

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 31 OF 2015
(FOR LEAVE TO FILE APPEAL)**

The State of Maharashtra]
(Through Vita Police Station,]
Tal. Vasai C.R.No. 67 of 2012)].. Applicant
[Ori. Complainant]

Vs.

Hanmant Bapurao Pawar	]
Age 20 years, Occ: Labour,	]
Residing at Bhavani Mal, Vita	]
Taluka Khanapur, Dist. Sangli	].. Respondent
	[Ori. Accused]

Mr. A.S. Shitole A.P.P. for the Applicant-State of Maharashtra
None for the Respondent

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

DATED : APRIL 20, 2015

ORAL ORDER : [PER SMT. V.K.TAHILRAMANI, J.] :

1 The applicant-State of Maharashtra has preferred this application for leave to file appeal against the acquittal of the respondent-accused. By judgment and order dated 31.10.2014, the respondent was acquitted of the offences

under Sections 363, 366A and 376 of IPC by the learned Sessions Judge Sangli in Sessions Case No. 117 of 2012.

2 The prosecution case, briefly stated, is as under:

(i) The prosecutrix was about 17 years of age at the time of the incident. The prosecutrix was residing along with her parents at village Gardi. The maternal uncle of the respondent was staying adjacent to the house of the prosecutrix. The respondent used to frequently visit the house of his maternal uncle, hence, the prosecutrix and the respondent got acquainted. The respondent used to frequently visit the house of the prosecutrix and they used to talk to each other. The incident occurred in the year 2012. At that time, the prosecutrix was studying in 12th standard at Vita.

(ii) On 12.5.2012 at about 8.30 a.m. the respondent gave a call on cell phone of the father of the prosecutrix. The prosecutrix took the call. The respondent told her that his wife had gone to the house of her parents and the respondent questioned the prosecutrix as to what they should do ? The

respondent then told the prosecutrix that they will run away and get married. He told the prosecutrix that after she reached Vita to attend school, she should contact him on his cell phone. The prosecutrix replied in the affirmative. The prosecutrix then went to Vita stating that she is going to attend school. When they reached Vita, she called on cell phone of the respondent from an STD centre. The respondent then came there and took her to Ichalkaranji. They resided in Ichalkaranji till 23.6.2012 in the room taken on rent from one Vilas Pawar. Vilas Pawar was residing adjacent to the room occupied by the prosecutrix and the respondent. The respondent started working in one power loom at Ichalkaranji. He used to attend his work from 8.00 a.m. to 5.00 p.m. The prosecutrix represented to the employer of the respondent as well as the owner of the room in which they were residing that they were married. In the meanwhile, on 12.5.2012 the father of the prosecutrix lodged missing complaint. After some days, P.W. 1 Suresh the father of the prosecutrix visited the house of the respondent and he came to know that the respondent was also missing since 12.5.2012, hence, he suspected that the respondent had kidnapped his daughter. Hence, he lodged

F.I.R. Exh. 12. During the course of investigation, the police found out that the respondent was residing at Ichalkaranji, hence, they went to his room where they found the respondent as well as the prosecutrix. Then they brought them back to Khanapur. After completion of investigation, the charge sheet came to be filed.

3 As far as offence under Section 376 of IPC is concerned, according to the prosecution, the act of rape took place between 12.5.2012 to 23.6.2012. At that time, clause (6) of Section 375 of IPC provided that "an act would amount to rape if a man had sexual inter-course with a girl who was under 16 years of age." As per the evidence of the prosecutrix as well as the other evidence on record, the prosecutrix was over 16 years of age at the relevant time. The evidence of the prosecutrix on the point of rape shows that the respondent took her first to village Palus and then he took her to Ichalkaranji. Then they started residing in a room taken on rent from Vilas Pawar. The prosecutrix has stated that she disclosed to the owner that she is the wife of the respondent and due to dispute with family members, they had left the

house. She has further stated that she resided in the room at Ichalkaranji with the respondent from 15.5.2012 to 23.6.2012. At that time, the respondent had sexual inter-course with her. It is pertinent to note that the prosecutrix has not stated that the respondent had forcible sexual inter-course with her nor has she stated that she did not consent to the sexual inter-course. We would like to advert to the evidence of P.W. 6 Dr. Bhise. Dr. Bhise has stated that he examined the prosecutrix on 25.6.2012. The prosecutrix was accompanied by her parents. The prosecutrix gave history that she knew the respondent since last two years and that both left Vita on 12.5.2012. The prosecutrix categorically told him that she was not subjected to any force or pressure by the respondent. She has further stated that she went with the respondent without any tension and there was sexual inter-course between them on many occasions. Looking to all these facts, it cannot be said that a case of rape is made out.

