

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 391 OF 2001

Udhav s/o Maruti Londhe,
age 23 years, occ. education
R/o Banshelki Road, Udgir,
Tq. Udgir, Dist. Latur

...Applicant

VERSUS

The State of Maharashtra,

...Respondent

.....
Shri V.G.Sakolkar, advocate for applicant
Shri S.A.Ambad, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 5th January, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith. Heard with the consent of the learned counsel for the parties.

2] The present Revision is directed against the judgment and order of conviction, passed by the learned IInd Assistant Sessions Judge, Latur in Sessions Case No. 163 of 1997 on 22.4.1999; whereby the applicant was convicted for the offence punishable under Section 366A of the Indian Penal Code and

was directed to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.2,000/-, in default he was directed to suffer further rigorous imprisonment for nine months. The learned Judge of the trial court also convicted the applicant for the offence punishable under Section 376 of the Indian Penal Code and was directed to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.2,000/-, in default he was directed to suffer further rigorous imprisonment for nine months. The learned trial Judge though convicted the applicant for the offence punishable under Section 363 of the Indian Penal Code, no separate sentence was passed against the applicant.

3] Feeling aggrieved thereby, the applicant preferred an appeal. The said appeal was registered as Criminal Appeal No. 31 of 2001. The learned Additional Sessions Judge, Udgir partly allowed the appeal. The learned appellate court set aside the conviction and sentence for the offence punishable under Section 366A of the Indian Penal Code, however, convicted the applicant for the offence punishable under Sections 376 and 363 of the Indian Penal Code and directed the applicant to suffer rigorous imprisonment for seven years and to pay fine of Rs.2,000/- and in default to suffer further rigorous imprisonment for nine months.

4] I have heard Shri V.G.Sakolkar, learned counsel for the applicant and Shri S.A.Ambad, learned Additional Public Prosecutor for the respondent/State. With their able assistance, I have gone through the entire record and proceedings.

5] Perusal of the prosecution case clearly reveals that the applicant, who was at the relevant time, a boy of 19 years, was in love with the prosecutrix. The only question that has to be decided by this court is as to whether the prosecution has proved that the prosecutrix did not attain the age of consent.

6] Exh. 38 is the report of Radiologist. The opinion of the Radiologist is that, "Radiological gone age is 14 years plus minus two years". Thus, it is absolutely clear that the Radiologist is not sure about the exact age of the prosecutrix.

7] The prosecution relied on a document Exh.44. Exh.44 is a transfer certificate issued by the Head Master of Jijamata Vidyalaya Tondchir. Admittedly no person from Jijamata Vidyalaya, Tondchir is examined by the prosecution. The prosecution has relied upon the evidence of PW 9 Devidas Patil. Said Devidas Patil was serving as Head Master of Annabhau Sathe Dnyan Prasarak Prathmik Shala, Udgir. He has admitted that Exh.46, which is an extract of admission register, shows the date of birth of the prosecutrix as 11.6.1985.

He has admitted that entry of the date of birth of the prosecutrix is taken in Exh.45 only on the basis of the date mentioned in Exh.44. He has admitted that he has not verified whether the date mentioned in the transfer certificate of Jijamata Vidyalaya (Exh.44) tallies with the date of birth in the school record of Jijamata Vidyalaya. The primary evidence in order to determine the date of birth will be the admission register of Jijamata Vidyalaya, Tondchir. No attempts were made on behalf of the prosecution to examine any person from the said school.

8] In that view of the matter, the benefit of doubt ought to have been extended in favour of the applicant. I, therefore, record a finding that the prosecution has failed to prove the exact date of birth of the prosecutrix by clinching and conclusive evidence, warranting extension of benefit in favour of the applicant.

9] The Revision is, therefore, allowed. The judgment and order of conviction, passed by both the courts below is set aside. Rule is made absolute accordingly.

[V.M.DESHPANDE, J.]