
(2013) 02 BOM CK 0180

In the Bombay High Court

Case No : Criminal Revision Application No. 16 of 2010

Shashikant @ Aba Vedu Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 323, 377, 506

Citation : (2013) ALLMR(Cri) 2478

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : Pravin S. Patil, for the Appellant; R.K. Laddha, APP, for the Respondent

Judgement

K.U. Chandiwal, J.—Heard extensively. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.

2. The revision applicant was convicted in RCC No. 70/1997, for offense u/s 377 of I.P.C., to suffer rigorous imprisonment for two years and to pay fine of Rs. 4,000/-; in default, simple imprisonment for one month; for offense u/s 323 of I.P.C., to suffer rigorous imprisonment for six months and to pay fine of Rs. 500/-; in default, simple imprisonment for one week; for offense u/s 506 of I.P.C., to suffer simple imprisonment for six months and to pay fine of Rs. 500/-; in default, simple imprisonment for one month. The substantive sentence was directed to run concurrently.

3. In Criminal Appeal No. 6/2006, the revision applicant failed and hence the present Criminal Revision questioning the conviction. Fine amount has been deposited and an amount of Rs. 3,000/- was directed to be paid to the complainant as compensation.

4. The victim, a boy of 10/11 years, on 1.4.1997, along with his friends, entered agricultural field of revision applicant to pluck unripe mangoes. On noticing the

victim climbing on the tree, the revision applicant got estranged by such act of the victim and his friends. Sensing presence of the applicant, two boys; Bhausahab and Vijay, sneaked away from the field, however, since the victim was at the branch of tree, could not succeed in escaping. The applicant/accused nabbed him. He started beating the victim. On the way, while taking the victim to nearby hut, he mercilessly beat him with a stick. He did not bother to the yelling of the victim; even advice from his watchman, to refrain. The victim was taken to a secluded shade/room where the applicant/accused indulged into carnal intercourse against order of nature with the victim boy, then 10 years old.

5. The accused/applicant took bath. He had warned the victim not to disclose the events to the villagers or anybody else. Consequently, the victim remained aloof for few days, however, since there were severe pains at his back, he on inquiry, informed his grand mother the events of abuse, injuries. The accused was confronted. The accused, allegedly, implored, for mercy, for the events, however, FIR vide Crime No. 6/1997, was lodged on 3rd April, 1997, for offense under Sections 377, 323, 506 of I.P.C. Charge was explained to the accused in vernacular to which he did not plead guilty and claimed to be tried. The accused/applicant asserted to the false implication.

6. Ten witnesses were examined wherein PW No. 2 is the victim of the offense. PW No. 5 is Dr. Purushottam, Medical Officer, who has examined the victim and so also accused; the report in respect of accused is at Exh. 32 and at Exh. 33, to the extent of the victim. PW No. 6, the watchman cemented the events. PW No. 7 was witness for spot panchnama. PW No. 8 witnessed seizure of blue coloured under pant belonging to the accused. Exh. 39 is seizure panchnama of the nicker belonging to the victim boy. PW No. 9 is the Chemical Analyser who has established report of nicker and undergarment at Exhs. 55, 56 and 57. The report of Chemical Analyzer in respect of semen, blood and pubic hairs of the accused; it illustrates that the blood group of the accused and that of the victim is different. The Chemical analysis has clearly shown that semen stains belonging to the accused were on the nicker and equally on the under-pant of the accused and the victim boy.

7. Mr. Patil, learned Counsel for applicant has criticized about report of the Chemical Analyzer canvassing that the victim had only two nickers which were regularly washed. Hence, there could not be an evidence about presence of semen stains on the undergarments. According to him, an incident of beating by the accused has been magnified to rope him for the event of unnatural act. He has stressed to the evidence of Medical Officer PW No. 5 to indicate that on 4.4.1997, there were no semen stains found. He has criticized delay of four days in lodging the FIR.

8. There are concurrent findings of facts recorded by two Courts against the revision applicant. On analysis of the same, I find no perversity to disbelieve it. The appreciation reached by both the Courts was on the basis of available material. Even, for satisfaction of Mr. Patil, I had read evidence of Medical Officer,

the victim, his father PW No. 2, still, I did not notice any glaring omission or exaggeration of facts in it. There should not be a disbelief to the Chemical Analyzer's report, on the discounts desired by the learned Counsel. Even if, on 4.4.1997, no semen stains were found on the person of the accused, it will not violate the evidence of the victim. The victim, indeed, has exposed his esteem against the accused. It cannot be a brand, to coin any other element between the two groups; rather, there is no evidence on this aspect than mere denial.

9. In the set of above facts, the reasoned order of both the Courts does not call for interference. Conviction of the revision applicant for offence under Sections 377, 323, 506 of IPC is maintained. The applicant was 28/29 years old in the year 1997. He was in custody for 27 days throughout. Now, he is 45 years old. He has suffered a lot in his life due to prosecution. He had to wait for his marital knot for a substantial period as the stigma was over influencing to his status. Taking stock of all these facts, the revision applicant deserves some leniency in awarding the sentence. In the fact situation, there being scope for modification of the sentence, having examined all the relevant aspects having bearing on the question, the quantum of sentence is reduced on all counts, to four months (four months). The fine amount to remain the same.

ORDER

1. The conviction in RCC No. 70/1997, for the offense under Sections 377, 323, 506 of I.P.C., with fine amount and default clause is maintained. Instead of the sentence imposed, the revision applicant to undergo imprisonment, on all counts, for a period of four months; with same fine amount and default clause.

Set off u/s 428 of Cr.P.C. be given to him.

Fine amount is already deposited on 9.1.2006.

The revision applicant to surrender to the conviction up to 20th Feb., 2013.

Criminal Revision Application partly allowed. Rule partly made absolute.