

Received on : 17.01.2017.
Registered on : 17.01.2017.
Decided on : 15.03.2017.
Duration : Y M D
- 01 19

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, PUNE.
(PRESIDED OVER BY ASHOKKUMAR B.BHILLARE.)

SPL. CASE NO. 32/2017
EXH.

State of Maharashtra
Through Velha police station,
(at the instance of Radhika Malu Kachre)

..Prosecution.

Versus

Thakru @ Rajesh Hiru Chavan
Age : 25 Yrs. Occ. Driver
R/at : Jalgiri Lamantanda, L-t-4,
Tal-Tikota, Dist-Vijapur (State Karnataka)
At present- Khambwadi, Tal-Velha, Dist-Pune.

..Accused.

**Offence punishable under section
376 of Indian Penal Code and
Section 3 & 4 of Protection of
Children from Sexual Offence Act,
2012.**

APPEARANCES :

Mr. Vilas Pathare, the ld. APP for the State.
Mr. B. R. Bhosale, Advocate for accused.

ORAL JUDGMENT
[Delivered on 15.03.2017]

The accused who is under trial prisoner stands prosecuted for

the offence punishable under Sections 376 of Indian Penal Code and 3 & 4 of Protection of Children from Sexual Offence Act, 2012.

2] The facts of the prosecution case, in brief are as under :

Prosecutrix Radhika is resident of Ghisar, Raidhanwadi, Tal-Velha. She has four brothers namely Rambhau, Laxman, Tanaji and Suresh. Her brothers Tanaji and Sursh are residing in Pune in connection with their work. She is residing with his brother Rambhau, sister-in-law Sunita and nephew Waghu and niece Ishwari. Her another brother Laxman is residing separately in the same village.

3] On 14.02.2016 work of digging foundation of the house of her brother Rambhau was going on. For the said work JCB machine was deployed. The accused was working as JCB driver. While the work of digging foundation of house was going on, the accused was residing in the house of informant. At that time, wife of Rambhau was pregnant and hence, she had gone to her parental village. On 22.02.2016 at about 8.00 pm informant was alone present in the house. The accused came there and on the pretext of talking with her he had taken her outside the house. He kept proposal of marriage before her and had forcible sexual intercourse with her. He promised to marry with her and told her not to worry. After finishing the work of house he used to visit her house and on 3-4 occassion he had sexual intercourse with her. After the work of house is over, he went away and did not keep contact with her. On 17.2.2016 the menstrual cycle of informant was missing but she has not disclosed this fact to anybody. After some months also she could not get menstrual period and her stomach became increasing and thereafter swelling started to her feet. One Matabai Kachre, who happens to be the aunt of informant

asked her brother to take her to hospital. Accordingly, informant's brother Suresh and Rambhau took her to one hospital at Shukrawar peth, Pune where her sonography examination was done and it was revealed that she was a regnant. On inquiry the prosecutrix disclosed that accused had sexual intercourse with her by giving assurance of marriage.

4] The informant was admitted in 'Bhartiya Samaj Seva Kendra', Koregaon park, Pune where ASI Hulwan recorded her complaint Exh.16. On the basis of complaint, offence vide CR No. 122/2016 u/s. 376 of IPC and 4 & 6 of POCSO Act came to be registered. Thereafter investigation followed. During investigation police prepared the panchanama, arrested the accused, referred the accused for medical examination. In due course the samples and seized articles were forwarded to Chemical Analyzer. On completion of investigation police of Velha police station filed charge-sheet in the court of Special Judge, Pune.

5] I framed charge against the accused vide Exh.6 for the above mentioned offences. Contents of the charge were read over and explained to the accused in vernacular. The accused pleaded not guilty and claimed to be tried. His defence is of total denial and false implication.

6] The following points arise for my determination and I record my findings thereon for the reasons stated as under:

POINTS

FINDINGS

- 1 Does prosecution prove that on 22.02.2016 at about 8.00 pm and thereafter on 3-4 occasions at Ghisar the accused committed rape on prosecutrix, a minor girl under 18 years of age?

...No.

2 Does it further prove that on same date, time and place and in the course of same transaction, the accused committed penetrative sexual assault repeatedly on prosecutrix? ...No.

3 What order? As per final order.

:: REASONS ::

7] In order to establish guilt of the accused, the prosecution has examined in all four witnesses namely Radhika Kachre (PW1) (Exh.12) informant, Suresh Kachre (PW2) (Exh.13) and Rambhau Kachre (PW4) (Exh.16) brothers of prosecutrix and API Hulwan (PW3) (Exh.15) investigating officer.

8] Besides the ocular testimony of above witnesses, prosecution is relying upon documentary evidence viz., FIR Exh.16, spot panchanama Exh.9, medical case papers Exh.10 & 11, original school leaving certificate Exh.14. Evidence of prosecution came to be closed by filing pursis Exh. 17.

9] I heard Mr. Pathare, the Id. APP for state and Mr. Bhosale, the learned counsel for defence. Both submitted that matter may be decided on merit.

