
Dasu s/o Kisan Waghmare Vs The State of Maharashtra

884 of 2015

Court: BOMBAY HIGH COURT

Date of Decision: Aug. 29, 2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 324](#), [Section 323](#), [Section 506](#), [Section 452](#), [Section 504](#),
[Section 376\(2\)](#) - V

Hon'ble Judges: Sangitrao S. Patil

Bench: SINGLE BENCH

Advocate: Satyajit S. Bora, G.O. Wattamwar

Final Decision: Allowed

Judgement

Section of IPC,Sentence

452,Rigorous imprisonment for one year and fine of Rs.500/.

376(2),Rigorous imprisonment for ten years and fine of Rs.1000/.

323,Rigorous imprisonment for two months and fine of Rs.200/.

504,Rigorous imprisonment for four months and fine of Rs.300/.

506,Rigorous imprisonment for six months and fine of Rs.500/.

the police, he would kill her. She raised shouts whereon one Sheshabai, Suwarna and Sojarbai (PW4) (Exh23) came there and rescued her from",

the clutches of the appellant. After that incident, she went to Police Station, Dindrud along with her husband, her minor son and the victim girl. She",

lodged report (Exh21) against the appellant.,

10. The report (Exh21) corroborates the version of the informant on all material points. Sojarbai (PW4) also corroborates the version of the,

informant in respect of the incident that took place in front of the house of the appellant on the next day of the incident at 7 a.m. She specifically,

states that when the informant questioned the appellant as to why he committed rape on the victim girl, the appellant caught left hand of the",

informant and twisted it. Due to that, one of the bangles in the hand of the informant was broken. She further states that the appellant threatened",

the informant that in case she lodged the report against him, he would kill her. The only omission that has been elicited in her crossexamination",

about breaking of one of the bangles and causing injury to the hand of the appellant at the time of the incident that took place in front of his house.,

The said omission is minor one and insignificant.,

11. The reaction of the informant of going to the house of the appellant on the next day morning to question him about the misdeeds committed by,

him as against the victim girl also is a circumstance which corroborates the case of the prosecution about occurrence of the incident that took place,

inside the house of the informant on the previous day. Had such incident not taken place at all, the informant would not have been gone to the",

house of the appellant to question him about that incident. There was no reason for the informant to go to the house of the appellant on the next,

day morning of the incident and question him on the false ground of committing rape on the victim girl.,

12. Dr. Priyanka (PW9) (Exh33) examined the victim girl in the Civil Hospital at Beed on 18th June, 2014 at 7.30 p.m. She states that by showing",

gestures, the victim girl was telling that something abnormal had happened with her. She noticed three teeth bite marks over the chin of the victim",

girl. She found that the hymen of the victim girl was torn and the tears were fresh. She issued certificate (Exh34) in respect of the victim girl wherein,

she noted the history of sexual assault at about 2.00 p.m. on 17th June, 2014. Her evidence has remained unshattered in her crossexamination.",

13. The evidence of Dr. Priyanka (PW9) supports the version of the victim girl that the appellant had taken bite on her chin at the time of the,

incident. It further supports her version about sexual assault since there were fresh tears of her hymen.,

14. The learned counsel for the appellant submits that the medical certificate (Exh34) shows that the victim girl was produced for examination on,

18th June, 2014 at about 7.30 p.m. Dr. Priyanka (PW9) states that the teeth bite marks over the chin of the victim girl might have been caused",

within 24 hours. Therefore, according to him, the said teeth bite marks cannot be connected with the incident in question which took place prior to",

more than 24 hours of examination of the victim girl. I am not inclined to accept this contention. There is positive evidence of the victim girl and her,

mother i.e. the informant that there were teeth bite marks on the chin of the victim girl when the victim girl narrated about the incident to the,

informant on 18th June, 2014 at about 7.30 p.m. The opinion of Dr. Priyanka (PW9) about the approximate time of causing the said teeth bite",

marks would not throw away the ocular evidence of the victim girl. Thus, the medical evidence supports the evidence of the victim girl that the",

appellant took bite and due to that, there were teeth bite marks over her chin.",

15. The victim girl being mentally challenged, could not narrate in specific words the penetrative sexual assault committed by the appellant with her.",

However, when she specifically states that the appellant removed her clothes, sat on her stomach and gave jerks to her, it would be sufficient to",

indicate that the appellant had penetrative sexual intercourse with the victim girl.,

