

vks

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APEAL NO.698 OF 2015

Meena Ramdeen Chaurasia	]	
age 18 years, Occupation : Nil	]	
r/o room No.2, Kasim Ibrahim Chunawala	]	... <u>Appellant</u>
Compound, Shastri Nagar, Kalina	]	Victim
Santacruz (E),	]	
Mumbai	]	

V/s.

1. Mohammed Naim Ajim Ansari	]	
age 26 years,	]	
c/o Wahid Pasha, Ram Rahim Nagar	]	
Garib Nawaz Colony, Hariyali Road	]	 <u>Respondents</u>
Malegaon, District: Nashik.	]	Respondent Nos.
	]	1 & 2 Original
2. Sharafatali Mohammed Ajim Ansari	]	accused.
age: 22 years, r/o Ulhas Nagar,	]	
No.3, Furniture Market, Hira Ghat	]	
Ulhas Nagar, District: Thane	]	
	]	
3. The State of Maharashtra	]	

Mr. Satyaprakash Sharma I/by Mr. Satyaprakash Sharma I/by Mrs. Shakuntala Sharma, for Appellant.

Mr. Amit Mundhe, for the respondent Nos 1 & 2.
Mrs. A. S. Pai, A.P.P., for the Respondent-State.

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

DATE : 3rd AUGUST, 2015.

ORAL JUDGMENT : [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. The Additional Sessions Judge, Greater Bombay, has vide his judgment dated 20.11.2013, in Session Case No.219 of 2013, acquitted respondent Nos 1 & 2, for the offences punishable under Sections 363, 376, 212 read with 34 of Indian Penal Code. Hence, being aggrieved by the said judgment the prosecutrix has preferred this appeal.

2. Facts of the appeal can be stated as follows :-

The appellant, in this case at the time of incident in the year 2011, was a young girl of about 15 years age. On 5.10.2011, she was found missing from her house. Hence after taking search, her father P. W.1 Ramdeen lodged missing report at Wakola Police Station. P.W.4 API Kore, registered missing complaint No.66 of 2011 on his report and took search of the prosecutrix. However, she was not found. Her father thereafter came to know that respondent No.1 had taken away the prosecutrix to Uttar Pradesh and she was kept there in the house

of respondent No.2 at Utarawala gaon. Hence in pursuance of directions given in Criminal Writ Petition No.2060 of 2012, filed by her father for habeas corpus writ, the police brought her from Uttar Pradesh and produced her before this Court on 28.6.2012. At that time she admitted her marriage with respondent No.1 and further the fact that she was residing with respondent No.1. In view of her statement and in view of the fact that she was in an advanced stage of pregnancy, coupled with reluctance on the part of her father to accept her, she was sent to Asha Sadan Mahila Suraksha Kendra, Dongri, Mumbai.

3. Meanwhile, in view of complaint lodged by her father on 13.11.2011 (Exh.19) against respondent, C.R. No.455 of 2011 was registered against respondents and after completion of investigation, chargesheet was filed against them, for the offences punishable under Sections 363, 376, 212 read with Section 34 of Indian Penal Code.

4. On committal of the case to the Sessions Court, trial Court framed charge against respondents vide Exh.11. Both the

respondents pleaded not guilty and claimed trial raising, defence that the prosecutrix of her own accord accompanied respondent No.1 and willingly stayed with respondent No.1 in the house of respondent No.2.

5. In support of its case, prosecution examined in all four witnesses and on appreciation of their evidence, trial Court, vide its impugned judgment acquitted respondents of all the charges levelled against them.

6. This judgment of the trial Court is challenged in this appeal by learned counsel for the prosecutrix, by submitting that at the time of incident, as admittedly the age of prosecutrix was less than 16 years, the question of her consent or willingness does not arise at all. Hence trial Court has committed an error in acquitting respondents of the charges levelled against them.

7. Per contra, learned counsel for respondents has supported the judgment of trial Court by producing on record the order passed by this Court in Criminal Writ Petition No.2060 of

2012 to prove that the prosecutrix herself has admitted that she was in love with respondent No.1 and she left the house of her father of her own accord; however, in evidence before trial Court, she has disowned her statement and given improved version at the instance of her father; the trial Court has, therefore, rightly disbelieved the same. Hence according to learned counsel for respondents, no case is made out for interference in the impugned judgment of the trial Court.

8. In our considered opinion also, if the entire evidence which is brought on record is appreciated in the light of admitted facts on record, then it has to be held that there is no case made out by the prosecutrix for conviction of respondents. It is a matter of record that the prosecutrix went missing on 5.10.2011. Her father has filed Criminal Writ Petition No.060 of 2011 for writ of habeas corpus. As per evidence of P.W.4 API Kore, in pursuance of the directions given in the said Writ Petition, the search of the prosecutrix was taken and she was found in Uttar Pradesh. From there, she was brought to Mumbai and produced before this Court. At that time, enquiry was made with her by

the Court and it was categorically stated by her that she was married to respondent No.1. Both of them were staying together in a village in Uttar Pradesh and she was not willing to stay with her parents. It was further found that she was in an advanced stage of pregnancy and as she was not willing to go to the house of her parents and her parents were also reluctant to accept her, in view thereof, she was sent to rescue home.

9. In evidence before the Court also, prosecutrix has admitted the fact that she was knowing respondent No.1 as he used to come to her Panshop and talking with her and even used to come to her house. She has further admitted that she had sexual relations with respondent No.1 and was pregnant for two months when she left her house alongwith him on 5.10.2011. As per her further evidence, thereafter respondent No.1 took her to Panvel, then to Calcutta and lastly to Uttar Pradesh. When her father filed Writ Petition in this Court, she was produced in this Court, and she has told the Court that she was not ready to go with her parents and wanted to stay with respondent no.1. At that time she was nine months pregnant. Then she was sent to

Rescue Home. In her cross-examination it is further brought on record that she was having sexual relations with respondent No.1 and was pregnant from him.

In our considered opinion, in the light of the evidence of love affair and sexual relations between the prosecutrix and respondent No.1, there hardly remains any substance in the prosecution case. It may be true that considering the birth date of prosecutrix, which is 12.10.1995, at the time of incident on 5.10.2011, she has not completed the age of 18 years. However, it goes without saying that she was about 16 years of age, as observed by the trial Court. She was educated upto 10th Standard. The Ossification Test report shows that she was 17 years of age, therefore, definitely on the verge of majority. Her evidence goes to prove that she has attained sufficient majority to understand the consequences and implications of her act of leaving the house of her parents of her own accord and then having sexual relations with the respondent No.1. In view, thereof and in the light of law laid down by Supreme Court in case of ***S. Varadrajan -vs- State of Madras***¹ the trial Court

1 1965 AIR 942

has rightly held guilt of respondent Nos 1 & 2 to be not proved beyond reasonable doubt and acquitted them accordingly. The view adopted by the Trial Court, therefore, being a possible and reasonable view, no interference is warranted therein. The appeal, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[SMT. V.K.TAHILRAMANI, J.]