
(2000) 12 BOM CK 0020
In the Bombay High Court
Case No : Criminal Appeal No. 496 of 1997

Ramesh @ Lalya Anand Jagtap	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 19-12-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 377(1)
Penal Code, 1860 (IPC) — Section 376(2)

Citation : (2001) ALLMR(Cri) 209 : (2001) BomCR(Cri) 385 : (2001) 1 BOMLR 290 : (2001) CriLJ 1579

Hon'ble Judges : Vishnu Sahai, J;T.K. Chandrasekhara Das, J

Bench : Division Bench

Advocate : Ms. Kiran Gupta, for the Appellant; Mr. D.P. Adsule, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—The appellant aggrieved by the Judgment and order dated 31.7.1997 passed by the Vth Assistant Sessions Judge. Thane in Sessions Case No. 610 of 1996 convicting and sentencing him to undergo 10 years R. I. and to pay a fine of Rs. 1000/- in default to suffer three months S. I. for the offence u/s 376(2)(f) I.P.C. has come up in appeal before us.

2. Shortly stated the prosecution case runs as under :-

The victim Nandini, a child aged 21/2 years is the daughter of the informant Saraswati Gupta P.W. 1 and Suresh Gupta PW 3. At the time of the incident, she lived along with her parents and grandmother Munnidevi PW 2 in Kopri Colony. District Thane. The appellant resided adjacent to her house and was known to her parents and her grandmother.

On 10.6.1996, at 9.30 p.m. the appellant came to the informant's house and took Nandini on the pretext of giving her Pepsi drink. After 20 minutes, he came back with Nandini. There were blood stains on his shirt and there was also blood on the frock and legs of Nandini.

Since Nandini was crying loudly the informant asked the appellant as to what had happened whereupon the appellant replied that she was frightened on account of darkness. At about 10 p. m. the informant's husband Suresh PW 3 came and noticed that she was crying and there were blood stains on her thighs and legs. Suresh asked his mother Munnidevi as to why Nandini was crying whereupon Munnidevi told him that ever after the appellant had taken her she was crying.

Thereafter, the informant and Suresh took Nandini to the clinic of Dr. Balasaheb Gandhi P.W. 6, a private medical practitioner. Since there was bleeding in her genital organs, he referred her to Manisha Hospital for treatment.

The evidence of Dr. Mrs. Madhuri Bangela P. W. 5 of Manisha Hospital shows that on 10.6.1996 at 10.30p.m. she examined Nandini who had been referred by Dr. Balasaheb Gandhi. On her examination, she recorded the following findings :-

"There was no external injury on other parts of her body.

Small tear on the posterior couchette there was bleeding in the vagina. She was excessively crying due to injury.

This injury is possible by hard object like finger".

Evidence of Dr. Bangela shows that Nandini was admitted for three days in her private clinic and on the next morning passed urine.

4. The evidence of Dr. Bangela shows that on 12.6.1996 at 8 p. m. she sent a letter to Police Inspector, Kopri Police Station, Thane (East) Exhibit 16 intimating therein that Nandini was admitted on 10.6.1996 at 10.30 p. m. with history of trauma to genital urinary region and since on examination, she started crying excessively, her examination could not be done. In the letter, it has also been mentioned that she is not passing urine since 9 p. m. and she administered I. V. fluids and waited for her to pass urine and she passed urine on 11.6.1996 at 10.30 a. m. and she discharged her on 12.6.1996. She also mentioned in the letter that since she thought that there could be a foul play (rape) she decided to do the E.P.R. on 12.6.1996 at 1.10 p. m.

5. The evidence of the informant Saraswati Gupta shows that since in Manisha Hospital the doctor had told her husband that Nandini was raped, she lodged her FIR at Kopri Police Station. On the basis of the FIR, P. S. I. Suryakant Gaikwad P.W. 8 of Kopri Police Station registered an offence u/s 376 I. P. C. against the appellant on 12.6.1996

6. The evidence of P. I. Gaikwad shows that on 13.6.1996 he sent Nandini for medical examination to Civil Hospital. Thane. At the said hospital, she was medically examined by Dr. Kisan Ubale P.W. 7 on the said date at 2.30 p. m.

The findings recorded by Dr. Ubale are as under :-

"1. Lacerated deep wound on posterior part of posterior edge of hymen at couchette. 1 cm. diameter and 1 cm by deep reddish colour, unsecured object,

injury was caused by hard and blunt object and it was within 36 to 72 hours. It was not bleeding and was a dangerous wound. As the wound was deep and on delicate tender part of private part, therefore I say that it was dangerous. The age of the girl was 2 1/2 years. She was previously treated in Manisha Hospital. Naupada on 12.6.1996.

The hard and blunt object which caused injury might be because of insertion of finger with force and stick."