16. The appellant was examined by Dr. Deepali (PW8) on 18th June, 2014 at about 6.50 p.m. She found nothing to indicate that the appellant",

was impotent.,

17. Though the garments, which were on the persons of the victim girl and the appellant, were seized and sent to the Chemical Analyst, no semen",

was detected on the garments of the victim girl. The blood group of the appellant was found to be ""A"". The blood group of the victim girl could not",

be determined. The Jangya of the victim was stained with blood in middle portion and appeared to have been washed. The blood group thereof,

could not be determined. In the circumstances, the C.A. Reports would be of no help to the prosecution to connect the appellant with the incident",

in question.,

18. The defence of the appellant that because there was a civil dispute between the informant and her husband on one hand and himself on the,

other in respect of a house property, a false report came to be lodged against him, ex facie, is not probable and acceptable. He has not produced",

anything on record to show that any such dispute in respect of any house, in fact, was in existence.",

19. It has come in the crossexamination of the informant that after the victim girl told her about the incident, she immediately did not go to the",

Police Station due to rains and night time. It may be noted that in the incident like rape, generally the victim or the relative of the victim are reluctant",

to make such incident public to save their dignity. In this case, the reaction of the informant in questioning the appellant about the misdeeds",

committed by him as against the victim girl by approaching his house on the next day morning of the incident itself shows that the informant was,

very much annoyed by the said misdeeds of the appellant. It is only because of the rains and night time that she could not approach the police,

immediately after she came to know about the incident. After having questioned the appellant about that incident, she went to the Police Station",

along with her husband Mahadeo (PW5) and the victim girl. In the circumstances, the delay of few hours in lodging the report cannot be said to be",

fatal to the prosecution. The said FIR cannot be characterized as an outcome of an afterthought. There was absolutely no reason for the informant,

to make false allegations of committing rape on her daughter at the cost of the dignity of her family. The delay in lodging the report has been,

properly explained by the informant.,

20. The evidence of the victim girl itself inspires a great confidence. It is difficult to accept that a mentally challenged girl will make false allegation,

against any particular person of having committed rape on her. Her evidence is corroborated by the medical evidence. It is further corroborated by,

the evidence of the informant to whom she had narrated about her ravishment at the earliest possible opportunity.,

21. From the evidence of the prosecution, guilt of the appellant for the offence under clause (I) subsection (2) of Section 376 of the IPC is",

established beyond reasonable doubt. The evidence further proves that the appellant committed house trespass for committing the offence of rape,

on the victim girl, which is made punishable under Section 452 of the IPC. The appellant caused injury by taking teeth bite on the chin of the victim",

girl and as such, committed offence punishable under Section 323 of the IPC. The appellant threatened the informant of death with intent to cause",

alarm to her so as to deter her from lodging the report against him and as such, committed the offence punishable under Section 506 of the IPC.",

However, there is no evidence to show as to what abusive words were actually uttered by the appellant so as to constitute the offence punishable",

under Section 504 of the IPC. The evidence on record is not sufficient to prove the said offence against the appellant. In the circumstances, the",

appellant is liable to be acquitted of the offence punishable under Section 504 of the IPC. However, his conviction for the offences punishable",

under Sections 452, 376 (2), 323 and 506 of the IPC is liable to be upheld. The learned Trial Judge has convicted the appellant for the offence",

punishable under Section 376 (2) of the IPC with minimum sentence of rigorous imprisonment for ten years. The sentence passed against the,

appellant in respect of the remaining three offences is rigorous imprisonment for a period of one year and less than that. All the,

substantive sentences have been ordered to run concurrently. In the circumstances, the minimum sentence of imprisonment passed against the",

appellant needs no interference.,

22. The appeal is liable to be allowed partly to the extent of the conviction and sentence passed against the appellant for the offence punishable,

under Section 504 of the IPC. His conviction and sentence for the remaining four offences need no interference. In the result, I pass the following",

order:.,

O R D E R,

(i) The appeal is partly allowed.,

(ii) The conviction and sentence passed against the appellant, vide the impugned judgment and order, for the offences punishable under Sections",

452, 376 (2), 323 and 506 of the Indian Penal Code are maintained as they are.",

(iii) The conviction and sentence passed against the appellant, vide the impugned judgment and order, for the offence punishable under Section 504",

of the Indian Penal Code are set aside and he is acquitted of the said offence.,

(iv) The fine amount of Rs. 300/paid by the appellant in connection with the offence punishable under Section 504 of the Indian Penal Code be,

refunded to him.,

(v) The rest of the directions given by the Trial Court in the impugned order are maintained.,

(vi) The appeal is accordingly disposed of.,