4 As far as Sections 361 and 366A of the IPC are concerned, the prosecutrix was about 17 years of age at the time of the incident. The evidence of the prosecutrix shows

that 2.5.2012 at about 8.30 a.m. the accused gave call on the mobile of her father. She took his call. The accused told her that his wife had gone to the house of her parents and questioned her as to what they should do ? The accused also told her that they would run away and perform marriage and she should contact on his mobile when she came to Vita to attend school. She gave reply to him in affirmative and switched off the mobile. She further stated that on that day her brother Mayur left her at Vita at about 11.30 a.m. to attend the school. After reaching at Vita, she gave call to the accused on his mobile through STD centre. Then accused took her to village Palus and thereafter to Ichalkaranji. She further stated that after going to Ichalkaranji, the accused joined service in the power-loom of one Nahar at Ichalkaranji. The accused disclosed to his owner that she is his wife and due to dispute they both had come to Ichalkaranji for work. She also disclosed to his owner that she is his wife. The accused had taken a rented room of one Pawar and they both started residing there. In the cross-examination, it has been proved that in her statement before the police she had stated that the accused was visiting the house of his maternal uncle Arun

Mohite, who was her neighbour and at that time the accused was also visiting her house and she was talking with him and she fell in love with the accused. She further stated in her statement before police that when accused told her by giving call that he shall not live without her, then she also gave reply that she shall not live without him and she gave consent for performing marriage by running away and accordingly, on that day, after reaching at Vita she went to the bus stop of Vita and met the accused and then she accompanied the accused. However, she has not stated in her statement before the police that the accused enticed her to run away and marry him. P.W. 8 API Wanjari admitted in his cross-examination that he recorded statement of P.W. 5 prosecutrix on 24.6.2012 and she has stated the portion marked A in her statement before him and it was recorded as per her say. Thus, it is evident that there is no taking away of the prosecutrix or enticing on the part of the respondent-accused. P.W. 5 prosecutrix has admitted that she and accused were in love. She has also admitted that when she left the house she had not disclosed to anybody including her mother and brother that the accused is taking her for performing illegal marriage. Her evidence on

record indicates that she has left lawful custody of her father of her own accord. She was fully grown up girl, may be one who had yet not touched 18 years of age, but still, she was in the age of discretion, sensible and aware of the intention of the accused that for what purpose he was taking her away. It was not unknown to her with whom she was going and for what purpose. If it was against her will, it was expected of her to disclose to her mother or brother or to put up a struggle or in any case, raise an alarm to protect herself. But no such steps were taken by her at any stage.

5 After the prosecutrix was brought back from Ichalkaranji, she was sent for medical examination. At that time, her parents accompanied her. P.W. 6 Dr. Bhise examined the prosecutrix. At that time, the prosecutrix gave history that she knew the accused since last two years and they both left Vita on 12.5.2012 and there was no force or pressure by the accused. She went with the accused without any tension.

6 It is to be noted that prosecutrix P.W. 5 admitted in her cross-examination that the accused has already performed

marriage and the accused was having one daughter. She further admitted that she herself attended the marriage of accused. The above fact goes to show that prosecutrix had knowledge that the accused was already married and he had one child. Despite this fact she has not opposed the accused from taking her as well as she has not questioned the accused as to how he will perform marriage with her. Admittedly at the time of incident prosecutrix was taking education in 12th standard. She was well educated lady and she was knowing the consequences of her act as well as the act of the accused. Despite this fact she accompanied the accused. Thus, from her evidence on record, it is evident that there is no taking or enticement and we find that where a girl who has attained the age of discretion and who is a well educated lady of her own accord came out of her house and gave company to the accused, it would not be a case of taking her away on the part of the accused, but it appears from her evidence that the prosecutrix was acting of her own free will. This becomes even more clear from the cross-examination of the prosecutrix where she has stated that since the incident till the police brought her from Ichalkaranji she had not contacted her

parents by making a telephone call to them. If at all, the respondent had enticed the prosecutrix or was taking her away forcibly the prosecutrix being an educated lady, would have informed this fact to her mother after receipt of call from the respondent to her at 8.30 a.m. on 12.5.2012.

7 It is also pertinent to note that the prosecutrix has admitted that when she and the respondent were residing at Ichalkaranji, at that time, the respondent was attending his work in the power-loom from 8.00 a.m. to 5.00 p.m. and during the whole day, she was staying alone in the house. If at all events were against the will of the prosecutrix, she would have run away to her parents house or at least made efforts to seek help from neighbours or the police. Inaction on her part in taking such steps shows that she was a consenting party. She has further admitted that she has not disclosed to neighbouring persons that the respondent had kidnapped her by giving promise of marriage or by force. Looking to the facts of this case, useful reference can be made to the decision of the Supreme Court in the case of **S. Varadrajan Vs. State of Madras** reported in **A.I.R. 1965 SC 942**. In the above case, it is

observed by the Supreme Court that when a girl who, though a minor, had attained the age of discretion and is on the verge of attaining majority and is a student, complying with her wishes can by no stretch of imagination be said to have taken her out of the keeping of her lawful guardianship. The fact of her accompanying the accused all along is quite consistent with her own desire to live with accused as the wife of accused. Under these circumstances no inference can be drawn that the accused is guilty of taking away the girl out of the keeping of her father. She has clearly of her own accord willfully accompanied him and law does not cast upon him the duty of taking her back to her parents or even of telling her not to accompany him. For the purpose of Section 361 where the minor leaves her father's protection knowing and having the capacity to know the full import of what she is doing and voluntarily joins the accused, he cannot be said to have taken her away from the keeping of her lawful guardian. The evidence on record clearly shows that the prosecutrix left the house of her father of her own accord.

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 Supreme Court in the case of **C. Anthony Vs. 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. In view of the above, leave to file appeal, is refused. Application is accordingly rejected.

[SHRI.B.P.COLABAWALLA, J.] [SMT. V.K.TAHILRAMANI, J.]