

Ravi Vs. The State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Oct-12-2015

Judge : V.M. Deshpande

Appeal No. : Criminal Appeal No. 306 of 2013

Appellant : Ravi

Respondent : The State of Maharashtra

Advocate for Pet/Ap. : Shri. Mahesh Rai

Judgement :

1. The present appeal is directed against the judgment and order of conviction passed by the learned Additional Sessions Judge, Wardha, in Sessions Case No. 52 of 2012 on 09.4.2013, thereby convicting the present appellant for the offence punishable under Section 376 (2)(f) read with Section 511 of Indian Penal Code and sentencing him to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for three months. The trial Court also directed that on payment of fine, Rs.4,500/- be paid to the prosecutrix by way of compensation.

2. The prosecution case, as it was unfolded during the course of trial, is narrated as under:

(a) Kailash Kurhade (P.W.2) is the first informant. He has lodged oral report with police station Arvi on 10.2.2012. The report is at Ex.26 whereas printed F.I.R. is at Ex.27.

(b) The first informant was discharging his duties as Chowkidar in a school at Arvi known as Gandhi Vidyalaya. His duty hours used to be from 6 p.m. to 8 O' clock of next day morning. He used to take round of the school premises while on duty. There is no compound wall to the school.

(c) On 10.2.2012 the first informant joined his duties at 6 O' clock in the evening. He started taking round of the school. At about 7-30 p.m. in front of Chemistry Laboratory of the school he noticed one person lying on the ground. His face was towards the floor. He was having shirt on his person. However, his pant and under garment, i.e. nicker, were removed up to his knees. Therefore, the first informant went there and found that the said man was sleeping on a minor girl. Nicker of the minor girl was also removed up to her knees and he was trying to insert his private part into the private part of minor girl. Therefore, the first informant caught hold the collar and lifted the said person from the body of the minor girl. The minor girl was the daughter of the peon working in Anna Bhau Sathe Prathamik Shala. The age of the girl was five years. The said person tried to give some jerks to the first informant. Therefore, he called for help. One person by name Sudhakar Kangali came there and with his help apprehended the said person, who is appellant before this Court. Then both of them took the appellant and the minor girl to the police station where Kailash narrated the entire incident to police.

(d) P.W.3 Dashrath Dhurve, who on the relevant day was on duty at police station Arvi, registered the oral report of the first informant and registered the offence vide Crime No. 32/12. He visited the spot of incident along with the first informant. The spot was shown by the first informant. In presence of panch witnesses, panchanama was drawn which is at Ex.20. He arrested the accused under arrest panchanama (Ex.30);. He seized the clothes of the prosecutrix under seizure panchanama (Ex.21). Clothes of the accused were also seized under seizure panchanama (Ex.22).

(e) The investigation was then handed over to P.W.8 Yunis Lakade. He recorded statements of witnesses. He collected medical papers of the prosecutrix and also sent Muddemal to chemical analyser along with forwarding letter Ex.46. Reports of chemical analyser were received which are at Exs.48 and 49. After completion of usual investigation, the Investigating Officer presented charge-sheet in the Court of law.

3. After committal of the case to the Court of Sessions, it was registered as Sessions Case No. 52/12. The learned Additional Sessions Judge framed a charge against the appellant under Ex.5 for the offence punishable under Section 376(2)(f) of Indian Penal Code and also under Section 376 read with Section 511 of Indian Penal Code. The appellant abjured his guilt and claimed for his trial.

4. In order to bring home guilt of the appellant, prosecution has examined following witnesses. They are -

Sr.No.	Name and witness No.	Status of witness
1.	Pawan Bele (P.W.1)	Panch witness to the spot panchanama (Ex.20), witness to seizure of clothes of prosecutrix Ex.21, witness to seizure of clothes of accused Ex.22 and also witness to seizure of blood samples, semen sample, pubic hair and nail clipping of accused Ex.23.
2.	Kailash Kurhade (P.W.2)	First informant and lodging of F.I.R. (Ex.26).
3.	Dashrath Chindhuji Dhurve(P.W.3)	Registered the F.I.R. and drew spot panchanama (Ex.20)
4.	Mamta Pravin	Mother of the prosecutrix.

5.	Sudhakar MahadeoraoKangali (P.W.5)	Immediately reached the spot of incident on the call given by the first informant and apprehended the accused.
6.	Dr.Jaishri Gathe P.W.6	Examined the prosecutrix and issued certificate Ex.41.
7.	Pravin P.W.7	Father of prosecutrix
8.	Yunis Lakade P.W.8	I.O. who filed chargesheet
9.	Dr. Pravin Thakare P.W.9	Examined the accused and issued certificate Ex.53.

5. After full-dress trial, the learned Judge of the trial Court found the appellant/accused guilty of the offence punishable under Section 376(2)(f) read with Section 511 of Indian Penal Code and sentenced him, as stated in opening paragraph of this judgment.

6. I have heard Shri Mahesh Rai, learned counsel for the appellant and learned A.P.P. With their able assistance I have gone through the record and proceedings and the notes of evidence. Both the learned counsel articulated their submissions in support of their respective prayers.

7. Pravin (P.W.7), father of the prosecutrix, deposed before the Court that the date of birth of the victim is 23.9.2007. This particular assertion is not challenged by the defence when he was under cross-examination. Thus, on the date of incident, i.e. on 10.2.2012, the prosecutrix was aged about 5 years.

