

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 678 OF 1996

Krishna Rau RaneAppellant
R/o Bhairewadi, Tal. Shahuwadi
Dist. Kolhapur.

V/s.

The State of MaharashtraRespondent

WITH
CRIMINAL REVISION APPLICATION NO. 12 OF 1997

Suvarna Krishna Khot ...Applicant
R/o Bhairewadi, Tal. Shahuwadi
Dist. Kolhapur.

V/s

Krishna Rau Rane and anotherRespondents

Mr. S. R. Phanse Advocate for Appellant
Mr. Shekhar Ingawale for applicant in Revision No. 12 of 1997
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MARCH 16, 2016.

JUDGMENT:

Heard learned appointed counsel for the appellant. Appellant herein is
convicted for offence punishable under sections 376, 417 & 506 of Indian

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Penal Code by 2nd Additional Sessions Judge, Kolhapur in Sessions Case No. 166 of 1995 vide Judgment and Order dated 31/10/1996.

2) Such of the facts necessary for the decision of this appeal are as follows.

3) On 01/06/1995, prosecutrix lodged a report at Shahuwadi Police Station alleging therein that an year ago, accused/appellant had sent a chit to her through Balabai, daughter of Tukaram Khot. In the said chit, he has expressed his love for her. He had requested her to meet him in the agricultural land. After some days, he had met her in the agricultural land. He had expressed his desire to get married to her. That she had consented because she lacked power of cognition. Thereafter, accused and complainant had met on several occasions. On one occasion he had ravished her. According to her, she had raised cries, but in vain. That she had not disclosed about the incident to anybody, including her mother who had continued to meet him on several occasions and they had maintained sexual relations thereafter. After about 4 months, she had disclosed to the accused that in all probabilities she had conceived pregnancy. At that time, accused had given her a strip of medicines and had asked her to take two tablets everyday. However, tablets had no

effect. Mother of the informant had noticed the changes in the physical constitution of the complainant. Thereafter, family members had decided to get the complainant married to the accused. Father of the complainant had approached the village Sarpanch, Sadashiv Khot. That the accused had refused to marry the complainant and therefore, she was constrained to file a report against him. According to her, a meeting was held on 22/05/1995 to bring about an amicable settlement. It did not bear any fruits and she lodged a report on 01/06/1995. She had delivered the baby on 28/06/1995. On the basis of her report, crime no. 40 of 1995 was registered against the accused for offence punishable under sections 376, 417 & 506 of Indian Penal Code. After completion of investigation, charge-sheet was filed on 07/08/1995. Case was committed to the Court of Sessions and registered as Sessions Case No. 156 of 1995. Prosecution examined 7 witnesses to bring home the guilt of the accused. The case rests upon the substantive evidence of the prosecutrix P.W.

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4) P.W. 1 prosecutrix has deposed before the Court that she had received a letter through Balabai. That 2 to 4 days after receiving the chit, she had been to her agricultural land. Accused had followed her, he had expressed his love

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for her and also his desire to marry her. That 2 to 3 weeks thereafter, she had gone to her agricultural land to fetch fodder. Accused had followed her. That he had made physical advances towards her. She had attempted to resist him by pushing him aside, however, he had ravished her. She got frightened and therefore, she had not disclosed the incident to anybody, but continued to meet him. She has deposed before the Court that she was fully confident that the accused would marry her and therefore, had not disclosed the incident to anybody. The change in her physical constitution was noticed by her aunt. The family members had realized that she had conceived pregnancy and thereafter, she was constrained to inform her parents that she had sexual relations with the accused/appellant. Her father had approached village Sarpanch who had called for meeting. Meeting was held on 22/05/1995. She had also been for the meeting. According to her, accused had admitted before the villagers that he would marry her. On the next day, when she had been to the bore well to fetch water, accused had informed her that he does not wish to marry her and had also threatened her of dire consequences in the eventuality that she had disclosed the incident to anybody. She has proved the contents of the report filed by her which is marked at Exhibit 18.

5) In the cross-examination several omissions are elicited. The defence has tried to bring it on record that the place where the incident had occurred was a public place and the way to the said road was having dwelling houses on both sides of the road. She has admitted that she had not told before the police in her previous statement that she had raised hue and cry. This contradiction which is marked at 'A' & 'B'. P. W. 1 has also admitted that she was very close to her mother, however, she could not disclose about the said incident to her mother as she was scared of her mother.

6) Learned counsel appointed for the appellant rightly submits that this admission indicates that she was scared of her mother as she knew that she has done some wrong. That it prima facie appears that there was love in between accused/appellant and prosecutrix. She has candidly admitted that she had confidence that he would marry her and had therefore, consented to have sexual relations with him.

7) Learned APP as well as learned counsel appearing for the original complainant in Criminal Revision Application No. 12 of 1997 submit that prosecutrix was a minor and her consent cannot be taken into consideration and therefore, it is clear that accused had committed an offence under section

376 of Indian Penal Code.

8) The fact that prosecutrix has admitted that she had confidence in the accused/appellant that he would marry her, would simplicitor show that she had consented. She was more than 15 years old and was on the verge of attaining majority. She had sufficient knowledge of the rights and wrongs in life.

9) Evidence on record is sufficient to arrive at a conclusion that confidence of the prosecutrix was shattered by the accused. He had misrepresented to her that he would get married to her, although, he had no intention of marrying her. Prosecutrix had delivered a male child which was left in the custody of a Welfare Organization. As on today, the child begotten by the prosecutrix has also attained majority. Evidence is sufficient to arrive at a conclusion that accused has committed an offence punishable under section 417 of Indian Penal Code.

10) Accused/appellant, therefore, deserves to be acquitted of offence punishable under section 376 of Indian Penal Code. The sentence imposed upon the appellant for offence punishable under section 417 of Indian Penal Code is one year. Appellant has undergone about 1 month as an under trial.

He deserves to be sentenced to the period already undergone. Sentence of fine is maintained.

11) The Judgment cannot be parted with without recording appreciation of learned counsel appointed for the appellant. Legal fees to be paid by the High Court Legal Services Committee to the appointed advocate is quantified at Rs. 3000/- within 3 months from today.

12) Hence, following order.

ORDER

- (i) Appeal is partly allowed.
- (ii) Appellant is acquitted for offence punishable under section 376 & 506 of Indian Penal Code.
- (iii) Conviction of appellant for offence punishable under section 417 of Indian Penal Code is hereby maintained, however, he is sentenced to the period already undergone. Sentence of fine is maintained.
- (iv) Bail bonds of the appellant stand cancelled.
- (v) Revision application is allowed in the above terms and stands disposed of.
- (vi) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)