

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 123 OF 2015

The State of Maharashtra ..Applicant
Versus
Naryan Balu Patil ..Respondent

Mr. J. P. Yagnik, APP for the applicant.

CORAM : RANJIT MORE &
1. L. ACHLIYA, JJ.
2.
DATE : 3rd DECEMBER, 2015.

P. C. :

Heard Mr. Yagnik, learned APP for the applicant-State.

2. This application is filed by the State for leave to file an appeal challenging the order of the learned Sessions Judge at Kolhapur dated 3rd August, 2015, in the Sessions Case No.55 of 2011. By the said order, the respondent-original accused is acquitted of the charge under sections 376, 452, 342 and 506 of the Indian Penal Code, 1860.

3. The respondent-original accused is the cousin of prosecutrix. They are residents of the same village. The prosecutrix alleged that about six to seven months prior to the date of the FIR i.e . 7th March, 2011, the respondent-original accused came to the home of the prosecutrix and forcibly committed rape on her when she was alone in the house. The prosecutrix further alleged that thereafter on 2-3 occasions again, the respondent-original accused committed rape on her. It is alleged that the prosecutrix conceived and the Doctor advised her not to go for medical termination of the pregnancy in view of the advanced stage of pregnancy and, therefore, the FIR came to be filed.

4. During investigation, in order to ascertain the paternity of the child born to the prosecutrix, DNA Test was conducted. The report was submitted accordingly, and the same is exhibited at "Exhibit 56" of the sessions case. The report does not support the story of the prosecutrix. The report shows that the respondent-original accused is not the biological father of the child of the prosecutrix. The prosecution is based on the allegation that due to forcible sexual intercourse, the prosecutrix conceived. As stated above, the DNA Test report, however, does not support this story. That apart, though the delay is always not fatal to the prosecution case, in the facts and circumstances of the present case, the delay of seven months in filing the FIR is significant. There is no positive evidence that the prosecutrix was under 16 years of age at the time of the incident. The learned Session Judge has considered all the aspects and passed the impugned order. The impugned order is supported by reasons based on evidence. The view taken by the learned Sessions Judge is a plausible view. We do not find any perversity in the same. The criminal application is, accordingly, dismissed.

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]