8. Mamta (P.W.4), mother of prosecutrix, stated from the witness-box that on the date of incident in the evening prosecutrix was playing in the court-yard of her house. At about 5-30 p.m. when the light was off, Mamta went inside the house for lighting the lamp in the kitchen. Thereafter, she noticed that the prosecutrix was not present in the court-yard. Therefore, in the search of prosecutrix she went to her neighbour's house, which is described as Pallavi's house by Mamta in her evidence. It was told to her that time by the mother of Pallavi that prosecutrix and Pallavi had gone along with Ravi, the present appellant, to bring book. In search of prosecutrix, Mamta went to the house of Pallavi for two-three times but she did not

find her daughter there. Mamta further deposed that at about 10-30 p.m. one Chowkidar from Gandhi Vidyalaya came to her house. This Chowkidar is obviously P.W.2 Kailash. Kailash informed Mamta, mother of prosecutrix, that her daughter is in the police station. She then went to the police station. On the next day, the victim was referred to the hospital for her medical examination along with a lady police constable. Prior to medical examination of victim, the medical officer has obtained consent of Mamta (P.W.4), which is at Ex.32.

9. Dr.Jaishri Gathe (P.W.6) was attached to Civil Hospital, Wardha. On 10.2.2012, after obtaining the consent of Mamta (P.W.4)- the mother of prosecutrix, she examined the victim and found no injuries on any part of the body of the prosecutrix. Hymen was also intact and secondary sexual characters were not developed. Accordingly, she issued medical certificate (Ex.41).

10. In the present case, the victim was not examined by the prosecution. The case of prosecution cannot be thrown in dust-bin on that count because the age of the prosecutrix is only five years. The medical officer, who examined the victim, has opined that no rape was committed on the prosecutrix. Therefore, the question that this Court has to decide is, whether the appellant could be convicted for making an attempt to commit sexual intercourse on a minor girl?

11. An attempt is an overt act immediately connected with the commission of an offence and forming the part of series of act which, if not interrupted or frustrated or abandoned, would result in the commission of a complete offence. Mere intention not followed by an act cannot constitute an offence, the preparation is a mental act which follow up some action to do a particular thing. Preparation consist in devising or arranging the means or measures necessary for the commission of the offence. Let us now examine the evidence of the prosecution in the light of the above.

12. Unchallenged evidence of Mamta (P.W.4) shows that she had been to Pallavi's house in search of her daughter when she noticed that her daughter was not there in the court-yard and that time it was revealed to her that her daughter is taken away by the appellant. In view of this unchallenged version, it is established that the prosecutrix was in the company of the appellant. There cannot be any fixed

point by which it could be said that at a particular point of time, intention of a person to commit an offence has crept in his mind. Such intention will have to be gathered from the subsequent acts.

13. P.W.2 Kailash is the Chowkidar in Gandhi Vidyalaya, Arvi. His duty hours used to be from 6 p.m. to 8 O' clock in the morning of next day. His evidence discloses that there is no compound wall. Ex.20 spot panchanama also does not recite about having the compound wall. As per evidence of Kailash, to prevent trespass in the premises, it is his duty to keep a watch.

14. P.W.2. Kailash deposed in his evidence that on the date of incident, i.e. 10.2.2012, he reported duty at 6 p.m. His taking rounds in the premises is most natural. Since he is a Chowkidar, it is his duty to keep vigil eye on the premises. The evidence of this witness further reveals that while he was taking third round, he noticed in the source of light that one person was sleeping facing the ground. The said invited the attention of this witness and, therefore, he immediately reached there. On reaching there, this witness noticed that the said person, the appellant, was having his pant and nicker removed up to his knee. At the same time, Kailash (P.W.2) also noticed one minor girl was lying on the floor beneath the appellant. This witness further noticed the private part of that man (appellant) in an erected position. By removing his pant and nicker up to knee, the appellant exposed his private part. Kailash (P.W.2) also noticed that the nicker of the girl was also removed up to her knees. With erected position of private part when the appellant was on the body the minor girl, thus it is amply clear that the appellant has travelled beyond the point of preparation and has tried to commit rape on the girl. However, the said act was frustrated and could not be completed because of the intervention at the right point of time by P.W.2 Kailash. Had Kailash been not there at that particular point of time, the act of commission of rape would have been completed.

15. The evidence of this prosecution witness is challenged by the learned counsel for the appellant on the ground that Kailash (P.W.2) did not report the said matter to the School Head Master. However, cross-examination of this witness discloses that on the date of incident, the Head Master was not available in the town and on

the next day the matter was reported to the HeadMaster.

16. Dr. Pravain Thakare (P.W.9), who also examined the witness Kailash (P.W.2), deposed that the injury found on the person of Kailash was simple in nature. Certificate issued by the medical officer to this effect is at Ex.54. This corroborates the version of P.W.2 Kailash when he says that the accused tried to rescue himself from his clutches. Therefore, pain and tenderness as noticed by the medical officer on the left hand of Kailash is most natural. In that view of the matter, the submission of learned counsel for the appellant that the appellant is falsely implicated in the crime has no force.

17. The version of Kailash (P.W.2) that he caught hold of the appellant on the spot itself is corroborated by P.W.5 Sudhakar Kangali. This witness reached the spot immediately when he heard the call given by Kailash. Thus, the evidence of Kailash (P.W.2) and Sudhakar (P.W.5) are corroborative to each other on the aspect of taking the appellant to the police station along with the victim. The evidence of both these witnesses inspire confidence and their evidence is free from exaggeration. There is nothing on record to show that these two prosecution witnesses were having any enmity with the appellant for his false implication. In that view of the matter, I see no reason to interfere with the findings recorded by the learned Judge of the trial Court.

The appeal deserves to be dismissed.

18. The appeal is dismissed.

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