
(2013) 09 BOM CK 0231

In the Bombay High Court

Case No : Criminal Appeal No. 643 of 2010

Satish Ramji Chaurasiya

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3975

Hon'ble Judges : V.K. Tahilramani, J;A.R. Joshi, J

Bench : Division Bench

Advocate : Rohini M. Dandekar, for the Appellant; M.M. Deshmukh, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—This appeal is preferred by the appellant-original accused against the judgment and order dated 11.12.2009 passed by the learned Additional Sessions Judge, Vasai in Sessions Case No. 242 of 2007. By the said judgment and order, the learned Sessions Judge convicted the appellant u/s 376 of IPC and sentenced the appellant to R.I. for life and fine of Rs. 5000/- in default further imprisonment for four months. The prosecution case, briefly stated, is as under:

The prosecutrix was the daughter of PW-5 Sushil and the appellant. Sushil is the mother of the prosecutrix and the appellant is the father of the prosecutrix. The appellant, his wife PW-4 Sushil, prosecutrix who is their daughter and two sons of the appellant and Sushil were residing at Nalasopara, District Thane. Prosecutrix was about 13 years old in the year 2006. It is the prosecution case that the appellant committed rape on his own daughter aged about 13 years. He committed rape on the prosecutrix first in December, 2005 and thereafter he committed rape on her in the month of February, 2006. As the appellant had threatened the prosecutrix, she did not disclose this incident to her mother or anyone else. In August, 2006, she was taken by her mother Sushil to PW-2 Dr. Gupta who was the family doctor of the appellant. The mother of the prosecutrix

told Dr. Gupta that there was increase in the belly of the prosecutrix and it was her misconception that it was increased due to over-eating of rice. When PW-2 Dr. Gupta examined the prosecutrix, he had some suspicion, hence, he asked the mother of the prosecutrix whether her daughter's menses was regular. Her mother stated that her daughter's menses was not regular, therefore, PW-2 Dr. Gupta referred the prosecutrix to PW-3 Dr. Bhambari for sonography. Hence, they went to PW-3 Dr. Bhambari who performed sonography on the prosecutrix. PW-3 Dr. Bhambari examined her on 2.8.2006 and found that she was carrying foetus of 20 weeks. He gave report to the father of the prosecutrix to give it to PW-2 Dr. Gupta. The prosecutrix was then referred to KEM hospital. PW-7 Dr. Prashant Parvadekar was the Doctor serving in KEM hospital. On 9.8.2006 he examined the prosecutrix. She was admitted in KEM hospital. He found that she was about 20 weeks pregnant. It was noticed that hymen of the prosecutrix was ruptured. In KEM hospital, police came and recorded the statement of the prosecutrix. In the said statement, the prosecutrix has stated that her father had forcible sexual intercourse with her in the month of December, 2005 and in the month of February, 2006. Her father (appellant) had threatened her not to disclose the said fact to her mother or anyone else. Due to the act of father, the prosecutrix became pregnant and at the time of lodging of F.I.R. she was about six months" pregnant. The F.I.R. was registered. Thereafter the investigation commenced.

2. Charge came to be framed against the appellant u/s 376 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant was that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para I above, hence, this appeal.

3. We have heard the learned counsel for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, we are of the opinion that the appellant committed rape on his minor daughter.

4. The case is mainly dependent on the evidence of the prosecutrix, the evidence of Doctors who examined the prosecutrix and the D.N.A. Report Exh. 39. The prosecutrix (PW-4) has stated that on one after-noon at 3 p.m. when her mother had gone out of the house and her brothers were playing outside, her father (appellant) stated that she should not tell what was he going to do with her, otherwise he would beat her. Her father took out her clothes and then committed rape on her. Her mother and brothers came home but she did not disclose this fact to them or any one else as she was threatened by the appellant. After about 1 1/2 months thereafter when she was carrying sand to the construction site of nearby room, at that time, her father again committed rape on her. Thereafter she did not get her monthly period. Her mother took her to the Doctor. There sonography was done. Then she was taken to KEM hospital where she was

examined. It was found that she was about six months pregnant. She lodged F.I.R. (Exh. 21). Thereafter, she gave birth to a daughter.

