

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.738 OF 2015

ANIL BALU KAMBLE

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Shri Abhaykumar Apte, Appointed Advocate for the Appellant.

Shri A.R.Patil, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 5th APRIL 2016.

ORAL JUDGMENT :

1 The appellant and one Prakash Kambale were convicted of offences punishable under Section 376 of the IPC and Section 506 of the IPC by the Additional Sessions Judge, Khed. They were sentenced to suffer Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/- each, with respect of the offence punishable under Section 376 of the IPC, and to suffer Rigorous Imprisonment for 1 year and to pay a fine of Rs.2,000/- each, with respect to the offence punishable under Section 506 of the IPC.

Being aggrieved by the order of conviction and the sentences imposed upon him, the appellant has preferred the present appeal.

2 The co-accused Prakash Kambale, who was also convicted as aforesaid, had preferred a separate appeal, being Criminal Appeal No.1099 of 2013, before this court, which was allowed by an order dated 23rd January 2015 (Coram : Smt.I.K.Jain, J.) and the said Prakash Kambale was acquitted of the said offences. This court held that it was unsafe to rely on the prosecution evidence to hold the said co-accused guilty.

3 Shri Abhaykumar Apte, the learned counsel for the appellant, submitted that the case of the present appellant is on par with that of the said Prakash Kambale, and that the nature of evidence against the present appellant is in no way different from that against the said Prakash Kambale. The learned APP, on examination of the record, conceded that the case of the present appellant is on par with that of the said Prakash Kambale, who was acquitted, on appeal, as aforesaid.

4 I have, nevertheless, gone through the relevant parts of the impugned judgment and the judgment delivered by this court in Criminal Appeal No.1099 of 2013.

5 I find that the victim had not disclosed to anyone about the alleged incidents of rape, and that, the disclosure came only after it was revealed that the victim was in advanced stage of pregnancy. The victim named the present appellant, the said Prakash Kambale, and one more, who could not be prosecuted along with the appellant and the said Prakash Kambale, as he was a juvenile. Enquiry against him was required to be held by the Juvenile Justice Board.

6 Except the bare statement of the victim, there was no other material against the appellant. The disclosure of the alleged incident, as aforesaid, was made belatedly, and only after the fact that the victim was pregnant, was disclosed. The victim gave birth to a child. The result of the DNA Test that was carried out

indicated that the juvenile offender was the father of the child that was born to the victim.

7 This court has already held while disposing of Criminal Appeal No.1099 of 2013 that it was unsafe to rely on the bare testimony of the prosecutrix. The case of the appellant, being on par with that of the said co-accused Prakash Kambale, the appellant also deserves to be acquitted similarly.

8 The appeal is allowed.

The judgment of conviction of the appellant and the sentences imposed upon him are set aside.

The appellant is acquitted.

He be set at liberty forthwith, unless required to be detained in connection with any other case.

Fine, if paid, be refunded to him.

The Appeal is disposed of in the aforesaid terms.

(ABHAY M. THIPSAY, J.)