

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.960 OF 2015

Smt. Madhavi Dhananjay Sonawane	]	
Age - 33 years, Occu : Housewife	]	
Presently R/at. 501, A Wing,	]	
Dream Castle, Makhaamalabai Road,	]	
Waghmala, Ganesh Nagar,	]	
Panchvati, Nashik 422 003	]	.. Appellant

V/s.

1)	The State of Maharashtra	]	
	At the instance of Nashik Road	]	
	Police Station, Nashik	]	
2)	Mr. Abhijit Pandurang Niphade,	]	
	Aged - 33 years, Occu.: Business,	]	
	Address - Abhijeet Bunglow,	]	
	Opp. Rathi Amrai,	]	
	Gangapur Road, Nashik	]	.. Respondents

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Mr. Ashok Mundargi, Senior Counsel i/b. Mr. Prashant Badole,
Advocate for the Appellant.

Ms. Sangeeta Shinde, APP for the Respondent - State.

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**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

DELIVERED ON : SEPTEMBER 21, 2016.

JUDGMENT (Per PRAKASH D. NAIK, J.) :

This Appeal is preferred by invoking the amended proviso of Section 372 of the Code of Criminal Procedure (for short "Cr.P.C."). The appellant is the defacto complainant who had lodged First Information Report with Nashik Road Police Station vide C.R.No.618 of 2009 for the offences punishable under Sections 417, 366, 376, 342, 504 and 506 of the Indian Penal Code (for short "IPC") as well as Section 3(1)(xii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and Section 7(i)(d) of the Protection of Civil Rights Act. The appellant has challenged the judgment and order dated 29th June, 2015 passed by the Additional Sessions Judge, Nashik in Special Case No.8 of 2010 wherein respondent no.2 (original accused) was acquitted of all the charges. Appellant is a victim within the meaning of Section 2 (wa) of Cr.P.C.

2 Respondent no.2 was charge-sheeted for the aforesaid offences and was tried before the aforesaid Court.

3 Prosecution case in nutshell is as under:-

The appellant/complainant was married to one Dhananjay Madhukar Sonawane on 9th May, 2004. There were quarrels between the appellant and her family members. The appellant was in disturbed state of mind. The accused took advantage of the situation and befriended with the complainant. He tried to show her sympathy and got acquainted with her. In the circumstances, the complainant and the accused became very close. On 15th April, 2009, as alleged, the accused forcibly had physical relationship with the complainant. The accused also assured her that he would marry her after she obtained divorce from her husband. The complainant had resided with the accused at several places and had physical relationship. It is further alleged that the accused took undue advantage of the situation and also abused her in the name of caste stating that the girls belonging to the Mahar caste are not meant for getting married but only for deriving sexual pleasure. When the accused refused to get married with the complainant, she lodged the FIR which was investigated by the police and charge-sheet was filed.

4 The prosecution examined five witnesses in support of its case. After recording the evidence, statement of accused under Section 313 of the Cr.P.C were recorded. The trial Court

acquitted the accused vide judgment and order dated 29th June, 2015 which is under challenge in the present Appeal.

5 Trial Court has appreciated the evidence and passed the judgment by giving cogent reasons for acquitting the accused. The trial Court while acquitting the accused had noted that the prosecution has failed to establish its case. It was observed that there was no mark of force for committing the alleged sexual assault. It is further observed that the victim was already married and there was no question of making any promise of marriage by the accused. The claim of divorce purportedly obtained by the complainant on the basis of the notarized documents was discarded. It is further observed that the victim chose to reside with the accused in several places and there was no evidence of abduction. It was further observed that the complainant had lodged a written complaint after the period of about one month when she had been to her mother's house. There is no explanation for lodging complaint belatedly. It is also observed that FIR was lodged after deliberation with her husband and advocate who were present at the time of lodging the same. There were several contradictions and omissions in the evidence of the witnesses. The ocular testimony of the complainant is not

consistent with her complaint. The defence has brought several omissions and contradictions while impeaching the credibility of the testimony of the complainant which has affected the prosecution case. The prosecution has failed to prove the case of rape, abduction and wrongful confinement as well as violation of any provisions of the Atrocities Act.

6 Mr.Mundergi, the learned senior advocate appearing for the appellant has submitted that there was sufficient evidence on record to convict the accused. Trial Court has failed to appreciate the evidence in proper prospective. It is further submitted that there was evidence on record which establishes the charge under Section 3(1)(xii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. It is submitted that the victim was abused physically by the said accused. It is further submitted that the evidence of the complainant inspire confidence and, therefore, on the basis of such evidence the trial Court ought to have convicted the accused. It is submitted that the accused made false promises of marriage thereby inducing the complainant to submit herself for physical relationship. It was also submitted that the accused also had forcible sexual intercourse with the complainant/victim without her consent and

thereby committed the offences for which the accused was charged.

7 We have perused the evidence on record and the reasons assigned by the trial Court for acquitting the accused. It is noticed that the prosecution has not proved its case beyond reasonable doubt. The evidence of the complainant suffers from major infirmities. It is difficult to accept the grievance of the complainant that the accused forcibly had sexual intercourse with the complainant at the initial stage and, thereafter, the accused had induced the complainant to submit to physical relationship on the promise of marriage. There is also no evidence to substantiate the charge under Section 3(1)(xii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. The requirement of said provision is that a person being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed. The requisite ingredient to constitute such offence are completely absent in the present case. We do not find any reason to interfere in the findings arrived at by the trial Court.

8 While entertaining the Appeal against acquittal, the Appellate Court is required to give proper weight and consideration to the issues such as :

- (i) The view of the trial Judge as to the credibility of the witnesses;
- (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that the accused has been acquitted at the trial;
- (iii) the right of the accused to the benefit of any doubt;
- (iv) the slowness of the Appellate Court disturbing a finding of fact arrived at by trial Court which had advantage of seeing the witnesses.

These principles are laid down in several decisions of the Apex Court. We do not find that the approach of the trial Court, is vitiated by any manifest illegality or conclusions recorded by the said Court would not have been possibly arrived at by any Court acting reasonably and judiciously and is liable to be characterized as perverse. The Apex Court in the case of

Narinder Singh Vs. State of Punjab¹ and ***Kalyan Singh Vs. State of Madhya Pradesh***² as well as several other pronouncements have observed that if the evaluation of the evidence by the trial Court does not suffer from illegality, manifest error or perversity and the main grounds on which it has based its order are reasonable and plausible, the High Court should not disturb the order of acquittal even if another view is possible.

9 In view of the aforesaid observations and taking into consideration the evidence on record and the reasons assigned by the trial Court, we do not find it appropriate to entertain this Appeal and hence we pass the following order:

:: ORDER ::

- (i) Appeal is dismissed;
- (ii) No order as to costs.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

1 2000 Cr.L.J.3562 (SC)

2 (2006) 13 SCC 303