

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.24 OF 2015

The State of Maharashtra	]	
(Through Kavathe Mahankal	]	 Applicant /
Police Station, Dist. Sangli)	]	(Org. Complainant)

Versus

Vasant Shivram Bandgar,	]	
Age : 20 Yrs., Occu.: Nil,	]	
R/o. Kavathe Mahankal,	]	 Respondent /
District Sangli.	]	(Org. Accused)

Dr. F.R. Shaikh, A.P.P., for the
Applicant/State.

None for the Respondent.

CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 30TH JUNE, 2015.

P.C. :

1. The Applicant/State has preferred this Criminal Application seeking leave to challenge the acquittal of the Respondent for the offence punishable under Section 376 of the IPC, as recorded by the Additional Sessions Judge, Sangli vide his Judgment dated 16th October, 2014 in Sessions Case No.125 of 2012.

2. Facts, as are necessary, for deciding this Criminal Application may be stated as follows :-

Prosecutrix in this case is the daughter of PW-1 Shalan, *(The name of the Prosecutrix is withheld to protect her identity)*. At the time of incident, in the year 2012, she was studying in 9th Standard. In June, 2012, her mother PW-1 Shalan noticed that Prosecutrix was pregnant of six months. Hence she took her to Primary Health Center and confirmed the said fact. She made enquiry with the Prosecutrix and then it was revealed to her that the pregnancy of Prosecutrix was on account of the sexual intercourse with the Respondent on more than one occasion. Prosecutrix was then taken to Civil Hospital, Sangli. The information was given by the Medical Officer at Sangli Civil Hospital to Vishrambag Police Station and from there to Kavathe Mahankal Police Station. There, the complaint of PW-1 Shalan, her mother, came to be recorded vide Exhibit-12. The statement of Prosecutrix was, accordingly, recorded on the same day. Prosecutrix delivered a male child in Civil Hospital, Sangli on 28th October, 2012. On the arrest of the Accused, blood sample of Prosecutrix, her child and the Accused was collected and sent for

D.N.A. Test. The D.N.A. Report (Exhibit-19) confirmed that the child born to the Prosecutrix was from the Accused. Hence, further to completion of investigation, PW-9 PI Vitthal Bhujbal filed Charge-Sheet in the Court against the Accused.

3. On committal of the case to the Sessions Court, the Trial Court framed charge against the Accused. The Accused abjured the guilt and claimed trial.

4. In support of its case, the Prosecution examined in all 9 witnesses, though the main plank of the Prosecution case rested on the testimony of Prosecutrix, her mother PW-1 Shalan and the D.N.A. Report (Exhibit-19). On appreciation of this evidence, the Trial Court was pleased to acquit the Accused.

5. Being aggrieved by the same, the Applicant/State is seeking permission to file Appeal challenging the said order of acquittal. We have heard learned A.P.P., who has taken us through the evidence of all the nine witnesses and the impugned Judgment of the Trial Court. On the basis of the same, we are of the considered opinion that the view taken by the Trial Court

being a probable view, this Court sitting in Appeal against the acquittal should restrain itself from interfering in the said view.

6. Our reasons for the same are as follows :-

Prosecutrix in this case, as referred above, is a young girl, who, at the time of incident, was on the threshold of majority. Her birth date is 11th November, 1996 and she was studying in 9th Standard at the time of incident in the year 2012. In evidence before the Court, which was recorded on 20th February, 2014, she has stated her age as 18 years. PW-7 Dr. Mahesh Patil, who has carried out ossification test of Prosecutrix, has also opined that at the time of examination, age of the Prosecutrix was more than 16 years, though below 17 years. Therefore, it follows that in the year 2012, she was of 16 years of age. Considering her birth date, it can be said that at the time of incident, though she has not completed the age of 16 years, she was definitely on the verge of majority and, hence, capable to understand the consequences of her act and also the moral and social attributes thereof. She has attained sufficient maturity, though technically she may be called as below the age of 16 years.

7. Her evidence goes to reveal that on three occasions, the Accused had committed sexual intercourse with her in the field of one Kondiba Shendge. She was knowing the Accused quite well, as he was grazing his cattle in her locality. Her evidence also reveals that she was having love affair with the Accused. The very fact that even after the first incident of sexual intercourse committed by the Accused, she had not disclosed about the same to her mother or to anyone, reveals that whatever sexual relations Accused had with her, were with her consent, the reason for the same being her love affair with the Accused.

8. In such situation, mere vague averment that Accused was having sexual relations with her by giving promise of marriage, is not sufficient to infer that her consent was obtained under misconception of fact. It also cannot be disputed that Prosecutrix was having adequate intelligence and maturity to understand that her marriage cannot take place unless her parents and the parents of the Accused consent for the same.

9. In the light of this evidence on record, it cannot be said that the view taken by the Trial Court that Prosecution has failed to prove its case against Accused beyond reasonable doubt is perverse or calls for any interference. The said view being the probable view from the entire gamut of facts, circumstances and evidence on record, it does not call for any interference. Hence, this Criminal Application stands dismissed. Leave to Appeal is refused.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]