5. PW-2 Dr. Gupta was the family Doctor of the appellant and his family. He has stated that in the month of August. 2006, the prosecutrix was brought to his dispensary. The mother of the girl told him that there was increase of the belly of the girl and it was her misconception that it might be due to overeating of rice. Dr. Gupta then examined her. He had some suspicion, hence, he asked the mother of the prosecutrix whether her daughter's menses was regular. The mother said that it was not regular. According to Dr. Gupta, the age of the girl was 12 to 15 years. Dr. Gupta then referred the prosecutrix to PW-3 Dr. Bhambari who conducted a sonography. On receiving sonography report, Dr. Gupta noticed that the report stated that the girl was carrying of foetus of 20 weeks.

6. PW-3 Dr. Bhambari performed sonography on the prosecutrix on 2.8.2006. He found that she was carrying foetus of 20 weeks. According to him, the age of the girl might be 12 to 13 years. PW-7 Dr. Prashant examined the prosecutrix on 9.8.2006. Dr. Prashant was serving in KEM hospital. On 9.8.2006 the prosecutrix was admitted in KEM hospital. On her examination, he found that she was carrying foetus of about 20 weeks. He further noticed that her hymen was ruptured. Thus, the evidence of PW-2 Dr. Gupta, PW-3 Dr. Bhambari and PW-7 Dr. Prashant corroborates the case of the prosecution.

7. The fact that the prosecutrix was a minor at the time of the incident is seen from the evidence of her mother PW-5 Sushil who has stated that the prosecutrix was 13 years of age in the year 2006 and in the year 2006 she was in the 5th standard. The mother of the prosecutrix came to know about the incident only in August, 2006. It is the case of the prosecutrix that much prior to that the appellant committed rape on her. At that time, she was in the 5th standard. So, it appears that the prosecutrix was about 12 years at the time when the rape was first committed on her. The evidence of the mother of the prosecutrix that the prosecutrix was 13 years of age at the relevant time, has not been shaken. In addition. PW-2 Dr. Gupta has stated that the girl was about 12 to 15 years of age and PW-3 Dr. Bhambari stated that the girl was 12 to 13 years of age. There is not even a suggestion to any of these witnesses that the prosecutrix was over 16 years of age at the time of the incident. Thus, the evidence on record clearly establishes that the prosecutrix was a minor at the time of the incident and she was well below 16 years of age at the relevant time.

8. The prosecution is also heavily relying on the evidence of PW-8 Dr. Desai who was working in the Government Forensic Laboratory at Kalina, Mumbai. This witness has stated that he received blood samples of the prosecutrix, the appellant and the minor child Mohini who is the daughter of the prosecutrix. He conducted DNA analysis on these three blood samples. The report of the said analysis is at Exh. 40. The said report shows that the prosecutrix as well as the appellant who is her father, are the biological parents of the child Mohini. This

report clearly establishes that the appellant had sexual intercourse with his own daughter due to which his daughter got pregnant and thereafter delivered a female child.

9. After going through the record, we find that there is sufficient evidence to connect the appellant with the crime. Hence, we find no merit in the appeal. Appeal is dismissed.

10. Office to communicate this order to the appellant and the Jail Superintendent in which Jail, the appellant is lodged. At this stage, we must record our appreciation for Ms. Rohini Dandekar who is on the panel of Advocates of the High Court Legal Services Committee Bombay and who was appointed by us by order dated 20.9.2013 to represent the appellant. We found that she had meticulously prepared the matter and she has very ably argued the matter. We quantify legal fees to be paid to her by the High Court Legal Services Committee at Rs. 2500/-.