

1 Spl. Sessions Case No. 33/2017

Received on : 18-1-2017
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Decided on : 2-5-2017
Duration : Y. M. D.
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IN THE SESSIONS COURT PUNE.
(Presided over by Shri P. Y. Ladekar,
Addl. Sessions Judge, Pune)

Spl. Sessions Case No.33/2017
Exhibit No.

State of Maharashtra
[Through Kondhwa Police Stn.] ...Complainant.

Vs.

1] Jitendra Madhukar Dhavare,
age about- 26 years,
occupation- service,
R/at- 20/1 Siddharthnagar,
Behind Sunshree Building,
NIBM Road, Pune. ...Accused.

2 Spl. Sessions Case No. 33/2017

Offences punishable under section 376 [2][f][i][n], 354[A], 506 [2], 509 of the Indian Penal Code and under sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

Appearances:-

Shri S. G.Gawali APP for the State .

Shri A. S. Nahar Advocate for the accused.

ORAL JUDGMENT
[Delivered on 2-5-2017]

1] The accused stands prosecuted for the offences punishable under sections 376 [2][f][i][n], 354[A], 506 [2], 509 of the Indian Penal Code and under sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. [hereinafter POCSO Act].

2] The prosecution case against the accused as per complaint [Ex 10] and FIR [Ex 11] is that the prosecutrix and the accused are the relatives. The accused is husband of step sister of prosecutrix. The prosecutrix was aged 19 years on the date of complaint i.e 10-10-2016 was working in a Beauty Parlour. Her mother had left her and was residing with some other person and her father has married with Sangita i.e her

step mother. Her step sister married to the accused about 8 years back and about six years back in 2010 the accused used to visit her house and talk sweetly with her. By talking sweetly the accused asked her to pretend an affair between him and her and as she could not understand much she was also pretending it. One day she does not remember the date the accused by talking nicely took her to a Lodge at Undri and demanded physical relations. But since she was not in love with him she refused it. But the accused had forcible intercourse and then threatened her that if she tells anybody he will kill her. Therefore, she has not disclosed it to anybody. Then the accused was frequently taking her out. He was clicking photographs with her. He was making phone calls to her and told her that he had recorded the conversation between them, but never showed it to her. The accused was taking to her to various Lodge till 2015 and had sexual relations. He is an alcoholic and used to abuse her sister. About one year back he was arrested by police. He was in jail for some time. When he came out he again demanded sexual relations to which she refused, on which the accused came to their house threatened her and her sister and as his trouble increased she filed complaint to Commissioner of Police, Pune [Ex 12].

3] Based on it, C. R. No. 447/2016 for the aforesaid offence came to be registered against the

accused as per FIR - Ex 11, statement of the prosecutrix was recorded by Ld. JMFC which is Ex 13, investigation was carried out by PSI Swati More [PW 2], she arrested the accused, drew spot panchanama [Ex 16], ossification test of the victim was carried out and its report is at [Ex 17]. The investigating officer also drew spot panchanama of the room at Ajinkya Lodge as per Ex 18. The entries about earlier crime against the accused are at Ex 20 and Ex 21.

4] After investigation chargesheet was filed against the accused and charge for the aforesaid offence has been framed against the accused, to which he pleaded not guilty.

5] The prosecutrix has not at all supported the case against the accused, she was the only witness of the incident, therefore, the statement of the accused under section 313 of the Code of Criminal Procedure has been dispensed with.

6] I have heard Ld. APP and Ld. Advocate for the accused.

7] Ld. Advocate for the accused has submitted that there is variance in the complaint [Ex 10] and letter [Ex 12] of the prosecutrix. She has stated some different version in the statement under section 164 of

the Code of Criminal Procedure. She has not at all stated that the accused has committed any offence against her.

8] Ld. Advocate for the accused also submitted that the ossification test of the prosecutrix indicate that in 2016 she was above 19 years, but below 21 years of age. The FIR [Ex 11] indicate the offence took place from 2010 to 2015. But the complaint is filed in October 2016. the delay is not at all explained. The investigating officer could not collect any evidence about visit of the accused and the prosecutrix to any of the Lodge. The only Lodge visited by the investigating officer does not indicate names of accused and prosecutrix in the register of that Lodge. Some different name is mentioned in that register. But the investigating officer has stated that it was signed by the accused. However, that signature part is also not proved.