To a Court question whether the injury on Nandini was possible by forceful insertion of penis, Dr. Ubale replied yes.

7. The investigation was conducted in the usual manner by P. I. Gaikwad. On 12.6.1996, he arrested the appellant.

During the course of interrogation appellant admitted that he could point out the place of offence and produce his clothes. The said willingness of the appellant was recorded in a pahchnama, in the presence of the public panchas. one out of whom Namdeo Gadge has been examined as P.W. 4. Thereafter, the appellant took P. I. Gaikwad and the public panchas to his house in Siddarth Nagar. Kopri and produced therefrom a white coloured shirt and half pant. There were blood stains on the left sleeve of the shirt. The said clothes were seized under a panchnama.

On 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 the offence punishable u/s 376(f) I. P. C., to which charge he pleaded not guilty and claimed to be tried.

During trial, the prosecution examined 7 witnesses. We may straight away mention that there is no eye-witness of the incident and the case hinges on circumstantial evidence.

The learned trial Judge concluded that there was sufficient circumstantial evidence warranting the conviction of the appellant for the offence punishable u/s 376(f) I. P. C. and accordingly convicted and sentenced him thereunder.

Hence, this appeal.

9. We have heard learned counsel for the parties and in our view, there is sufficient circumstantial evidence warranting the inference that the appellant raped the victim - Nandini.

10. The evidence of the informant Saraswati and her mother-in-law Munnidevi shows that the appellant was known to them from before the incident and on 10.6.1996 at 9.30 p. m. he came to their house and took Nandini on the pretext of giving her Pepsi drink and 20 minutes later when the appellant returned alongwith Nandini, there were blood stains on his shirt, there was also blood on the frock and legs of Nandini and Nandini was crying. When the informant asked

the appellant as to why she was crying, he replied that she may have got frightened on account of darkness.

It is pertinent to mention that both the informant and her mother-in-law were cross-examined but, could not be discredited on the factum that on 10.6.1996 at 9.30 p. m. the appellant took away Nandini on the pretext of giving her Pepsi drink and 20 minutes later, when he returned, with her, there was blood not only on his shirt but, also on the frock of Nandini and the latter was crying. We may also mention that both of them had no rancour or ill will against the appellant and in this view of the matter would not have falsely deposed against him.

This circumstance unmistakably shows that whatever happened to Nandini between 9.30 p. m. and 9.50 p. m. on 10.6.1996 the appellant was solely responsible.

It is pertinent to mention that the said shirt was seized by P. I. Suryakant Gaikwad in the presence of public panch Namdeo Gadge P. W. 4 from the house of the appellant in Siddarth Nagar, Kopri on his pointing out under a panchnama. It may be mentioned that both P. I. Gaikwad and Namdeo Gadge were subjected to cross-examination but, nothing could be extracted therefrom which could render the said seizure suspect. It should be remembered that they had no rancour or ill will against the appellant and in our view, in the absence of the same, they would not have foisted this recovery on the appellant.

It is significant to mention that this shirt was sent to the Chemical Analyst and he found thereon blood of "O" group, namely the blood group of Nandi. We say this because, on the frock of Nandini also, blood of the said group was found.

It is pertinent to mention that in his statement u/s 313 Cr. P. C. the said circumstance were put to the appellant and all that he could reply was it is false.

We make no bones in observing that we are not impressed with this reply of the appellant.

In our view, this is a very strong circumstance which incriminates the appellant.

11. We may also mention that the medical evidence shows that the injuries sustained by Nandini were attributable to her being raped. It is also pertinent to mention that Dr. Ubale P.W. 7 in response to a Court question whether the injuries suffered by Nandini were a consequence of rape, replied in the affirmative.

In our view, the said reply of Dr. Ubale Coupled with the evidence of Saraswati and Munnidevi conclusively establishes that Nandini was raped.

12. For the said reasons, in our view the Trial Court acted rightly in convicting the appellant u/s 376(2)(f) I. P. C.

13. Ms Gupta, learned counsel for the appellant strenuously urged that since Dr. Bangela P.W. 5 of Manisha Hospital and Dr. Ubale P.W. 7 of Civil Hospital, Thane

stated in their examination-in-chief that the injuries suffered by Nandini were a result of a blunt object and insertion of a finger, the appellant deserves the benefit of doubt.

We have examined this submission of Ms Gupta and we regret that we do not find it worthy of acceptance. It is pertinent to mention that Dr. Bangela in her cross-examination admitted that she had written a letter to Inspector of Kopri Police Station, Exhibit 16 and a perusal of the said letter shows that she has voiced an apprehension therein that there could be foul play (rape).

Dr. Ubale to a Court question admitted that the injuries suffered by Nandini could be as a consequence of rape.

