

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.776 OF 1998

1) Babaji Maruti Wajge	}	
Age 26 years, Occ-Nil	}	
R/at Domewadi, Taluka Junnar, District-	}	
Pune	}	
	}	
2) Vithal Ramji Tambe	}	
Age-34 years, Occ-Buiness	}	
R/at Otur, Taluka Junnar, District-Pune.	}	
	}	
3) Sushilabai Ramchandra Kurhade	}	
Age-37 years, Occ-Household	}	
R/at Alechi-Lawanwadi, Taluka-Junnar,	}	
District-Pune.	}	
	}	Appellants
<i>Versus</i>		
State of Maharashtra	}	Respondent

Mr,Sachin Chavan a/w Mr.Vaishnav Brahmarkar i/b Mr.Shriam Kulkarni, for the Appellants.

Mr. C.D. Mali, APP, for the Respondent-State.

CORAM : R.M. JOSHI, J.

RESERVED ON : 27th NOVEMBER 2025

PRONOUNCED ON : 4th DECEMBER 2025

ORAL JUDGMENT :-

. Accused/Appellants aggrieved by the judgment and

order dated 30th September 1998 passed in Sessions Case No.373 of 1995 recording conviction against them have preferred this Appeal.

2. It is the case of the prosecution that, Accused No.1 Babaji had compelled one of the two victims to write a note in her own hand writing indicating that, being fed-up they are leaving home on their own. Thereafter, on the next day Accused No.1 came to the house of the victim and threatened her to come with him. He also went to the house of another victim and told them to come to ITI bus stop. The victim were threatened to be killed if they do not follow the instructions. The victims went to the bus stop. Accused No.1 came there along with Accused No.2 Vithal on two motorcycles. The victim girls were asked to sit on the motorcycle as pillion rider. The accused took them to the house of Accused No.3 Sushila Kurhade at Lawanwadi. According to the victims, they heard conversation between accused persons and one unknown person who was informing the Accused about the transaction of sale of the girls is fixed at Rs.50,000/-. The victims started crying. Accused No.1 threatened them to keep

quiet. After some time, Police came to the house of Accused no.3 and rescued victims. Initially when victim went to the Police Station she did not make any complaint against any one and claimed that on their own left the house. However, victims informed about the real incident to their parents after about a day or two. The parents of the victims tried to lodge complaint with the Police, but local police station failed to take cognizance thereof and they were required to approach higher Police Officer. It is thereafter, FIR came to be lodged being C.R. No.16 of 1995 registered with Otur Police Station for the offences punishable under Section 451, 361, 363, 366 and 506 read with Section 34 of the Indian Penal Code ('IPC' for short), During the course of the investigation, statement of the witnesses were recorded. The chit written by one of the victim was seized under panchnama. Knife was recovered at the instance of Accused No.1 under Section 27 of the Evidence Act. One motorcycle bearing No.MH-14-E-3058 came to be seized. Accused were arrested. On conclusion of investigation charge-sheet was filed being RCC No.131 of 1995. The case was committed to the Sessions Court

for trial by the Magistrate, since, the offence under Section 366 is exclusively triable by the Court of Sessions.

3. Charge is framed against Accused Vide Exhibit-3. Accused abjured the charge. The prosecution examined nine witnesses i.e. Yashwant Gawade, PW-1, PW-2 Victim (S), PW-3 minor witness, PW-4-Victim (U), PW-5 Babaji, father of the victim (U), Dashrat, ASI, Dr.Chandekar, Medical Officer who conducted ossification test for determining age of the victims. PW-8 Govind, Police Head Constable and PW-9 Tukaram, ASI Investigating Officer.

4. Accused did not dispute the genuineness of panchnama dated 29th April 1995 at Exhibit-11, 12 and 13. Seizure panchnama at Exhibit-21 and Seizure of the Motorcycle panchanma at Exhibit-14, Arrest panchnama Exhibit-15 examination of the certificate of victims at Exhibit-18 and 19. After conclusion of the evidence of prosecution incriminating circumstances were put to the Accused person in their statement recorded under Section 313 of the Criminal Procedure Code ('Cr.P.C. for short). Accused examined two witness, DW-1

Mahadev (Exhibit-51) and DW-2 Sawalaram (Exhibit-52).

5. The learned Trial Court accepted the evidence led by the prosecution to be sufficient to bring home guilt of the Accused beyond reasonable doubt and convicted Accused No.1 Babaji for offences punishable under Section 452, 506, 363 and 366A of IPC. Accused No.2 was convicted for offences punishable under section 363 and 366A read with Section 34 of IPC. Whereas Accused No.3 is convicted for offence punishable under Section 366A of the Code.

6. The learned counsel for the Appellant/Accused submits that, in order to prove the charges against the Accused persons the prosecution at the first instance ought to have proved that, the victims were minor at the time of occurrence of the incident. It is his submission that, except for the evidence of ossification report of victim there is no other evidence to indicate their age. With regard to the evidence of Dr.Chandekar and ossification test, it is argued that, the age of one victim is said to be between 14 to 16 years with margin of errors and another victim between 15 to 17 with margin of error. It is his

contention that, consistently the Courts have taken view that, the margin of 2 years would be on either side. It his submission that, in view of settled principle of law that if two views are possible one in favour of Accused must be accepted by the Court. Thus, according to him with margin of error of two years, both victims were major and therefore the prosecution has failed to prove the offences punishable under Section 363, 366A of IPC.

