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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.203 OF 2014.**

The State of Maharashtra ... Applicant.

V/s.

Sagar Chandrakant Saundade,
age 25 years, Occn. Educator
r/o Soni, Tal. Miraj,
District Sangli

.... Respondent
Ori. Accused.

Mrs. A. S. Pai, APP for Applicant State.

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

DATE : 6th JULY, 2015.

P.C. : [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. The State has preferred this application seeking leave to prefer appeal challenging the judgment of Additional Sessions Judge, Sangli in Sessions Case No.129 of 2011. By the said judgment, respondent is acquitted for the offence punishable under Section 376 of the Indian Penal Code.

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

The prosecutrix (her name is withheld to protect her identity), in this case is a young girl of 17 ½ years old. She was residing alongwith her parents. Respondent was also residing nearby and studying in college. Both of them were knowing each other very well. Their acquaintance flowered into love affair which resulted into their sexual relations. As per prosecutrix, respondent has given her assurance of performance of marriage with her. However, when her parents came to know their love affair and confronted respondent about it, respondent refused to perform marriage with her. Hence alongwith her parents, she went to Miraj Rural Police Station on 3.1.2011 and filed complaint against respondent.

3. On her complaint C.R.No.1 of 2011 came to be registered against respondent for the offence punishable under Section 376 of the Indian penal Code. During the course of investigation, the prosecutrix was referred for medical examination. P.W.4 Dr. Dharmapal Bhagate, who examined her found that her hymen was ruptured and on ossification

test, her age was found to be 18 to 20 years. As part of further investigation, the statements of witnesses were recorded. Respondent was arrested. The school leaving certificate of the prosecutrix was collected and further to completion of investigation, chargesheet was filed in the Court against respondent.

4. On committal of the case to the Sessions Court , trial Court framed charge against respondent vide Exh.11. Respondent denied the guilt and claimed trial raising defence that the prosecutrix was having love affair with him. She wanted to perform marriage with him. As he could not accede to her request, she has filed this false complaint against him.

5. In support of its case, prosecution examined in all 8 witnesses and on appreciation of their evidence, the trial Court was pleased to hold that the prosecutrix was in love affair with respondent and hence it was a case of consensual sex. Therefore, the charge of rape against respondent cannot be held to be proved. Accordingly the trial Court acquitted respondent.

6. In this appeal, we have heard learned APP and with her assistance we have perused the depositions of prosecution witnesses recorded and also the impugned judgment of the trial Court. On careful consideration of the same we are of the considered opinion that no case is made out to grant leave to prefer appeal against acquittal. Reasons of the same are as follows :-

7. The birth date of prosecutrix as deposed by her is 25.5.1993. The prosecution has also brought on record the relevant school leaving certificate Exh.39 by examining P.W.6 the Head Master of RM High School, Miraj, Mr. Prabhakar Patil. Complaint in the present case is lodged on 14.12.2010. Hence it follows that on that date, she was more than 17 years and six months. Even assuming that some months prior to lodging of complaint accused was having sexual relations with her, even then it follows that she was above the age of 16 years or definitely on the verge of majority. Therefore, she has attained sufficient maturity to understand the consequences and implications of her act. Her evidence clearly reveals that since their love affair started, both were meeting each other once in a month. Then both of them

were going to hill area known as Dandoba and were enjoying physical relations. Even as regards to last incident which took place in the house of her aunt, she informed respondent about her stay in the house of her aunt and called him there when the children of her aunt were sleeping, she had sexual relations with respondent.

8. Thus evidence on record clearly goes to prove that whatever sexual relations the prosecutrix and accused had with each other were voluntary and of own accord of prosecutrix with her full consent. Merely saying that respondent had given promise of marriage to her and hence she had sexual relations with him is not sufficient to bring it within four corners of section 376 of the IPC. As held by the Apex Court in **Deepak Gurav -vs- State of Haryana (2013) 7 SCC 675**, there is distinction between forcible sexual intercourse which amounts to rape and consensual sexual intercourse, may be under the promise of marriage, which does not amount to rape, though at the most, it may amount to breach of promise. Again there is distinction between mere breach of promise and not fulfilling a false promise. When the prosecutrix agrees to have sexual intercourse on account of

love for the respondent and not solely on account of misrepresentation made to her by the respondent or where the respondent, on account of circumstances which he could not foresee or which were beyond his control, was unable to marry her, despite having every intention to do so, such case cannot fall under Section 376 of IPC.

9. In the instant case, totality of the facts and evidence on record do not make out ingredients of offence of rape, that of sexual intercourse without consent and against will of prosecutrix. Hence the trial Court has rightly acquitted respondent. No case is made out for grant of leave to appeal. The application for leave appeal stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

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