In other words, the evidence of both Dr. Bangela and Dr. Ubale admits of the possibility of the injuries of Nandini being the result of rape. It also admits of the possibility that it could be a result of a hard and blunt object including insertion of a finger. Since both the possibilities are there, in our view, the crucial evidence would be that of Nandini's mother Saraswati P.W. 1 and grandmother Munnidevi P.W. 3. Their evidence, which has been discussed by us earlier, shows that on 10.6.1996 at 9.30 p.m. when the appellant took Nandini on the pretext of offering Pepsi drink, she was normal and her clothes were not stained with blood but, 20 minutes later, when he returned with her, there was blood on his shirt; blood on Nandi's frock; and Nandini was crying, -Presence of blood of "O" group (blood group of Nandini) on the shirt of appellant and Nandini's frock; the circumstances that she was crying; and the possibility of Nandini being raped, as per the medical evidence, leaves not even an iota of doubt in our minds that Ms Gupta's submission is devoid of merit.

We feel it pertinent to mention that we have perused the injuries of Nandini and in our view, they were caused while the appellant was raping her.

14. It should always be borne in mind that where two inferences are open from medical evidence, the Court should accept the inference which is in consonance with the other evidence available : direct or circumstantial, as the case may be provided the same is beyond reproach. The rationale for such a view is that the medical evidence is inconclusive and the other evidence is conclusive and unerringly leads to the inference of guilt.

In the instant case, there is no direct evidence of rape because, Nandini has not been examined : obviously because she was aged about two and a half years at the time of incident and was incapable of comprehending who raped her. However, as we have seen, the circumstantial evidence furnished through Saraswati P.W. 1 and Munnidevi P.W. 3 conclusively leads to the inference that the appellant raped her.

15. Coming to the question of sentence, we find that section 376(2) I. P. C. provides that the minimum substantive sentence shall be 10 years and the maximum may extend to imprisonment for life. In the instant case, the minimum

sentence prescribed under the law has been awarded to the appellant.

Ms. Gupta, learned counsel for the appellant, urged that in view of the proviso to section 376(2) I. P. C. we should reduce it further.

16. It is true that the proviso to section 376(2) IPC provides that for adequate and special reasons, to be reflected in Judgment, the Court can impose sentence below the minimum.

But, we make no bones in observing that the discretion vested in the Court by the proviso should be sparingly exercised. It is only when the Court after the utmost circumspection, finds that there are compelling circumstances, warranting the reduction of the sentence below the statutory minimum, should it reduce it.

The words adequate and special reasons used in the proviso of section 376(2) I. P. C. connote sufficient and compelling reasons, it is impossible to enumerate such reasons; for any list can only be illustrative and not exhaustive. Some such reasons can be the tender age of the accused or consent of the girl or in a given case both.

But, it should always be borne in mind that the reasons should be exceptional and extraordinary because if this is not so, the proviso would Override the legislative intent contained in section 376(2) I. P. C. which provision provides that the sentence shall not be less than ten years.

17. We are constrained to observe that in the instant case, there are no special and adequate reasons warranting the reduction of the sentence below the minimum. The appellant, who as per his statement recorded u/s 313 Cr. C. P. was aged about twenty eight years at the time of the incident cheated the confidence of Nandini's mother by telling her that he was taking Nandini for a Pepsi drink. His act thereafter of raping Nandini, a girl of two and a half years of age, was both despicable and reprehensible. It reflects a perverted mind. Persons like the appellant deserve no sympathy. They should cool their heels in jail and only come out therefrom when they are civilised enough to live in society

A soft-pedaling policy by courts in the matter of sentence in such cases, would erode the confidence of the citizenry in the courts. It should never be forgotten that the bedrock on which courts survive is public confidence and it is their duty to ensure that it is not undermined.

18. We dare say that the appellant should thank his stars that he got away with the minimum sentence of ten years because, the maximum provided for the offence u/s 376(2)(f) IPC; under which provision his offence falls, is imprisonment for life. And if a case, wherein the girl raped is aged about two and a half years, does not call for the maximum sentence, then which would.

It is a matter of profound regret that the State of Maharashtra has not preferred an appeal u/s 377(1) Cr. P. C. for enhancement of the appellant's sentence.

It is true that in view of the revisional powers vested in us, we can suo motu

issue a notice to the appellant to show cause as to why his sentence be not enhanced but, at this very belated stage, such an exercise would not be conducive to the cause of justice.

It should be remembered that Judges should never be blood thirsty. Wisdom calls for judicial balance in such situations.

19. For the said reasons, in our view, there is no merit in this appeal.

20. In the result, we confirm the conviction and sentence of the appellant for the offence u/s 376(f) I. P. C. and dismiss this appeal. The appellant is in jail and shall serve out the sentence.