

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

CRIMINAL APPLICATION NO. 2213 OF 2017

P,
Age 18 years, Occu. Nil,
R/o Kakaddar, Alhanwadi,
Taluka Pathardi,
District Ahmednagar .. Applicant

Versus

1. The State of Maharashtra
2. Rajendra s/o Gangaram
Waghmode, Age 22 years,
Occu. Agri., R/o Alhanwadi,
Taluka Pathardi,
District Ahmednagar .. Respondents

Mr A.G. Ambetkar, Advocate for applicant
Mr S.D. Ghayal, A.P.P. for respondent no.1
Mr P.G. Tambade Advocate h/f Mr S.S. Jadhavar,
Advocate for respondent no.2

**CORAM : S.S. SHINDE AND
A.M. DHAVALA, JJ**

DATE : 31st August 2017

PER COURT (Per A.M. Dhavale, J.)

1. The prosecutrix has filed this application seeking leave to file appeal against the judgment of acquittal of the accused for offences punishable under Sections 376, 504, 506 of Indian Penal Code and Section 3 (a) and 4 of the Protection of Children From Sexual Offences Act, 2012 (hereinafter referred to as 'POSCO Act' for brevity). The prosecution was initiated on the basis of Crime No.I-222/2014, registered at Pathardi Police Station, on 2.8.2014.

2. As per the F.I.R., the prosecutrix - P was a minor girl aged 16 years from labourer family. Her father was disabled and she was

looking after cattle. About 7 to 8 months earlier to the lodging of F.I.R., the accused met her as he was visiting the place for collecting firewood. He developed intimacy with her and gave assurance to her to provide good food, good clothes etc and had raped her in the crop of Bajra. She was threatened that she should not disclose the incident to her parents and brother. The incident was thereafter repeated three times. The prosecutrix had no menses but due to intimidation by the accused, she did not disclose this fact to anybody. When she disclosed it to her mother, she was already pregnant with pregnancy of six months. Her mother had taken her to the doctor and after learning about advanced stage of pregnancy, she along with her brother and father went to Child Line at Ahmednagar and thereafter went to Pathardi police station to lodge the F.I.R. After registration of crime and carrying out usual investigation, charge sheet was submitted in the Court. Learned Sessions Judge, Ahmednagar recorded the statements of seven witnesses.

3. The learned Sessions Judge, Ahmednagar noted that the D.N.A. report was negative and there were several suspicious circumstances. The evidence of the prosecutrix was not of credence hence, he disbelieved the evidence and acquitted the accused.

4. Learned Advocate Mr Ambetkar for the applicant argued that the prosecutrix was held to be below 18 years of age. Her consent was irrelevant. She has supported the prosecution and deposed about her relations with the applicant. Those could not have been disbelieved, as she has given birth to a child. He relied upon **Manik**

Sitaram Jibhkate Vs. State of Maharashtra, 2012 (1) Bom. C.R. (Cri.) 239 to submit that the presumption that can be drawn from the D.N.A. report is not conclusive and it is just opinion of an expert. He argued that in case of rape, the prosecutrix should be generally believed and no corroboration is necessary to her evidence.

5. Per contra, learned A.P.P. Mr Ghayal and learned Advocate Mr Tambade appearing for respondent no.2 supported the impugned judgment. They relied on **Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik, 2014 Cri.L.J. 1098 SC** to submit that D.N.A. report is a strong piece of evidence, sufficient to dislodge the presumption under Section 112 of the Evidence Act.

6. After hearing the learned Counsel and learned A.P.P. for respective parties and going through the papers, we find that there is no scope to interfere with the judgment delivered by the Sessions Judge for following reasons :

(I) The prosecutrix in her cross-examination admitted that her menstruation was closed due to a fellow of her community who is her nearest relative. (The accused is not related to her). Those questions and answers are recorded in question and answer form and the learned Sessions Judge has taken a note that she has answered the questions consciously after understanding those questions.

(II) The prosecutrix admitted that Child Line people told her that she should disclose somebody's name and file complaint and then

they would maintain her baby. She admitted that if real name was disclosed, then there would be defamation of their family. The Judge has noted that she had understood the question before giving this answer. She admitted that the accused told her father that he had no question with the issue, hence he would not pay the amount to her father.

(III) If these admissions were not sufficient, there is a D.N.A. report which is negative with respect to the accused as held in the case of **Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik (cited supra)**. D.N.A. report is more scientific and accurate. It is sufficient even to dislodge the conclusive presumption under Section 112 of the Evidence Act. Thus, the child delivered by the prosecutrix was not begotten out of sex relations with the accused. In that case, though there is possibility of prosecutrix having sex with more than one person, it is apparent that prosecutrix is suppressing the material facts.

7. In **Tameezuddin @ Tammu vs State Of (Nct) Of Delhi (2009) 15 SCC 566**, it is held that “Though vidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.”

8. The prosecutrix has admitted that the alleged spot of incident is gairan area, where several villagers regularly visit. Besides, she

herself used to go for grazing cattle along with her friends (girls) and cousins. Therefore, sexual activities in gairan area are quite improbable.

9. The prosecutrix admitted that her parents made efforts for her abortion. Even when they were making such efforts, the incident was not disclosed by them to anybody.

10. The admissions on record disclose that appreciation by learned Sessions Judge is proper. The view taken by him is logical, reasonable and probable view. While admitting the appeal against acquittal, there should be prima facie material to show some material defects in appreciation of evidence by the trial Court. We find that no such material defects have been pointed out. Therefore, this is not a fit case for grant of leave to file appeal against acquittal. Hence, the order :

ORDER

Criminal Application seeking leave to file appeal is rejected.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

vvr