

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.947 OF 2015

Ms.Naginadevi Jamunaprasad Yadav,
Aged 21 Years, Occu. Service,
Residing at Manorama Nagar,
Near Shankar Mandir,
Dhokali Naka,
Kolshet Road, Thane (W)

... **Appellant**

V/s.

1. Manojkumar Baburam Yadav,
Aged 26 Years, Occu. Service,
Residing at Near Ramjanam Tabela,
Behind Shankar Mandir,
Manorama Nagar, Thane (W).

2. The State of Maharashtra,
(Through Kapurbawdi Police Station)

... **Respondents.**

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Mr.Tarun Kumar Sinha, Advocate for the Applicant.
Mrs.P.P.Bhosale, Advocate for the Respondent.

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CORAM : ABHAY M. THIPSAY J.

DATED : 8th JANUARY 2016.

ORAL JUDGMENT :

1. On the basis of the First Information Report lodged by the present appellant, the respondent No.1 herein was prosecuted on the allegation of having committed offences punishable under

Sections 354A, 354B, 354C, 354D of the Indian Penal Code (For Short, 'the IPC'), 366 of the IPC, 380 of the IPC and 506 of the IPC. The learned Assistant Sessions Judge, Thane, after holding a trial, found the respondent No.1 not guilty and acquitted him. The appellant is aggrieved by the said order of acquittal. Claiming to be a victim of the alleged offence, she has filed the present appeal under the proviso to Section 372 of the Code of Criminal Procedure.

2. I have heard Mr.Tarun Kumar Sinha, the learned counsel for the appellant. I have carefully gone through the Judgment and Order. I have glanced through the copies of the notes of evidence, that are annexed to the Appeal Memo.

3. The prosecution case, as was made out against the Respondent No.1 (hereinafter referred to as 'the accused' for the sake of convenience and clarity), may, in brief, be stated thus :

The appellant (hereinafter referred to as 'the prosecutrix' for the sake of convenience and clarity) was studying in a High-school at Thane. The accused, who was residing in the same locality where she resided, proposed her. The prosecutrix refused, but the accused persisted and threatened to kill her parents and brother, to throw acid on her, etc.; and, therefore, the prosecutrix was constrained to speak to him. In the year 2010, once while the prosecutrix was returning home from her college

along with her friend, the appellant came in a rickshaw and asked her to sit in the rickshaw. She sat. She asked the accused as to where he was taking her, and also said that she should be allowed to get down, and also threatened that should she not be allowed to get down, she would scream loudly. The accused then threatened to kill her. The prosecutrix then requested the auto-rickshaw driver to stop the rickshaw, but he did not listen to her and continued to drive. The prosecutrix was taken to a lodge, where the accused committed rape on her. The accused and prosecutrix then left the lodge room, sat in a rickshaw and the accused dropped the prosecutrix at some place. That, in the year 2011 also, while the prosecutrix was studying in college, on one occasion, the accused came there, made her sit in rickshaw, took her to the same lodge and attempted to commit rape on her. On the same night, the prosecutrix learnt from other that the accused had consumed poison and was vomitting. The prosecutrix was scared. In the year 2012, the prosecutrix realized that her 10th Std. and 12th Std. Mark-sheets and certificates as well as medical papers were missing from home. That, on 09/03/2012, the accused came to the college of the prosecutrix, made her sit in rickshaw and threatened her that her previous video was with him, and if she would try to act over-smart, he would show it to everybody. She got scared and, therefore, sat in the rickshaw. The accused took her to Ashtavinayak Vivah Karyalaya, where he made his signature on a form. The prosecutrix saw that the accused was

having her 10th Std. and 12th Std. mark-sheets which were stolen from her house. The accused prepared false marriage certificate and had been threatening her since then. The accused filed a false case in a Court in Uttar Pradesh, which was dismissed.

4. The prosecution examined six witnesses during the trial. Except the prosecutrix, who was first informant, and the Investigating Officer, all others are panchas and their evidence is not very material.

5. The defence of the accused was that the prosecutrix had proposed him and that, they had love between them and that the prosecutrix had married him on her own accord. According to him, since the prosecutrix belongs to an upper caste i.e. Yadav and the accused belongs to a lower caste, the family of the accused was not informed about the marriage. The family of the prosecutrix (when learnt about the marriage) did not agree for the marriage and, therefore, the family members pressurized the prosecutrix to file a false complaint against him, so that the accused gives consent for dissolution of the marriage at the earliest.

6. The learned Assistant Sessions Judge did not believe the story of the prosecutrix. It is not necessary to discuss the entire reasonings of the learned Assistant Sessions Judge leading

to the acquittal, except observing that the learned Assistant Sessions Judge was right in disbelieving the version of the prosecutrix. Apart from the fact that the version itself is improbable, unlikely and quite absurd, there were a number of other infirmities also, in the evidence of the prosecutrix. Among other things, the prosecutrix admitted that she had gone to *Ashtavinayak Vivah Karyalaya* for marriage. She also admitted that, when the accused had neither tied her hands and feet nor had shut or gagged her mouth when he had taken her in the rickshaw.

7. The learned Assistant Sessions Judge also noted that when the prosecutrix went to *Ashtavinayak Karyalaya* for marriage, she was carrying a college bag and that the certificates and mark-sheets, which are alleged to have been stolen, were in her college bag, and observed that this was inconsistent with the theory of the same having been found missing from her house. The learned Assistant Sessions Judge rightly observed that it was highly improbable that a girl, who is aged about 17 years, could be taken away in a rickshaw, in the manner in which she claimed. The learned Assistant Sessions Judge rightly declined to go into the validity of the marriage between prosecutrix and the accused, but said that the version of the prosecutrix that she was raped, that she was forced to marry etc., was not believable.

8. Apart from this, it may be observed that the First Information Report came to be lodged only when the accused filed a petition for restitution of conjugal rights in a Court in Uttar Pradesh. It is not in dispute that it is after receipt of a notice of that proceedings that the prosecutrix filed the report alleging commission of offences punishable under Sections 354A, 354B, 354C, 354D, 354E, 366, 380 and 506 of the IPC by the accused.

9. The impugned Judgment and Order is proper and legal. The appreciation of evidence, as done by the learned Assistant Sessions Judge, does not suffer from any infirmity or error.

10. There is no merit in the appeal.

11. The Appeal is summarily dismissed.

(ABHAY M. THIPSAY J.)

CERTIFICATE

Certified to be true and correct copy of the
original signed Judgment/Order.