

Dattu Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Jan-15-2013

Judge : A.P. Lavande & a.B. Chaudhari

Appeal No. : Criminal Appeal No.52 of 2009

Appellant : Dattu

Respondent : State of Maharashtra

Judgement :

Oral Judgment: (A.B. Chaudhari, J.)

Being aggrieved by the judgment and order dated 23.9.2008 passed by the Adhoc Additional Sessions Judge-1, Chandrapur, in Sessions Case No.7 of 2008, convicting the appellant for the offence punishable under Section 376(2)(f) of Indian Penal Code and sentencing him to undergo imprisonment for life and to pay fine of Rs.1000/-, in default to suffer rigorous imprisonment for three months, the present appeal has been preferred by the appellant.

FACTS

Briefly stated, prosecution case is that the complainant Sau. Sangita Namdeo Naitam resided at village Ambezari along with her husband and 1-1/2 year old daughter Samiksha. On the date of incident, namely on 24.2.2008, the complainant and her small daughter were at home. Since her husband had gone

to Patan bazar, the child victim was playing in front of the house near tap and the complainant and one Indubai were sitting in the courtyard. At about 2 p.m. the appellant/accused, who is the neighbour of the complainant, arrived and lifted the victim child-daughter of complainant and took her to his house. Complainant felt that the appellant might have taken her daughter out of love for the child. After some time, she heard a voice of crying of her daughter and, therefore, she along with Indubai went towards the house of the accused running to find out why her daughter was crying. The appellant came out of the house along with the daughter of the complainant. When the complainant asked the appellant as to why her daughter was crying, the accused told her that he did nothing.

As the complainant noticed blood stains, she lifted the frock of her daughter to see that there was no nicker and her private part was profusely bleeding. She entered the house of the accused and found the nicker of her daughter lying on the cot. She then came out of the house and asked the accused why he did so, but he started abusing her. She then went to the Police Patil and narrated the incident to him and then along with the Police Patil she went to the police station and lodged a report against the appellant for having committed rape on her small child. After registering the offence, investigation was conducted. The victim girl was referred for medical examination. Usual steps in the investigation were taken and thereafter charge-sheet was filed by police. The appellant was charged for the offence punishable under Sections 363, 366 and 376(2)(f) of Indian Penal Code and under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. The appellant was, however, convicted and sentenced for the offence punishable under Section 376(2)(f) of Indian Penal Code, as stated above.

The appellant/accused filed a written statement at Ex.39 in the trial Court in support of his defence. He stated that he is having cordial relations with the husband of the complainant and was on visiting terms. On the date of incident, as usual, he took the child Samiksha for playing with the consent of the complainant. He had removed the nicker of Samiksha because she had urinated and at the time of removing the nicker, a nail of his hand entered her vagina and therefore she was crying and there was a bleeding but he did not commit sexual offence.

3. SUBMISSIONS :

In support of the appeal, learned counsel for the appellant criticised the impugned judgment and order and made the following submissions -

(i) The prosecution examined complainant P.W.1 Sangita and P.W.3 Indu who were fully interested witnesses and their evidence was liable to be rejected.

(ii) The evidence of these two witnesses is full of discrepancies and admittedly none of them has seen the alleged commission of offence of rape for which the appellant has been found guilty.

(iii) In the absence of any direct evidence about the commission of offence of rape, the trial Court could not have on the basis of assumption and presumption convicted and sentenced the appellant, which is very serious.

(iv) The trial Court was required to take maximum care to find out whether there was really any evidence about the commission of offence of rape because ultimately he has imposed the sentence of life imprisonment. That was all the more so because the evidence of the said two witnesses is not by way of direct evidence and admittedly both of them have stated that after cry was heard they went to the house of the appellant who was already out of the house along with the daughter and had immediately disclosed that he has done nothing.

(v) The trial Court ought to have accepted the defence raised by the appellant that he did nothing but since Samiksha had urinated he had merely removed the nicker and out of anxiety put his finger with nail in the vagina and then bleeding started. The medical evidence does not support the theory of rape propounded by the prosecution since admittedly no injury was found on labia majora and labia minora.

(vi) In the alternative, the sentence of life imprisonment was not an option which could have been adopted by the learned trial Judge and lesser sentence ought to have been imposed on the appellant. The learned trial Judge has not kept in mind the young age of the appellant and that there was no antecedents of criminal nature with the appellant.

4. Per contra, learned A.P.P. supported the impugned judgment and order and argued that the evidence of P.W.1 Sangita and P.W.3 Indu is consistent, cogent and trustworthy. The learned trial Judge has taken utmost care to scan the same and has rightly come to the conclusion that the said evidence is believable and trustworthy. There is no reason why the said evidence should be discarded. The learned A.P.P. submitted that the defence raised by the appellant is bogus and does not have any basis. He did not even put the story, which he has narrated in the written statement by way of defence, to P.W.1 Sangita and P.W.3 Indu nor there is any cross-examination made to these witnesses on the above aspect. The appellant also did not bring any evidence to show that he had disclosed to the Investigating Officer about existence of the nail to his finger, which could have been a part of the investigation. The defence is clearly afterthought and has been rightly rejected by the trial Court. He, therefore, prayed for dismissal of the appeal, the crime being heinous one.

