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

CRIMINAL APPEAL NO. 431 OF 2014

Ravindra Narayan Navale

..Appellant

Vs

The State of Maharashtra

..Respondent

Mr. S.R. Phanse, Amicus Curiae appointed for appellant.

Mr. V.V. Gangurde, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 27th FEBRUARY 2018.

P.C.:

1] The present appeal is directed against the Judgment and Order dated 5th April 2014 passed by Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai in Session Case No.687 of 2013, thereby convicting the appellant under Section 363 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for one year. That the applicant is further convicted under Section 376 of the Indian Penal Code and is sentenced to undergo

rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default of payment of fine, to further undergo rigorous imprisonment of six months. By the said Judgment and Order, it is directed that that the substantive sentences to run concurrently except sentences imposed in default of payment of fine.

2] Heard Mr. S.R. Phanse, the learned amicus curiae appointed by this Court on behalf of the appellant and the learned APP. Perused the record.

3] The prosecutrix in the present case was a minor, aged about 15-16 years on the date of incident i.e. on 31.12.2012. It is the prosecution case that, the appellant is the step-father of the victim girl. That the appellant used to live with the mother of the victim girl and used to take care of their daily needs. That on 30.12.2012 a quarrel took place between the victim girl and her mother and therefore the victim girl had been to her grand-father's place. Her grand-father gave her Rs.20/- for having snacks. As the victim girl did not intend to go to her residence due to the said quarrel, she informed the said fact to the appellant who in turn told her that they would go to Wardha at his friend's house. Accordingly, the appellant took the victim girl to Wardha by train. At Wardha they resided at

the place of Amol Devtale (PW No.4) i.e. the friend of appellant. That on that day the appellant consumed liquor and it is alleged that in the night, he committed forcible sexual intercourse with the victim girl. That on the next date, wife of Amol Devtale informed him about the fact of having some affair between the appellant and the victim girl and therefore PW No.4 Amol Devtale told appellant to leave his premises. The appellant thereafter came to Mumbai along with victim girl where the police apprehended him in the presence of mother of the victim girl and other police personnel.

That initially an offence under Section 363 of the Indian Penal Code was registered against the appellant, however, after completion of investigation and submitting chargesheet, the police have added Section 376 of the Indian Penal Code to the present crime.

4] Mr. Phanse, the learned amicus curiae submitted that Amol Devtale (PW No.4) in his testimony has stated that, in the morning of 31-12.2012 and 1.1.2013 his wife informed him that there was some affair between appellant and Ms. Shweta in that night. However, the said important witness namely the wife of Amol Devtale has not been examined by the prosecution and therefore it creates doubt about the testimony of

Amol Devtale (PW No.4). He submitted that, the said witness namely wife of Amol Devtale was the best person for the prosecution to corroborate the version of the victim girl. However, in the absence of her testimony, the testimony of victim girl and Amol Devtale PW No.4 has to be scrutinized with caution. He further submitted that the Medical Officer i.e. PW No.6, Dr. Amarsing Rathod in his testimony has stated that, on medical examination, no injuries were found on private part of the victim girl. That though the hymen was found torn, tears found to be old and healed. He submitted that if at all the alleged incident of sexual assault happened on 31.12.2012, finding recorded by the Doctor in his clinical examination is not supporting the prosecution case. He submitted that, due to consistent quarrels with her mother and with a view to take revenge, the victim girl has falsely implicated the appellant in the present crime and therefore the present appeal may be allowed.

Per contra, the learned APP vehemently opposed the appeal and submitted that the testimony of victim girl is reliable and needs no corroboration. He submitted that, the testimony of Amol Devtale PW No.4 is clear and supports the case of the prosecution. He therefore prayed that the present appeal may be dismissed.

5] At this stage, a useful reference can be made to a decision of the Supreme Court in the case of *Vadivelu Thevar vs The State Of Madras* reported in *AIR 1957 S.C. 614*, wherein the Supreme Court has enumerated three categories of witnesses namely. i) wholly reliable ii) wholly unreliable iii) neither wholly reliable nor wholly unreliable.

In view of the guidelines enumerated by the Supreme Court, after minutely scrutinizing the testimony of the prosecutrix namely Miss. Shweta Shinde, this Court is of the view that it inspires confidence in the mind of this Court and the said testimony appears to be trustworthy and reliable. The prosecutrix has in detail stated about the act committed by the applicant. The version of the prosecutrix has been corroborated by PW No.4 Amol Devtale who has deposed that, in the morning of 31-12.2012 and 1.1.2013 his wife informed him that there was some affair between appellant and Ms. Shweta(victim girl) in the night. The said testimony lends further corroboration to the version of the prosecutrix.

6] The Supreme Court in the case of *Bharwada B. Hirjibhai Vs. State of Gujrat* reported in *AIR 1983 SC 753 : 1983 Cri. L.J. 1096*, has held that, corroboration is not the sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual

assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so it, to justify the charge of male chauvinism in a male dominated Society.

In the case of of Aman Kumar And Anr Vs. State Of Haryana [AIR 2004 SC 1497], the Supreme Court has held that, there is no rule of law that the testimony of the prosecutrix cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. That in the later case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. The same view is further expressed by the Supreme Court in the case of State of Himachal Pradesh Vs. Shree Kant Shekari reported in AIR (2004) SC 4404.

As noted hereinabove, the testimony of the victim girl inspires confidence in the mind of this Court as it is trustworthy and reliable testimony. In the present case, the testimony of the victim girl appears to be trustworthy and reliable. The medical evidence on record also duly corroborates the version of the victim girl.

In view thereof, the offence under Section 376 of the Indian Penal Code has been clearly made out against the appellant.

7] As far as the conviction of the appellant under Section 363 of the Indian Penal Code is concerned, the evidence on record indicates that, the appellant was known to victim girl and was taking care of victim girl and her mother in his capacity as step-father and husband respectively and therefore the victim girl accompanied the appellant to his friend's house without any hesitation and went with him to Wardha. It appears from record that, no case of kidnapping is made out by the prosecution in the present crime and therefore the conviction under Section 363 of the Indian Penal Code needs to be set aside.

8] As noted above an offence under Section 376 of the Indian Penal Code has been proved by the prosecution against the appellant and therefore the conviction under Section 376 of the Indian Penal Code is maintained. However, after taking into consideration the peculiar facts and circumstances of the case, the sentence imposed upon the appellant is reduced to seven years from ten years.

Hence the following Order:

(i) The conviction of the applicant under Section 363 of the Indian

Penal Code is hereby quashed and set aside.

(ii) The conviction under Section 376 is maintained. However, in view of the peculiar facts of the present case and reasons hereinabove, the sentence is reduced to seven years from ten years.

(iii) Appeal is partly allowed in the aforesaid terms.

9] Before parting with the judgment, this Court deems it appropriate to place on record a word of appreciation for the efforts put in by Shri S.R. Phanse, the learned Amicus Curiae appointed for appellant in ably assisting this Court. His professional fees are quantified at Rs.5000/- to be paid to him by the High Court Legal Services Committee. The professional fees be paid within a period of four weeks from the date of receipt of this Order.

Office to communicate this order to the appellant who is presently lodged in Nashik Central Prison, Nashik.

(A.S.GADKARI, J.)