulkar from Maharshi Kanya Vidyalaya, Chandrapur to prove School Leaving Certificate (Exh.22) to prove that prosecutrix Pranali was born on 7.8.1995. Shri Hatware (PW 8), Gram Sevak, was also examined to prove that date of birth of Pranali was 7.8.1995 to establish that victim was minor on the date of the incident. Otherwise also, the trial Court has considered the entire evidence led by the prosecution to record its findings that Pranali was raped against her will and without her consent or with her consent which was obtained by putting her in fear to cause injury or likely to cause injury; the accused had taken her to desolated place in Junona forest to commit rape upon her

5. For conviction u/s 376 IPC, testimony of prosecutrix, though uncorroborated, is sufficient because it is neither desirable nor proper to look upon her evidence with suspicion, treating her as if she is an accomplice to crime. A minor girl seduced, enticed or forced to sexual intercourse amounts to rape irrespective of her consent as she is minor girl aged below 16 years of age.

Section 375: Rape : A man is said to commit "rape" who except in the case hereinafter excepted has sexual intercourse with a woman under circumstances falling under any of the six following description:

....

sixthly, with or without her consent when she is under sixteen years of age.

6. The evidence referred above is sufficient and reliable to record findings that the appellant had enticed the prosecutrix, a minor girl aged 16-years under threat of knife to Junona forest to an isolated place without the consent of her lawful guardians (father or mother) and had subjected her to forcible sexual intercourse under threat to kill her or her parents if she raise shouts and disclose the incident to anybody. She was kidnapped in order that she would be forced or seduced to illicit intercourse. No infirmity whatsoever is found to interfere with

the judgment of conviction by the trial Court.

7. As regards sentence, considering minor girl's ignominy and gravity of offence, it do not permit any sympathy or compassion in favour of the appellant so as to reduce the sentence awarded.

8. For the foregoing reasons and discussion of evidence as above, the approach of the trial Court was pertinent, proximate and proper, in reaching its incontrovertible conclusion. The Appeal being sans merit and substance, deserve dismissal, which I direct.