5. We have heard learned counsel for the parties. We have gone through the entire evidence that was recorded in the trial Court. We have also gone through the impugned judgment and order.

The present case depicts not only a heinous simpliciter but a brutal, barbaric and an inhuman crime of rape of a girl child of only one and half year by a married person of the age of 30 years, namely the appellant. Not only that, the minor girl child was helpless in the cruel hands of the accused/ appellant who was the neighbour of her mother, P.W.1 Sangita, who thought that the appellant took her child, who was playing, on his lap as usual for giving elderly affection to the child. The accused was holding the child in a relationship of 'neighbour's trust-belief and confidence'. But he betrayed the same and has belied the human relationship of trust and worthiness.

6. We now discuss the prosecution evidence:

P.W.1 Sangita in her evidence categorically stated that she along with P.W.3 Indu was sitting in her court yard at about 2 p.m. on the date of incident and the victim child Samkisha was playing near the tap in the court yard. The house of the appellant is just adjacent to her house. Then the appellant came there and lifted

Samkisha and took her to his house. P.W.1 Sangita thought that the appellant must have taken her daughter out of elderly affection since the appellant is her neighbour. After 5 - 6 minutes she heard cries of her daughter and therefore she along with Indu rushed to the house of the appellant and asked her as to why her daughter was crying. The appellant said he did nothing and placed her daughter in her arm. Since her daughter was repeatedly touching her private part, she lifted her frock and she found that there was bleeding in her private part and she was not having the nicker. Her frock was also stained with blood. When she took her daughter in her lap, her saree was also stained with blood as there was bleeding from the private part of Samiksha. When the complainant abused the appellant, the appellant in turn told her that he will do the same thing with her also. P.W.1 Sangita and P.W.3 Indu then went to the house of the police patil who took them to the police station. She lodged the first information report (Ex.12). Samiksha was referred to the hospital at Patan. The medical officer at Patan Hospital referred child Samiksha to the hospital at Chandrapur where she was examined at about 12 O' clock in the night and was admitted in the hospital. Similar is the evidence of P.W.3 Indu, which we have also seen.

7. We have seen the cross-examination of these two witnesses carefully on the incident proper. We do not find any discrepancy in the evidence of both these witnesses and the only suggestion given to these witnesses is that the appellant used to keep long nails, which has been denied. Further suggestion is that the nail of the accused had pierced in the vagina of child Samkisha and therefore there was bleeding and injury. It is note worthy upon reading of the evidence of both these witnesses so also the police witnesses that during investigation or the trial the accused never disclosed which finger he had pierced in the vagina and whether the said finger really had long nail. He did not also disclose to any of the witnesses or the Investigating Officer immediately after his arrest about the story of the nail having entered into the vagina of child victim. Had the appellant disclosed the same to the Investigating Officer, he would have certainly made full investigation on the said aspect to find out the truth. Therefore, the defence taken by the appellant will have to be termed as an afterthought and lame. The other evidence on record, namely seizure of bed cloth wrapped, wooden cot, nicker and saree of P.W.1 Sangita in clear terms corroborate the evidence of P.W.1 Sangita

and P.W.3 Indu and there is no room for us to disbelieve the same.

8. Insofar as denial of having committed the offence of rape is concerned, we find that there is a strong medical evidence against the appellant inasmuch as the medical examination revealed abrasion on prepuce of the penis of the appellant, for which no explanation has at all been offered by the appellant. The medical examination was done immediately after the incident. Further, the medical evidence in respect of the child clearly shows that hymen was ruptured. The entire evidence to our mind clearly shows that it was the appellant who inserted his penis into the vagina of the girl child, as a result of which her hymen was ruptured, bleeding started and having realised the same and the child having started crying, the appellant desisted. Fact, however, remains that the appellant had inserted his penis which resulted into rupture of hymen and profuse bleeding.

9. We have seen the judgment of the trial court and we are convinced that the findings recorded by the trial Court are based on the evidence.

10. The next question is about the imposition of sentence on the appellant. The trial Court has imposed sentence of imprisonment for life and for which he has recorded reasons. We have gone through the reasons recorded by the learned trial Judge. At this juncture, at the cost of repetition, we find that the appellant is the immediate neighbour of the complainant and element of faith and trust in the neighbour is the hall mark of human relationship. The appellant is a well grown married person of 30 years. He did not even think that the girl child of 1-1/2 year who could not even walk properly muchless resist or run away, could not have been subjected to such a heinous crime. The appellant did not think of the fact that the small child was like his daughter and would suffer immense pains and sufferings. His behaviour was of a monster. We do not think that the appellant deserves any leniency or sympathy, though he may have a family to support. In the light of the rising crime against the girl child and women, we do not think that the appellant can be shown any leniency, so far as imposition of sentence is concerned. We reject the plea of the appellant for any lessor sentence.

11. The upshot of the above discussion is that the appeal must fail.

In the result, we make the following order.

ORDER

Criminal Appeal No.52 of 2009 is dismissed.

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