

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO.396/2004

The State of Maharashtra, for
P.S.O. Jaulka, P. S. Jaulka.

...APPELLANT

...V E R S U S...

Bhagwan Pralhad Wankhede,
aged about 29 years, Occ. Agriculture,
r/o Bhoyata, Tq. Malegaon,
Dist. Washim.

...RESPONDENT

Mr. N. R. Patil, A.P.P. for appellant.
Mr. A. D. Girdekar, Advocate for respondent.

CORAM:- A. B. CHAUDHARI & INDIRA K. JAIN, JJ.
DATED :- AUGUST 20, 2015

J U D G M E N T (Per : A. B. Chaudhari, J.)

1. Being aggrieved by judgment and order dated 19.04.2004 in Sessions Trial No.103/2000 passed by Additional Sessions Judge, Washim, acquitting respondent-accused Bhagwan Pralhad Wankhede of the offences punishable under Sections 366 and 376 of the Indian Penal Code, the present appeal was filed by the State of Maharashtra. The respondent-accused was, however, convicted for an offence punishable under Section 363 of the IPC and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000/-.

2. When the appeal was called out for final hearing, we found from the record that the respondent had filed an appeal against his conviction for the offence punishable under Section 363 of the IPC before the Sessions Court at Washim, obviously because the judgment in question was rendered by the Assistant Sessions Judge, against which appeal lay before the Sessions Judge of the Sessions Division.

3. The crucial question involved in this appeal is about the age of the victim namely; whether she was below 18 years or above 18 years, which is the *sine quo non* for attracting the ingredients of offence under Section 363 of IPC. Criminal Appeal No.24/2004, that was pending before the Sessions Judge, appears to have been decided by judgment and order dated 09.12.2014. We have perused the findings recorded by the learned Sessions Judge that is the appellate Court and we find that he has recorded a categorical finding that the prosecutrix or the victim was not below 18 years of age. That finding has become final inasmuch as the State of Maharashtra has not preferred any appeal against the said judgment of the Sessions Court in the higher court and as informed by Mr. Patil, learned A.P.P., the appeal was not even

recommended by the State for being filed in the higher court. Thus, an inevitable conclusion will have to be drawn for the purpose of the present appeal that the prosecutrix/victim was above 18 years of age.

4. Now, in order to consider Criminal Appeal No. 396/2004 filed by the State against an order of acquittal of the respondent of the offences punishable under Sections 366 and 376 of the IPC, we have perused the entire judgment and record and also the evidence led by the prosecution. We find that the learned trial Judge categorically found that there is evidence that the prosecutrix/victim was moving with the accused for about four months from place to place and both were residing together and had sexual intercourse at several places, on the basis of which, the respondent was charged for the commission of offence of rape. The evidence of the prosecutrix/victim thus clearly shows that she was a consenting party to the sexual intercourse and she being above the age of 18 years, the respondent-accused was acquitted by the learned Sessions Judge. Looking to the conduct of the prosecutrix/victim in being with the respondent-accused for about four months and roaming from place to place, we are fully

convinced that the order of acquittal recorded by the trial Judge cannot be said to be perverse nor even a second view is possible. That being so, it is not possible for us to interfere with the finding of acquittal recorded by the learned trial Judge of the offence punishable under Section 366 and 376 of the IPC.

5. That being so, following order is inevitable.

ORDER

- (i) Criminal Appeal No.396/2004 is dismissed.
- (ii) Bail bonds of respondent-Bhagwan Pralhad Wankhade are cancelled.

JUDGE

JUDGE

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