
(2018) 01 BOM CK 0007
In the Bombay High Court
Case No : 358 of 2016

Prafulla Rambhau Kachare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

Code of Criminal Procedure, 1973, Section 428 - Period of detention undergone by the accused to be set off against the sentence of imprisonment
Indian Penal Code, 1860, Section 376(2)(f) - Punishment for rape
Protection Of Children From Sexual Offences Act, 2012, Section 6, Section 3(2)(v), Section 3(1)(XII)

Citation : (2018) 01 BOM CK 0007

Hon'ble Judges : Rohit B. Deo

Bench : Division Bench

Advocate : Mir Nagman Ali, N.H. Joshi

Final Decision : Dismissed

Judgement

1. The appellant is aggrieved by the judgment and order dated 11-7-2016 passed by the learned Additional Sessions Judge, Amravati in Special Atrocity Case 2/2014, by and under which the appellant (hereinafter referred to as the "accused") is convicted for offence punishable under Section 376(2)(f) of the Indian Penal Code ("IPC" for short) and is sentenced to suffered for rigorous imprisonment for ten years and to payment of fine of Rs.30000/- and is further convicted for offence punishable under Section 6 of the Protection of Children from Sexual Offences Act ("POCSO" for short)

and is sentenced to suffer rigorous imprisonment for ten years and to payment of fine of Rs.30,000/-.

2. The child victim, who was aged 6 years as on the date of the incident, is the daughter of the informant Sheela Shalik Dhurve on the basis of whose report the offence under the provisions of Section 376(2)(f) of the IPC, Section 6 of the POCSO and 3(1)(xii) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act ("Atrocities Act" for short) was registered against the accused.

3. The gist of the oral report dated 23-11-2013 lodged by P.W.2 Sau. Sheela is thus :

P.W.2 Sau. Sheela and her husband Shalikram are residents of village Belora and are agricultural labours by avocation. They have two children from the wedlock to-wit the child victim and a son who was then aged 3 years. Sau. Sheela and her husband Shalikram had left the house at 9-00 a.m. for their respective work and the child victim and her younger brother were alone in the house. Sau. Sheela returned at 3-00 p.m., she noticed that the child victim was not at home and came out of the house to look for her. One Bhagyashri Uike, aged 14 years, escorted the child victim to her house, one Prajwal informed Sau. Sheela that the child victim was taken by the accused alongwith him. Sau. Sheela enquired from the child victim who stated that the accused had taken the child victim, gave her cream biscuit and Rs.10/- and took her to his residence, made her lie on the bed, removed her knicker and after undressing slept on her person and sexually ravished her. Sau. Sheela states in the report that the child victim had a swelling on the private part and a blood stain was noticed on the knicker.

Police Station Officer, Benoda, on the basis of the said report, registered offence punishable under Section 376(2)(i) of the

IPC, Section 3(1)(xii) and Section 3(2)(v) of the Atrocities Act and Section 6 of the POCSO Act. The Investigating Officer Sagar Patil recorded the spot panchanama, sent the child victim for medical examination, seized the clothes of the victim, seized one bed-sheet from the house of the accused and the clothes of the accused, recorded the statements of the witnesses and sent the seized property for chemical analysis. The statements of the witnesses were recorded under Section 164 of the Criminal Procedure Code, the blood samples of accused and victim and vaginal slide of victim were also sent for chemical analysis. The culmination of investigation led to submission of charge-sheet before the Special Court.

4. The learned Special Judge framed charge under Section 376(2)(f) of the IPC, Section 6 of the POCSO Act, Section 3(1)(xii) and 3(2)(v) of the Atrocities Act. The accused abjured guilt and claimed to be tried. The defence of the accused is of total denial and false implication. In response to question 44 in the statement recorded under Section 313 of the Criminal Procedure Code, the accused stated that he and the mother of the child victim worked in the agricultural field of Chandan Kachare. The mother of the victim used to speak with him affectionately. The father of the child victim berated and assaulted the mother of the child victim and abused and threatened the accused. The accused further stated that he caught the father of the child victim red handed stealing cotton from the agricultural field of Chandan Kachare. The accused, put forth the aforesaid two reasons for the false implication.

5. P.W.1 is the child victim, whose date of birth is 30-11-2007 as is evident from birth certificate (Exhibit 65) which is admitted. The child victim, who was then six years old, has deposed that she alongwith Anjali (P.W.4), Abhishkh, Amit, Prajwal (P.W.3) had gone to the field of Babuji Appa to collect jujubes (berries). She

could not find the jujubes and was returning home when the accused caught her and brought her in his house. The accused gave biscuits to her friends except her. The accused gave her Rs.10/-, took her in the house, slept over her person, removed her knicker, increased the volume of Television and inserted his male organ into her private part. The door was closed, one Manu Aaji knocked the door and the accused opened the door after sometime. The child victim was crying and disclosed the incident to Durga Atya and Manu Aaji. Daughter of Durga Atya one Bhagyashri escorted her to her house. Her parents took her to the police station and the police referred her for medical examination. The child victim deposed that she was not knowing the accused prior to the incident and the name of the accused was disclosed to her mother by Prajwal. The child victim, who is examined as P.W.2, deposed in consonance with the first information report. She has proved the oral report (Exhibit 22) and the printed first information report (Exhibit 23). She has also deposed that her statement (Exhibit 24) was recorded by the Judicial Magistrate First Class, Warud and admitted the contents thereof as correct.

6. P.W.3 Prajwal, who was aged 15 years when the evidence was recorded, has deposed that on 23-11-2013 the accused took the child victim to his house, closed the door from inside and increased the volume of television. P.W.3 states that after fifteen minutes, he knocked the door but the accused did not open the door. Manu Aaji, grandmother of Bhagyashri, shouted and then the accused opened the door. The child victim was crying when she came out. P.W.3 Prajwal further states that he disclosed the incident to the mother of Amit and mother of Bhagyashri and his statement (Exhibit 27) was recorded before the Judicial Magistrate First Class, Warud.

