

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 553 OF 2015

Vishnu Asaram Rathod,
Age: 32 years, Occ: Labour,
Residing at Amdar Colony, Jintoor,
Tq. Jintoor, Dist. Parbhani.

...Appellant

versus

The State of Maharashtra,
(At the instance of Jintoor Police
Station, Parbhani)

...Respondent

.....
Mr. Y.B. Bolkar, Advocate for appellant
Mr. R.V. Dasalkar, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 9th MARCH, 2016

ORAL JUDGMENT :

Heard learned Counsel for the appellant and learned
A.P.P. for the State.

2. Present appellant is convicted by learned Extra Joint
Adhoc Additional Sessions Judge, Parbhani, by the judgment and
order dated 26/03/2015 in Sessions Case No. 91 of 2012, for an
offence punishable under Sections 452 and 366-A of the Indian Penal
Code and sentenced to suffer rigorous imprisonment for two years for

the offence punishable under Section 452 of the Indian Penal Code and fine of Rs.500/-, in default to suffer further simple imprisonment for one month and sentenced to suffer rigorous imprisonment for four years for the offence punishable under Section 366-A of the Indian Penal Code and fine of Rs.1000/-, in default to suffer further simple imprisonment for two months. It is ordered that both the sentences to run concurrently.

3. Prosecution case as against the present appellant-accused are as under :-

The alleged incident took place on 03/08/2011 in Zilla Parishad School after midnight, around 00-30 hours, when the appellant-accused unlatched door with the help of wire and entered into the house of complainant Muktabai, picked up her daughter Pooja and took her away by gagging her mouth. The complainant Muktabai, her mother-PW-1 awaked due to said events and saw the accused entering into her house, picking up her daughter Pooja, aged about 10 years and went out of the house. The complainant raised shouts and started following him. The accused went towards ground of zilla parishad school and on hearing her shouts, her neighbours rushed for help and saw the accused was kissing Pooja, daughter of complainant and was also trying to cause burns on her

cheeks with burning cigarette.

4. On 03/08/2011, pursuant to the complaint of PW-1 Muktabai, an offence punishable under Section 452 and 366-A of the Indian Penal Code came to be registered. After the investigation, charge sheet in the matter was filed.

5. The prosecution examined in all five witnesses; PW-1 Muktabai Shinde, mother of victim, who saw somebody carrying her daughter Pooja towards zilla parishad school, PW-2 Pooja, victim, PW-3 Dr. Girish Gupte, Medical Officer, PW-4 Sukhdeo Shinde, father of victim, PW-5 P.I. Vilas Nikam, the Investigating Officer.

6. Based on the evidence of above referred witnesses, learned Sessions Judge has held the accused guilty. As such, the present appeal against the conviction, under Section 372 of the Code of Criminal Procedure.

7. At the outset, it is required to be noted that PW-4 Sukhdeo, father of victim Pooja and husband of complainant Muktabai, PW-1, is not an eye witness but has deposed on the basis of hearsay evidence. So far as evidence of PW-3 Dr. Girish Gupte, Medical Officer is concerned, he has denied issuance of medical

certificate. The panch witnesses to the spot panchnama namely Vishnu Pawar and Dnyaneshwar Chavhan were not examined and as such, spot panchnama was not proved.

8. The prosecution case only based on evidence of PW-1 complainant Muktabai. The perusal of her deposition depicts that she was examined at Exhibit-26 and claimed in her examination in chief that on the date of crime, she was sleeping on the floor alongwith her two daughters, at around midnight, sound of outer gate was noticed and then noticed that elder daughter Pooja was not on her bed. When she went towards gate, she saw the accused was carrying her daughter Pooja towards zilla parishad school and she raised alarm, resulting into gathering of people. In response to her loud cry, people started following the accused, hence the accused left the daughter of complainant in the room of the school and ran away from there. It is then claimed that she went to the police station, after police vehicle arrived at the school, along with her daughter Pooja and son, lodged complaint and signed the same. She proved the complaint (Exhibit-27).

9. In the cross examination, PW-1 stated that the contents of the complaint was not read over to her. She further stated that police obtained her signature on 4 to 5 blank papers. The omission

could be noticed by not mentioning about the events as regards sound of outer gate, phone call made to the police. She then claimed that after she raised alarm, having seen the accused taking away her daughter, the people residing around namely Wakale, Deshmukh and one Sanjay followed the accused. From her evidence, it could be gathered that she gave signature to the police on 4 to 5 blank papers, complaint (Exhibit-27) was not read over to her before her signing. She has also not mentioned in F.I.R. about making phone call to the police. It is also required to be noted that she stated about the presence of watchman in the school, however, it is to be noted that watchman of the school was not examined. Apart from above, from the record it depicts that the persons who claimed to have followed the accused when he took away the daughter of complainant namely Wakale, Deshmukh and Sanjay are also not examined. As such, from the testimony of the complainant, it cannot be ascertained whether the alleged crime actually took place.

10. The victim Pooja was examined at Exhibit-28 being minor, in question answer form. She has deposed altogether different story as regards happening of the incident. She claimed that place of incident is court yard, whereas PW-1 complainant claims it to be in the class room. She then claimed that the accused caused burn injuries on her cheek with cigarette. She claims that the

neighbours called police and the accused ran away from the spot after he was noticed by her mother. In her cross examination, she narrates that she was unable to state as to who has entered the house and who has picked her up. The alleged story of kissing by present appellant-accused to the victim Pooja is neither narrated by PW-1 complainant nor victim PW-2.

11. PW-3 Dr. Girish Gupte, who according to the prosecution, has issued injury certificate, is examined at Exhibit-32 and he has in clear terms stated that the injury certificate is not issued by him. PW-4 Sukhdeo, father of victim and husband of complainant claimed that on the date of incident, he was not available and had gone out of station, however, he came to know about the incident after he returned back from his wife. PW-5 Vilas Nikam, the Investigating Officer, though has claimed that the accused gagged mouth of the victim, however, same does not appear in the story narrated by the complainant or victim. It is then required to be noted from his cross examination that he has come out with altogether different story stating that victim Pooja went for urination in the night and was taken away by the accused. His evidence does not repose any confidence. He has neither held any identification parade nor seized clothes of Pooja.

12. Upon analysis of oral evidence that is brought on record so as to ascertain the guilt of the accused, it could be inferred that the appellant-accused is falsely implicated in the crime in question. It is required to be noted that the story as is narrated by the complainant does not appear to be probable one, as is apparent from her narration and particularly in absence of examination of watchman of the school, and other persons namely Wakale, Deshmukh and Sanjay, in support of the prosecution case. PW-3 Dr. Girish Gupte has denied issuance of medical certificate, which speaks of false implication of the appellant. Apart from above, even if the independent analysis of evidence of the complainant Muktabai and victim Pooja, in my opinion, no case as is alleged against the accused could be proved beyond reasonable doubt.

13. As a consequence of above, present appeal needs to be allowed and accordingly, is allowed.

(i) The judgment and order passed by learned Extra Joint Adhoc Additional Judge, Parbhani in Sessions Case No. 91 of 2012 on 26/03/2015 is hereby quashed and set aside.

(ii) The present appellant is acquitted of the offence punishable under Section 452 and 366-A of the Indian Penal Code.

(iii) The appellant be set free forthwith, if not required in any other crime, and fine amount, if any, be refunded to him, after cancelling his bail bonds, after appeal period is over.

14. Record and Proceedings be sent back to the concerned Court forthwith.

Sd/-

[**N.W. SAMBRE, J.**]

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