7. With regard to the evidence led by the prosecution it is argued that, at the instance, the victims have disclosed to the police that they have no complaint against any one and have left their house on their own accord. It is submitted that, the incident had occurred on 18th March 1995, whereas the report came to be lodged on 28th April 1995. It is his submission that, having regard to the delay caused in lodging of the report the case of the prosecution needs to be scrutinized with more caution. It is argued that, there are material inconsistencies in the statements of the victim as to the manner in which they were threatened and being forced to accompany Accused Nos.1 and 2 for going to the house of Accused No.3 at Lawanwadi. It is argued that, the

entire case of the prosecution rests upon the fact that, the Accused has obtained writing i.e. chit from one of the victim however, the said chit is not produced on record. Thus, it is his contention that, the foundation of the case of the prosecution has not been established. Insofar as offence under Section 366A of the IPC is concerned, it is argued that, firstly for the reasons the victims are not proved to be minor and secondly there is no investigation done as to the alleged unknown person who stated about the girls to be sold for Rs.50,000/-. It is his submission that in absences of such evidence, the conviction cannot sustained.

8. The learned APP supported the impugned judgment and order. According to him the defence has not disputed the recovery of the chit and therefore the prosecution was not required to lead any further evidence in that regard. Insofar as the delay in lodging of report is concerned it is argued that, the same has been satisfactorily explained through the witnesses of the prosecution. It is argued that, there is evidence to indicate that, the concerned Police Station did not immediately record the

report and hence the parents of victims were required to approach higher Police Officer. With regard to the first statement made by the victims after they were rescued, it is argued that, since, the Accused No.1 was present in the Police Station, it is justified that, being scared of him the victim did not give the real reason, but later on informed about the same to the Police. It is argued that, there is recovery of knife at the instance of the Accused No.1 and inconsistencies in the evidence, if any, are not material in nature in order to give benefit of the same to the Accused persons.

9. Amongst other charges Accused are charged for the offences punishable under Section 363 and 366A of the IPC. In order to prove the said charges at the first instance the prosecution is required to prove age of the victims and that they are minor. Herein this case, not only birth certificate is not produced but though, the victims were studying in the school, the prosecution has not taken care of bringing the record of the school before the Court, in order to substantiate the fact of victims being minor. The only evidence on record in this regard is testimony of Dr.Chandekar. He claimed to have examined both

victims radiologically. It is opined by the Medical Officer that, age of the victims is between 14 to 16 years and 15 to 17 years with margin of error. Various Courts have taken consistent view with regard to the margin of error of two years on either side. When it comes to accepting the plea of Accused, and where two views are possible one in favour of the Accused needs to be accepted is settled principle of law. The age of the victim by adding two years considering the margin of error they could be major at the relevant time. The learned Trial Court seems to have got influenced with the fact that girls were studying in 9th Standard and the said fact has not been disputed by Accused. The finding recorded by the Trial Court to hold that they were minor is surmises and conjunctures and not based upon evidence on record. On the basis of the evidence on record, it cannot be held that, the victims were minor at the relevant time and therefore the charge against the Accused persons for offences punishable under Section 363 and 366A cannot be held to be established against them.

10. Even otherwise when it comes to the statement of the

victims about they being attempted to sold, perusal of the record does not indicate that, any investigation being carried out by the Investigating Agencies with regard to the unknown person who made the said statement. In absence of any such evidence, it cannot be held that, the Accused were intending or had knowledge about the victims were forced to illicit sexual intercourse with another person. The offences under Section 363 and 366A of IPC therefore are held not to be proved against the Accused.

11. As far as Accused Nos.2 and 3 are concerned they are not charged for commission of offence under Section 506 and 452 of IPC. Once it is held that, the victims are not proved to be minor, the Accused Nos.2 and 3 cannot be convicted for offences punishable under Section 363 and 366A of the IPC and deserves acquittal of all charges.

12. As far as Accused No.1 is concerned, there is specific contention of the victims about he entering in the house of the one of the victims with knife and threatening her to accompany him, the evidence of victims in this regard is consistent and

discrepancies sought to be brought on record are not material in nature. As far as the delay caused in lodging of the report, the evidence of victims and father of one of the victim clearly explains the reason for which the delay is caused. The prosecution was able to bring it on record that, owing to the threat of Accused No.1 and on account of his presence in the Police Station, at the time of the recording of the statements of the victims at the first instance, they could not have been stated anything against the Accused. Similarly, the complaint made by the parents of victims to the higher Police Officer and registration of the report thereafter is sufficient to explain the delay. Having regard to this fact, and evidence on record the offences under Section 506 and 452 of IPC are held to be proved against Accused No.1.

13. On the point of sentence Accused No.1 was sentenced by Trial Court to suffer RI for three months with fine of Rs.500/- and Rs.300/- respectively, in default one month imprisonment. The incident is of year 1995. There is nothing on record to show that, the Accused No.1 was involved in any

other crime. The Accused was aged about 26 years and now he 57 years with responsibility of family. He was arrested on 29th April 1995 and released on bail on 20th May 1995. Having regard to the overall facts and circumstances of the case, this Court is of the view that, the period undergone by the Accused in jail during the course of the trial would be sufficient sentence and the same would meet ends of justice. Hence, the following order.

ORDER

- (i) The Appeal stands partly allowed.
- (ii) The judgment and order of conviction of Accused Nos.2 and 3 dated 30th September 1998 passed in Sessions Case No.373 of 1995 stands set aside and they are acquitted of all charges.
- (iii) The order of conviction against Accused No.1 for the offences under Section 363 and 366A stands set aside. He is acquitted there from.
- (iv) The order of conviction of the Accused No.1 for the offences punishable under Section 452 and 506 of the IPC is maintained, however,

the sentence is reduced for the period already undergone.

14. All pending Applications are disposed of.

(R.M. JOSHI, J.)