

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

CRIMINAL APPLICATION NO. 11 OF 2017

THE STATE OF MAHARASHTRA **APPLICANT**

V E R S U S

ANIL SHAHAJI KAMBLE
AND OTHERS **RESPONDENTS**

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Mr.S.Y.Mahajan, A.P.P for the state
Mr. M.A.Shaikh and M.A.Jahagirdar
Advocate for the Respondents No.1 to 4

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CORAM : V.L.ACHLIYA, J.

DATE : 19TH JULY, 2017

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ORDER :

The applicant-State of Maharashtra has moved this application seeking leave to file appeal against the impugned judgment and order of acquittal passed by the Additional Sessions Judge, Shrirampur in Session Case No. 08/2016 dated 27.09.2016. By the impugned judgment the learned Additional Sessions Judge has acquitted the accused for offences punishable under section 365, 354,342,506 of IPC and

Section 8,10,12 of the Protection of Children from Sexual Offences Act 2012.

2. Heard the learned A.P.P for the applicant- State and counsel for the respondents. Perused the impugned judgment.

3. In nutshell it is contention of the learned A.P.P- State that that the prosecution and other witnesses have supported the case of the prosecution and there is cogent and convincing evidence to prove the guilt of the accused. He further submits that the judgment and order passed by the trial court is based upon misreading of evidence.

4. On the other hand the learned counsel appearing for the respondents supported the judgment and order passed by trial court. He submits view taken by the trial court is based upon due appreciation of the evidence adduced by the prosecution. It is pointed out that the complainant has admitted that there was strained relationship in between accused and family of

the prosecutrix and number of cases were going on in between them in the court of law.

5. In order to appreciate the submissions advanced, I have perused the impugned judgment and order passed by the trial court as well as the evidence as adduced by the prosecution. Accused were prosecuted for the committing an offences punishable under section 365, 354, 342, 506 of the IPC and Section 8,10 and 12 of the Protection of Children from Sexual Offences Act 2012. They were charged with allegations that on 23 September 2015 at about 6.30 p.m the accused No.1 and 2 came on the motor-cycle and wrongfully restrained the victim girl. They forced her to sit on the motor-cycle. When the victim refused to sit on motor-cycle the accused No.1 outraged her modesty. She was forced to sit on the motor-cycle and taken to agricultural field of of accused no.2. She was taken in room located in that field. The accused No.4 also outraged her modesty. He torn her clothes. She was confined in that room. The accused No.4 asked her to tell her father to give 5 Acres of land. On next

day in the morning the wife of accused No.4 came to serve her Tea. At that time victim girl escaped from room and went to her mother and narrated the incident. Thereafter, report of the incident was lodged by Sangita (P.w. No.2) the mother of the victim.

6. In order to prove its case the prosecution has examined eight witnesses. On due consideration of the evidence as adduced by the prosecution the trial court has acquitted the accused mainly for the reason that there was no consistency as to material fact deposed by prosecutrix as well as her mother i.e. complainant and there evidence found to be not credible and sufficient to prove the guilt of the accused beyond reasonable doubt. It is observed that the evidence adduced by the prosecution is not sufficient to prove the guilt of the accused beyond the reasonable doubt.

7. In order to appreciate the submissions advanced I have perused record and proceedings. Prosecution has examined the complainant i.e. Sangita (P.W. No.1) the mother of the prosecutrix. In her cross-

examination defence has brought on record that there was enmity in between the accused and family of the prosecutrix on account of certain dispute regarding the land. Some litigation was going in between them in the court of law. It is also brought on record that the complainant and other persons from her side were arrested and released on bail few days prior to incident. There was a criminal case registered against her and other family members on the basis of report lodge at the instance of the accused No.2 alleging therein that the complainant and few other persons set his house on fire. She further admitted that incident in question was occurred few days after they were released on bail and she had grudge against the family of accused as they put them in jail for 10-15 days. She has also admitted that there was enmity with accused from many years and there is only house of accused no.1 and 2 in the village.

8. In the cross-examination of the prosecutrix number of admissions are brought on record which raises serious doubt as to truthfulness of the facts

deposed by her. As per the case of the prosecution the incident was occurred at 6.30 p.m near the field of Dadasaheb Kapse. However, it is brought on record through her cross-examination that at 6.30 p.m she had came to her house from agricultural field.

9. Beside this there are number of admission brought on record which raises serious doubt as to creditability of testimony of prosecutrix. Considering the over all evidence in the light of the defence of the accused the trial court has given benefit of doubt to accused and acquitted them. The view taken by the trial court can not be termed as perverse and contrary to the law. It is quite settled position of the law while dealing with the appeal against the judgment and order of the acquittal the appellate court is not expected to interfere with the reasons and finding recorded by the trial court unless the reasons and findings recorded are found to be perverse and resulted in to miscarriage of justice. The view taken by trial court is a possible view in the matter. The appellate court is not expected to substitute its own view as to view taken by the trial

court, unless the view taken by trial court found to be perverse and contrary to evidence on record. In my view there is no perversity in the impugned judgment and order passed by the trial court, No case is made out to entertain the application seeking leave to file appeal . Accordingly the application is rejected. Record and proceeding be sent back to the trial court.

[V.L.ACHLIYA, J.]

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