

A

ASHOK SURAJLAL ULKE

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 251 of 2006)

B

JANUARY 27, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]

C

Penal Code, 1860: s.376 – Rape – Accused-teacher committing rape on 15 year old girl – Conviction u/s.376 – Challenged on the ground that the FIR was filed three days after the alleged incident and the medical evidence did not support the commission of rape – Held: In a case of rape, the fact that the FIR has been lodged after a little delay is of very

D

little significance – An allegation of rape, and that too of a young child 15 years of age, is a matter of shame for the entire family and in many such cases the parents or even the prosecutrix are reluctant to go to the police to lodge a report and it is only when a situation particularly unpleasant arises

E

for the prosecutrix that an FIR is lodged – The evidence showed that after the incident the father of the prosecutrix had first gone to the Head Master of the school (in which the accused was a teacher) who had advised him to wait for a few days to see if something could be done in the matter and it

F

was only after having failed to get any reply from the Head Master that an FIR was lodged – This also would explain the fact that the doctor had found nothing to suggest that rape had been committed and was not in position to give any definite opinion on that account as the medical examination was

G

conducted after three days – The doctor nevertheless found that there was a minor injury on the finger which was about four days old and that the hymen was also missing – In the light of categorical statements of the prosecutrix, her father and her brother and in the light of the fact that no case for false

H

implication was pointed out by accused, conviction is upheld.

A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 251 of 2006.

From the Judgment & Order dated 16.03.2005 of the High
Court of Judicature at Bombay, Nagpur Bench, Nagpur in
Criminal Appeal No. 327 of 2002.

B

Kishore Ram Lambat, Deven S. Lambat, S. Rajappa for
the Appellant.

Shankar Chillagre, Asha Gopalan Nair for the Respondent.

C

The following order of the Court was delivered

ORDER

1. The facts of this case are as under:

D

1.1 The prosecutrix, P.W. 1, was studying in the Zila
Parishad School at Mohali, District Gadchiroli. On the day of
the incident, the accused met her and enquired as to how she
had performed in the Mathematics paper in the examination.
P.W. 1 replied that she had not done too well on which the
accused advised her to bring the question paper to his house.
Tukaram, P.W. 2, P.W.1's father told her to go along with her
younger brother Kapil, P.W. 3. The two, accordingly, went to
the house of the accused which was near the school. They found
that the accused was sitting outside his house and he directed
them to go towards the school and told Kapil, to go out and
bring some snacks from the shop of Naitam. Kapil, accordingly,
left for the shop whereafter the accused held the hand of the
prosecutrix and pushed her towards the verandah of the school
and raped her. The shouts of alarm raised by the prosecutrix
could not heard by any one on account of the operating loud
speakers all around as it was the day of the Sharda Devi
festival. The prosecutrix thereafter returned home and disclosed
what had happened to her parents. A report was, accordingly,

E

F

G

H

A lodged at the police station on the 11th of October, 1997. On the completion of investigation, the accused was charged for an offence punishable under Section 376 of the Indian Penal code.

B 1.2 The trial court relying on the evidence of P.W. 1, as supported by the circumstantial evidence of P.W. 2 and P.W. 3 and noticing that the medical evidence was uncertain as the Doctor had opined that it was not possible to give any opinion as to the rape, nevertheless held that a case of rape had been made out. A sentence of 7 years was, accordingly, imposed on the appellant. An appeal taken to the High Court was also dismissed. It is in this situation that the matter is before us after the grant of special leave.

C

D 2. Mr. Lambat, the learned counsel for the appellant, has raised several arguments before us during the course of the hearing. He has first pointed out that the First Information Report had been lodged belatedly as the offence had taken place on the 8th October, 1997 and the FIR had been lodged three days thereafter and that in any case the doctor's evidence did not support the commission of rape and at the worst (for the appellant) the matter fell under Section 354 of the IPC.

E

F 3. The learned counsel for the State of Maharashtra has, however, pointed out that there was no reason whatsoever to disbelieve the evidence of P.W. 1, P.W. 2 and P.W. 3 and in fact no suggestion had come from the defence as to why they would give a false story. It has also been pleaded that in the light of the completely acceptable evidence of P.W. 1 even if the doctor's evidence with regard to the commission of rape was slightly uncertain it would not in any manner detract from the prosecution story.

G

H 4. We have considered the arguments of the learned counsel. We are of the opinion that in a case of rape the fact that the FIR had been lodged after a little delay is of very little significance. There can be no doubt that an allegation of rape,

and that too of a young child 15 years of age, is a matter of shame for the entire family and in many such cases the parents or even the prosecutrix are reluctant to go to the police to lodge a report and it is only when a situation particularly unpleasant arises for the prosecutrix that an FIR is lodged. We also see from the evidence that P.W. 2 had first gone to the Head Master of the school (in which the accused was a teacher) and he had advised him to wait for a few days to see if some thing could be done in the matter and it was only after having failed to get any reply from the Head Master that an FIR was lodged. This also explains the fact that the doctor had found nothing to suggest that rape had been committed and was not in a position to give any definite opinion on that account as the had incident happened on the 8th October, 1997 and the medical examination had been conducted on the 11th October, 1997, that is after three days. The doctor nevertheless found that there was a minor injury on the finger which was about four days old and that the hymen was also missing.

5. In the light of the very categoric statements of P.W. 1 as corroborated by P.W. 2 and P.W. 3 and in the light of the fact that no cause for false implication has been pointed out by the accused, we find no merit in the appeal. Dismissed. Accused is on bail. His bail bonds are cancelled. He should be taken into custody forthwith to undergo the remaining part of the sentence.

D.G.

Appeal dismissed.