
(2015) 01 BOM CK 0306
In the Bombay High Court
Case No : Criminal Appeal No. 1099 of 2013

Prakash Mahadev Kambale	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 506

Citation : (2015) 01 BOM CK 0306

Hon'ble Judges : I.K. Jain, J

Bench : Single Bench

Advocate : Abhaykumar Apte, for the Appellant; V.R. Bhonsale, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

I.K. Jain, J—This is an Appeal through jail against the Judgment and Order dated 29.01.2013 passed by the learned Additional Sessions Judge, Khed, District-Ratnagiri in Sessions Case No. 07 of 2010 convicting the appellant/original accused No. 2 for the offences punishable under Sections 376 and 506 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment of ten years and to pay a fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for six months for the offence punishable under Section 376 of the Indian Penal Code and to suffer rigorous imprisonment of one year and to pay a fine of Rs. 2,000/-, in default to suffer rigorous imprisonment of three months in respect of the offence punishable under Section 506 of the Indian Penal Code.

2. Briefly stated, the facts of the Appeal are as under:-

Complainant Sakharam Ratnu Kamble, father of the victim girl was resident of village-Tondli. At the relevant time, he was residing at Mumbai for painting work. His son Naresh and another daughter Manisha were doing job at Mumbai. According to prosecution, complainant used to visit his village. His wife Vasanti and daughter victim girl were residing at village-Tondli. Prakash Dattaram

Kamble, was the cousin of victim girl. Naresh, son of the complainant received a telephonic call from Prakash Kamble informing him that his sister victim girl was carrying seven months pregnancy. Naresh informed the father accordingly.

3. Then Sakharam inquired from his daughter about the incident. She disclosed that she was subjected to sexual intercourse by the appellant/accused, co-accused Anil and a juvenile offender Nilesh Kamble from time to time at different places. She also disclosed that they threatened her to kill, in case she discloses the incident to anyone. The complainant Sakharam then called villagers meetings. As nothing happened in the meetings, Sakharam went to Sawarde Police Station and lodged a complaint. Accordingly, offence was registered. During investigation, statement of victim girl was recorded. She was sent for medical examination. Scene of occurrence panchanama was drawn. On completion of investigation, charge sheet was filed against the accused before the learned Magistrate and against the juvenile offender Nilesh before the Juvenile Justice Board. In due course, case was committed to the Court of Sessions.

4. Charge was framed against the appellant/accused at Exh. 16. He pleaded not guilty to the charge. Prosecution examined in all eight witnesses. On hearing both the sides, learned Additional Sessions Judge came to the conclusion that there was sufficient evidence to find the appellant guilty for the offences punishable under Sections 376 and 506 of the Indian Penal Code. Appellant was thus convicted and sentenced as stated here-in-before in para 1. The appellant has challenged the correctness of the said Judgment and Order in this Appeal.

5. Heard Mr. Apte, learned counsel for the appellant and Smt. Bhonsale, learned APP for the respondent-State. Upon carefully going through the evidence of prosecution witnesses, I find that there is merit in the submissions advanced on behalf of the appellant/accused as the prosecution could not prove the guilt of appellant/accused beyond all reasonable doubt for the reasons stated below.

6. PW-2 victim girl is the star witness for the prosecution. She deposed that appellant with the co-accused used to visit her house. In the month of September, 2008 appellant/original accused No. 2 came to her house and asked her mother to send her victim daughter along with him to bring his daughter Pranita. Her mother asked the victim girl to accompany appellant Prakash Kamble. She accompanied him. She stated that while they were going, on the way appellant/accused Prakash took her to the river side and had sexual assault on her. He threatened her not to disclose the incident.

7. Thereafter, PW-3 Prakash Dattaram Kambale, cousin of victim-girl had been to village-Tondli at his house for attending Satyanarayan Mahapooja. He was informed by his wife that stomach of victim girl was appearing swollen and she should be taken to Doctor for medical check up. Prakash informed the same to complainant Sakharam, father of victim girl. They took the victim girl to Dr. Vijay Sahastrabuddhe of Wahal. On medical check up, Dr. informed that she was

carrying pregnancy of seven months.

8. PW-1 Sakharam Kamble then called three meetings in the village. They were unsuccessful. So he reported the incident to police. He has proved FIR (Exh. 28). It was lodged on 16.06.2009. It is apparent from the evidence of PW-1 Sakharam Kamble, PW-3 Prakash Kambale and the victim girl that on 16.05.2008, it was revealed that victim girl was carrying seven months pregnancy. PW-1 Sakharam Kamble had admitted in the cross-examination that he lodged report after discussion with his brother and the relatives. The inordinate delay in lodging FIR has not been explained by the prosecution. It is admitted that appellant/original accused No. 2 was working in Mumbai at the relevant time. Presence of the accused at the time of incident in the village is not duly established. The conduct of victim girl was also suspicious as on her own she never disclosed the incident to anyone.

9. Further the evidence of victim girl, her father and cousin, raises a reasonable doubt regarding reliability of prosecution case. The doubtful circumstance discussed above would require reasonable explanation and support from the other evidence. It would be, therefore, risky to rely upon the evidence of these witnesses to reach to any conclusion about the guilt of the accused.

10. It is the prosecution case that victim girl gave birth to a child after the incident. If one goes through DNA Report Exh. 57, it can be seen that present appellant/accused was excluded to be biological father of the child. Thus, DNA Report does not support in any manner the testimony of victim girl and further does not link the appellant/accused with the commission of alleged act.

11. The next important factor in the case is the age of the prosecutrix. According to prosecution, she was under age at the relevant time. For this reliance is placed on the evidence of PW-6 Head Master Sanjay Ganpat Warekar. It is stated by PW-6 Sanjay Warekar that victim girl was studying in 8th Std in H.B.P. Aba Sawant Madhyamik Vidyalaya, Tondli. She left the school on 30.09.2008. It is deposed by the Head Master that as per school record, her date of birth is 10.04.1994. The incident occurred somewhere in September, 2008. PW-6 Sanjay Warekar has proved entry in the school register at Exh. 47. Bona fide Certificate is proved at Exh. 48. It is pertinent to note that victim girl was studying till 7th Std in another school and on the basis of Leaving Certificate, entry was made in the register as stated by PW-6 Sanjay Warekar. There is an unequivocal admission in the cross-examination of the Head Master that he had not seen the Birth Certificate. From the evidence of PW-6 Sanjay Warekar, it is clear that primary evidence in respect to the birth date of victim was not brought on record. In such a situation, testimony of PW-6 Sanjay Warekar also does not help the prosecution to establish that at the relevant time, victim girl was minor.

12. In the light of the above, it can be seen that victim girl is not coming with a complete truth in the matter. Prosecution could not prove by convincing evidence that at the time of incident, she was minor and there is no medical evidence to

connect the appellant/accused with the commission of alleged act of sexual assault. In the circumstances, I am of the view that prosecution has not proved the guilt of appellant/accused beyond reasonable doubt. The trial Court has not considered the evidence properly.

13. In the result, Appeal is allowed. The judgment and order dated 29.01.2013 passed by the learned Additional Sessions Judge, Khed, Dist. Ratnagiri in Sessions Case No. 7 of 2010 is set aside against the original accused No. 2. Appellant - Prakash Mahadev Kambale is acquitted of the offences punishable under Sections 376 & 506 of the of IPC. Appellant is in jail. He be set at liberty forthwith if not required in any other case. Fine amount, if any, paid by the appellant shall be refunded to him.