7. P.W.4 Anjali Dhurve, who was 14 years when her evidence was recorded, was accompanying the child victim at the time of

incident and she has deposed that the accused took the victim to his house, P.W.3 Prajwal was standing in front of her house, accused increased the volume of television, Prajwal knocked the door, the accused did not open the door and it was only when Manu Aaji knocked the door that the victim could come out of the house. The child victim was crying, is the deposition. The deposition of P.W.4 was recorded before the Judicial Magistrate First Class, Warud (Exhibit 30).

8. Bhagyashri Uike, who was examined as P.W.5, and was aged about 17 years when her evidence was recorded, has deposed that since it was Saturday, she returned from school at 12-00 noon, she saw the child victim and other children playing near the Rukhmai temple. She then learnt that the child victim was taken by the accused to his house. She has deposed that Manu Aaji went to the house of the accused and rescued the child victim who was crying. The child victim disclosed the incident to Manu Aaji at whose instance P.W.5 Bhagyashri escorted the child victim to her house. P.W.5 Bhagyashri identified the accused during the evidence.

9. P.W.9 Snehlata Dhote, who examined the child victim on 23-11-2013, has deposed that she did not observe any injury on private part of the victim. However, there was congestion in labia minora on posterior side and P.W.9 noticed blood stains on the knicker. P.W.9 proved the medical certificate (Exhibit 45) and deposed that on the next day the victim was again referred to her with complaint of pain in abdomen and private part.

10. The report of the chemical analyzer (Exhibit 67) reveals that one semen stain of 2 cm. in diameter was detected on the lower portion of the front side of the frock of the child victim. Similar semen stain was detected on the panty of the child victim and the underwear of the accused. The D.N.A. report (Exhibit 67-H) opines thus :
DNA profiles obtained from semen stain cuttings from

exhibit 2 frock and exhibit 3 panty are identical and from one and the same source of male origin and match with the DNA profile of Praful Rambhau Kachare. Mixed DNA profile obtained from Exhibit 1, cotton swab from private part and exhibit 1 cotton swab from private part match with the DNA profiles of victim and Praful Rambhau Kachare.

The learned Counsel for the accused contends that it is not proved that the samples sent for chemical analysis and DNA profiling were duly sealed and that the possibility of tampering, is a real possibility. However, the evidence on record inter alia that of P.W.10 Lalita would show that the samples were duly sealed and the possibility of tampering can be safely excluded.

11. I have given my anxious consideration to the evidence on record in order to satisfy the conscious of the Court that the accused is not falsely implicated. Be it noted, that the accused put forth two reasons for false implication. The first is his interaction with the mother of the child victim and the second is that he caught the father of the child victim red handed stealing cotton from the field of Chandan Kachare. The defence has cross-examined the child victim extensively and the child victim has candidly admitted that till lodging of the report she did not know the name of the accused and that she was told by her father that the report is to be lodged against the accused. The child victim further admitted that she was told by her parents how to adduce the evidence and that 3 to 4 days prior to lodging of the report there was a quarrel between her parents on the issue of talking with third person in the field and that there was also a quarrel between her father and one Chandan Kachare on the issue of bringing some articles from the field of Chandan.

However, candid and fair as the admissions are, I am not persuaded to disbelieve the child victim on the substratum of her

evidence, which is corroborated not only by the three children who were in a position to depose, and had deposed, that the accused took the child victim in his house and was with the child victim for quite sometime till the accused opened the door due to the intervention of Manu Aaji. It is true that few discrepancies and omissions are brought on record during the cross-examination of the three minors. But the, the discrepancies are minor and do not dent the credibility of the version. The evidence of P.W.3 Prajwal, P.W.4 Anjali and P.W.5 Bhagyashri amply corroborates the evidence of the child victim to the extent the said witnesses have deposed that the child victim was taken by the accused in his house and the child victim was alone with the accused for sometime.

12. The report is lodged with promptitude. The evidence of P.W.1 Sau. Sheela is broadly consistent with the oral report and her testimony has withstood the test of the cross-examination. Sau. Sheela has denied the suggestion that the accused is falsely implicated. The denial apart, even if it is assumed that there was a quarrel between the parents of the child victim on the issue of Sau. Sheela talking to a third person in the field or that there was some altercations between the father of the child victim and Chandan Kachare, in the teeth of the evidence on record, I am not inclined to hold that the child victim would be used as a tool out of spite. In a tradition bound society sexual ravishment is unfortunately viewed as a stigma. It would be rare, if at all, that the parents of a child, aged 6 years, would falsely implicate a person of having sexually ravished their daughter.

Judicious notice must be taken of the social norms and mores of the tradition bound Indian society in which the victim of sexual assault has to bear the burden of the social stigma, more often than not, during her entire life. I am not persuaded to hold, in the teeth of the evidence on record, that the accused is falsely implicated. Be it noted, that the

conviction is not based on the sole testimony of the child victim. Her evidence is more than amply corroborated by the prosecution witnesses and the medical evidence. The D.N.A. profiling is clinching. It must also be borne in mind that in view of the evidence led by the prosecution, the statutory presumption under Section 29 of the POCSO Act is activated. With the result, the accused was under the reverse onus to prove that the prosecution case is highly improbable and bordering on falsehood. The accused has clearly failed to discharge the statutorily imposed burden.

13. The appeal is sans merit and is dismissed.

The accused is in Jail. He would be entitled to set off under Section 428 of the Criminal Procedure Code.