9] Following points came up for determination and findings of this court thereon are for the reasons as under.

POINTS

FINDINGS

- 1] Does the prosecution proved that prior to six years from 2010 to 20-10-2016 at Ajinkya Lodge, Pune and other various places and at Galli No.

8, near Smashanbhumi, Krushnanagar, Mohammadwadi, Pune, the accused being brother in law of the victim , a person in a position of trust towards the victim committed rape repeatedly on the victim under the age of sixteen years?

..No.

2] Whether the prosecution has further proved that the accused demanded sexual favors to the victim and abused in filthy language to victim with intent to outrage her modesty?

..No.

3] Whether the prosecution has further proved that the accused committed criminal intimidation by threatening the victim with injury or abduction and selling her and her sister, with intent to cause alarm to her and her sister?

..No.

4] Whether the prosecution has further proved that the accused intending to insult the modesty of the victim by threatening her that he shall not perform her marriage and sale her and her sister?

..No.

5] Whether the prosecution has further proved that the accused

a] committed penetrative sexual assault on the minor victim girl ?

.. No.

b] being brother in law of the victim, a person in a position of trust towards the victim, committed aggravated penetrative sexual assault with the victim?

c] committed sexual assault towards

the victim, a female minor girl?

d] committed sexual harassment of the victim?

6] What order?

..As per final order.

: R E A S O N S :

As to point Nos. 1 to 5 :-

10] All these points are interlinked and therefore, they are discussed together.

11] The entire prosecution case was dependent on the evidence of the prosecutrix. In her deposition before the court she has stated that the accused is husband of her step sister. She is 19 years old. There was a quarrel in the house and in the heat of anger she went to police station. She admitted her signature on the complaint [Ex 10] and FIR [Ex 11] as well as her statement under section 164 of the Code of Criminal Procedure [Ex 13] before the court. She has stated that the accused has not done anything to her, he has not had any physical relations with her without her consent. He has not threatened her or her any family members Her statement [Ex 13] recorded by Id. Magistrate indicate that the prosecutrix told before Magistrate that the accused asked her to pretend love

affair with him because his wife had relations with some other person. She asked him to delete her photographs. He had shown those photographs to her sister. He has not deleted those photographs, therefore, she has filed complaint. She has also stated that she is not interested to prosecute him.

12] If the above facts are to be seen then what comes out on record is that the prosecutrix has not at all stated any kind of sexual harassment, rape or threats by the accused. Even the statement before Ld. Magistrate does not indicate that there were physical relations between the accused and the prosecutrix. That statement only indicate that the accused has taken some photographs and not deleted them.

13] Ld. Advocate for the accused is right in submitting that when the FIR shows that the incident took place between 2010 to 2015 and the report is filed in October, 2016 there was delay of at least 10 months and there is no explanation in the FIR [Ex 11].

14] Further the investigating officer admitted that in register of concern Lodge name of the accused and prosecutrix was not there. There is no evidence about signature of the accused on the register and arrest form are same. In fact the copy of that register is also not on record. Apparently the prosecutrix was

more than 19 years old when the complaint was filed. So if the incident of 2015 is considered she was major and there is no evidence on record to show that when she was a child the accused had penetrative sexual assault or sexual assault or he has threatened her. Therefore, there is no evidence against the accused to prove the offences charged. Accordingly the points are answered in above terms and I pass following order.

Order

1] The accused Jitendra Madhukar Dhavare is hereby acquitted of the offences punishable under sections 376 [2][f][i][n], 354[A], 506 [2], 509 of the Indian Penal Code and under sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 as per provisions under section 235(1) of the Code of Criminal Procedure.

2] The accused is in custody, he be released forthwith if not required in any other case or crime.

3] The muddemal property i.e Register of Ajinkya Lodge be returned to the owner of said Lodge, after appeal period is over.

4] The accused be released on bail as per

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Section 437 [A] of the Code of Criminal Procedure.

Pune

Date : 2-5-2017.

(P. Y. Ladekar)

Addl. Sessions Judge, Pune

I affirm that the contents of this P. D.F. File judgment are same word for word as per original judgment.

Name of Steno- Smt. R.S. Urde

Court Name- Shri P. Y. Ladekar,
Addl. Sessions Judge,Pune.

Date- 2-5-2017

Judgment signed by Presiding Officer on 8-5-2017

Date of PDF 8-5-2017