AS TO POINT NO. 1 AND 2 :-

10] Since all these points are connected with each other, therefore in order to avoid repetition I would like to discuss all these points simultaneously. Precisely it is the case of prosecution that in February-2016 i.e. on 22.02.2016 and thereafter 3-4 occasions the accused had committed rape on the victim by giving her promise of marriage. Thus the

prosecution has attempted to establish that the accused committed rape.

11] In order to prove the charge u/s. 3 & 4 of POCSO Act, the prosecution is required to prove that at the time of incident the victim was below 18 years. The accused had committed penetrative sexual assault on the prosecutrix. With regards to minority of victim the prosecution is relying upon school leaving certificate Exh.14. The school leaving certificate shows the date of birth of prosecutrix as 20.5.2000. As per prosecution case the incident occurred on 22.2.2016. If we calculate the age of victim on the basis of her date of birth it appears that at the time of incident the victim was 18 years old.

12] So far as proving the offence of rape or penetrative sexual assault is concerned, the prosecution is relying upon the ocular evidence of prosecutrix Radhika. As per prosecution case one Matabai who happens to be the aunt of the prosecutrix asked Suresh (PW2) and Rambhau (PW4) to take the prosecutrix to hospital. Accordingly they took the prosecutrix to one hospital at Shukrawar peth, Pune and after conducting her sonography it was found that she was pregnant. Therefore, these witnesses inquired with the prosecutrix and they came to know that the accused had committed rape upon her. To prove this fact the prosecution is mainly relying upon the ocular evidence of Radhika (PW1). It is her evidence that on 14.02.2016 the work of digging of foundation of her house was going on and the accused was working as JCB operator. She further deposed that at that time accused was residing in her house. However, with regards to factum of rape is concerned, she denied that she ever stated to her brothers that the accused had forcible intercourse with her against her will on 22.02.2016 at about 8.00 pm and thereafter. The

informant herself has not supported the prosecution case and turned hostile.

13] Suresh (PW2) deposed that his aunt Matabai asked him to take Radhika to hospital and on 20.9.2016 he and his brother Rambhau took Radhika to one hospital at Shukrawar peth and after examination Doctor disclosed them that Radhika is pregnant. This evidence of Suresh (PW2) has not been shaken during cross examination. Moreover his evidence finds corroboration from the evidence of Rambhau (PW4). However both the witnesses denied that Radhika disclosed to them that accused had forcible sexual intercourse with her. In short, on point of accused had forcible sexual intercourse with prosecutrix Suresh (PW2) and Rambhau (PW4) turned hostile and not supported the prosecution. The Id. APP cross examined the witnesses at length, but failed to elicit material from the cross examination.

14] In the instant case, the informant herself has not supported the case of prosecution and turned hostile. She disowned that accused had forcible sexual intercourse with her. Therefore, even from the evidence of Suresh (PW2) and Rambhau (PW4) it is proved that in September-2016 the prosecutrix was taken to hospital at Shukrawar peth and after medical examination she was found pregnant, still for want of evidence it cannot be proved that she was pregnant only because that the accused had forcible sexual intercourse with her.

15] Only evidence before me is FIR. The complainant herself has not supported the prosecution case. For proving the FIR the prosecution adduced evidence of lady API Suvarna Hulwan (PW3). She claimed that

on 20.10.2016 in 'Bhartiya Samaj Seva Kendra', Koregaon park in presence of social worker Saguna Pharande she recorded complaint Exh.16 of prosecutrix. From her evidence only fact can be proved that complaint was lodged by the prosecutrix. Contents of the complaint cannot be proved through evidence of API Hulwan (PW3).

16] As like stated earlier the only evidence before me is FIR, however it is pertinent to note that FIR is not substantive piece of evidence. It can be used for corroboration and to contradict makers of it. In the instant case, ocular version of informant is totally contradictory with her FIR. Therefore, from such contradictory version it cannot be proved that the accused had committed rape upon the prosecutrix. Absolutely there is no other evidence on record. Therefore, I have no hesitation to hold that the prosecution has failed to prove guilt of the accused. Consequently I answer the points in negative and pass following order.

ORDER

1. The accused Thakru @ Rajesh Hiru Chavan is hereby acquitted as per Section 235(1) of Cr. P. C. of the offence punishable under Section 376 of Indian Penal Code and 3 & 4 of Protection of Children from Sexual Offence Act, 2012.
2. He be set at liberty forthwith, if not required in any other case.
3. The accused shall execute PR bond of Rs. 15,000/- with one surety of the like amount to ensure his presence in case of appeal against acquittal, if any, as contemplated under Section 437-A of Cr.P.C. The accused is granted time of 15 days to furnish surety.
4. Dictated and pronounced in open Court.

Sd/-

Place-Pune.
Date :15.03.2017.

(Ashokkumar B. Bhillare)
Addl. Sessions Judge,Pune.

I affirm that the contents of this [P.D.F.](#) file Judgment same word for word as per original Judgment.

Name of Steno : Mrs. A. A. Nikam.

Court Name : Shri Ashokkumar B.Bhillare, Addl. Sessions
Judge, Pune

Date : 15.03.2017.

order signed by P.O.on : 15.03.2017.

order uploaded on : 17.03.2017.