

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.171 OF 2014**

State of Maharashtra	... Applicant
v/s	
Satish Jinnappa Mohite and anr.	... Respondents

Shri A.S. Shitole, APP for Applicant.
Shri Nagesh Y. Chavan for Respondents.

**CORAM: SMT V.K. TAHILRAMANI &
SHRI B.P. COLABAWALLA JJ.**

DATE : 17TH MARCH 2015

P.C.:

1. The applicant – State of Maharashtra has preferred this application for leave to file appeal against the judgment and order dated 22nd April 2014 passed by the learned Additional Sessions Judge, Sangli in Sessions Case No.135 of 2012. By the said judgment and order, the learned Sessions Judge acquitted the respondents – original accused Nos.1 and 2 of the offence punishable under sections 363, 366, 376, 494, 323 and 506 r/w 34 of Indian Penal Code.

2. It is an admitted fact that Respondent No.2 is the wife of Respondent No.1. It is the prosecution case that at the relevant time the prosecutrix was under 16 years of age. Both the respondents kidnapped the prosecutrix with intention to compel her to marry respondent No.1. Accordingly the marriage took place on 12th June 2012. In addition, the respondent No.1 raped the prosecutrix and also threatened to kill her.

3. On going through the evidence of the prosecutrix, who has been examined as PW 1 it becomes apparent from her conduct that she was in love with respondent No.1. She has stated that when her mother was not at home, she gave company to the respondent No.1. She has further stated that the respondent No.1 gave her gifts which she accepted. She used to go with respondent No.1 in his car. When respondent No.1 used to come to her house to take her she did not raise shouts. Even after the first incident of rape she went to the house of respondent No.1. On that occasion also she did not call out or shout for help. Her father – PW 2 – Manjappa told her that the respondent No.1 is a married person. Her father

convinced her not to meet the respondent No.1 but she did not heed his request. The prosecutrix has stated that prior to one day of the incident, her father left her with his sister - Vaishali at Miraj as she (prosecutrix) did not give any response to her parents. The prosecutrix stated that she gave threats to her aunt - Vaishali that she will commit suicide by pouring kerosene on her person. Her aunt disclosed this fact to her parents, hence, her father brought her back to his house. The prosecutrix has further stated that respondent No.1 purchased a Mangalsutra for her. One hour was required to purchase the Mangalsutra. While the respondent No.1 was purchasing the Mangalsutra she and her parents were sitting in his car. The prosecutrix as well as complainant PW 2 - Manjappa have stated in their evidence that after performing the marriage, they had halted in Hotel Pai Prakash, Sangli for taking breakfast. They were there for about one hour. However neither the prosecutrix nor her parents who were with her raised any hue and cry or sought help from people. The same is the case when they were in the Court premises on the day of the marriage. Though Police are present in the Court premises, the prosecutrix or her father did not try to lodge any complaint. From the above

facts, it can safely be inferred that both the respondents had not taken the prosecutrix from the custody of her father without her permission.

4. It is further case of the prosecution that the respondent No.1 committed rape on the prosecutrix. The evidence of the prosecutrix indicates that whatever happened was with the consent of the prosecutrix. However it is the case of the prosecution that the age of the prosecutrix was below 16 years on the date of incident, hence her consent is immaterial according to the prosecution, the date of birth of the prosecutrix is 2nd June 1997 and the incident occurred on 12th June 2012. The prosecution has produced School Leaving Certificate of the Primary School of the Municipal Corporation at Miraj. The Head Master of the said School PW-3 Shri Londhe has been examined. He has not stated in his evidence that the School had verified the correctness of the date of birth of the prosecutrix. His evidence further shows that the prosecutrix had taken admission in the said School on 26th June 2006 in 4th standard and prior to that, the prosecutrix was taking education in Zilla Parishad School at Village Khanderajuri. It is pertinent to note

that the prosecution has not produced the register of admission of the prosecutrix of the Zilla Parishad School where the prosecutrix had initially taken admission. It appears that the prosecution has intentionally not produced the said document before the Court. This is more so in view of the evidence of PW 2 - Manjappa, the father of the prosecutrix, who has stated in his evidence that the birth of the prosecutrix took place in the house. In the case of Birad Mal Singhvi v/s Ahemd Purohit, reported in AIR 1988 SC 1796, it has been observed by the Supreme Court that the date of birth in the school register has no evidentiary value, unless the person who made the entry or who gave the date of birth is examined. In the present case no such witness has been examined.

5. In the case of Arvinder Kaur v/s State of Punjab, reported in 2007(3) RCC(Crime) 8187, it is stated thus :-

“it has been held that the school leaving certificate would be no proof of age without production of admission form and register.”

The statement of PW 2 Manjappa father of

prosecutrix cannot be relied upon as this witness has stated the birth date of prosecutrix approximately without any basis or any record. He has not given the details regarding the birth date of his children as well as exact date and gap between the age of his children. No birth certificate of the prosecutrix has been produced. The prosecution has failed to produce any admission form of the school or register which is primary evidence regarding the age of prosecutrix. In such case it cannot safely be held that the prosecutrix was below 16 years of age at the relevant time.

6. In relation to the age of the prosecutrix PW 5 - Dr Sutar who examined the prosecutrix has stated that she referred the prosecutrix to the radiologist for ossification test. Dr Sutar has admitted that during ossification test it was found that the age of the prosecutrix was more than 16 years. It is well settled that margin of error in ossification test is 2 years and the accused has to be given the benefit of the same. Moreover, Dr Sutar on physical examination of the prosecutrix found that secondary sex characters of prosecutrix were well developed Labia Majora was well developed and pubic hair were present.

Looking to the physical characteristics of the prosecutrix and the ossification test results it can be held that the prosecutrix was over 16 years of age at the relevant time.

7. As far as acquittal under section 494 of IPC is concerned, considering the provisions of section 198 of Cr.P.C., neither prosecutrix nor her parents have any right to file complaint against the respondent No.1 under section 494 and 495 of IPC as they are not aggrieved parties but only respondent No.2 is the aggrieved party in relation to performance of second marriage by respondent No.1.

8. Looking to the evidence on record, we are of the opinion that the view of acquittal taken by the learned Sessions Judge is a reasonable and possible view. The plenitude of power available to the Court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction, but, however, the court hearing an appeal against acquittal, will not interfere solely because a different possible view may arise from the evidence. The Supreme Court in the case of C. Anthony v/s K.G. Raghavan Nair, reported in

(2003) 1 SCC 1 has observed that while hearing an appeal against an order of acquittal, if two reasonable conclusions can be reached on the basis of evidence on record, the appellate court should not disturb the finding of the trial court. We have already observed that the view taken by the learned Sessions Judge is a reasonable and possible view. Hence we are not inclined to interfere in the judgment and order of acquittal.

9. In view of the above, no case is made out for interference. Application is rejected.

(SHRI B.P. COLABAWALLA, J.) (SMT V.K. TAHILRAMANI J.)