

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WREVISION APPLICATION NO.390 OF 2005

Saraswati D/o Sambhaji Londhe,
Age-18 years, Occu:Household,
R/o-Sathe Nagar, Near Doodh Dairy,
Osmanabad, Tq-Osmanabad,
Dist-Osmanabad.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Yogesh s/o Pandit Yedale,
Age-26 years, Occu:Education,
R/o-Sathe Nagar, Osmanabad,
- 3) Sanjay s/o Nanasaheb Kasabe,
Age-35 years, Occu:Labour,
R/o-Sathe Nagar, Osmanabad.

...RESPONDENTS

...

None present for Applicant.
Mr.A.P. Basarkar, A.P.P. for Respondent No.1.
Mr.P.S. Chavan Advocate for Respondent
Nos.2 and 3.

...

CORAM: V.M. DESHPANDE, J.

DATE : 12TH APRIL, 2019

ORAL JUDGMENT :

1. This Revision Application challenges the Judgment and order of acquittal passed by the learned IIIrd Ad-hoc Additional Sessions Judge, Osmanabad, dated 12th July, 2005, in Sessions Case No.59 of 2002, whereby the Court below has acquitted Respondent Nos.2 and 3 for the offence punishable under Section 376(2)(g) and 506(ii) read with Section 34 of the Indian Penal Code.

2. The counsel for the Applicant chose not to remain present when this Revision Application was taken up for final hearing.

3. I heard Shri P.S. Chavan, the learned counsel for Respondent Nos.2 and 3, original accused and Shri A.P. Basarkar, the learned Additional Public Prosecutor for the State. With their able assistance, I have gone through the

Record and Proceedings.

4. This is a Revision against acquittal. The scope of the Revision is much narrower than the appeal. Even when the Court deals with the matter in appeal against acquittal, merely because another view is possible, the appellate Court would not readily step in and would substitute its own view in place of the view expressed by the learned Court below. However only caveat in the said is that the Judgment and order of acquittal passed by the Court below should not suffer from non considering the available admissible evidence and/or the approach of the trial Court should not be perverse one while appreciating the evidence.

5. In the present case, PW-2 is the victim. Her age is not proved conclusively that she was below the age of extending consent at the time of occurrence. From the evidence of PW-2, it is clear

that she was admitted in the school. Thus, it was open for the prosecuting agency to obtain documentary evidence to prove the age of the victim. For the reasons best known to the prosecution, the said exercise was not done by the prosecution.

6. Be that as it may, the prosecution has examined PW-1 Dr. Sunita Garad, who examined the victim. Her evidence would show that the x-rays of elbow and wrist of the victim revealed lower end of radius and ulna was fused and therefore, radiologically the age of the girl was 17 years. At the relevant time, the age for extending consent was 16 years. In view of the aforesaid discussion, it is crystal clear that the prosecution has not adduced and produced the best available evidence to show the age of the girl and therefore, the prosecution case is required sufferance of drawing adverse inference against

it.

7. The learned Judge, while acquitting the Respondents, was aware of the fact that the evidence of the girl alone is sufficient to record the finding of guilt against the accused persons, however, for that, he has rightly observed that the evidence of the victim/ prosecutrix must inspire confidence in the judicial mind.

8. In the evidence of the victim, she has admitted about lodgement of various criminal cases in between the parties. It was the specific defence of the accused persons, when they were examined under Section 313 of the Code of Criminal Procedure, that they were falsely implicated because of exchange of various criminal complaints in between the parties. The learned Judge, in Paragraph-14 of the impugned Judgment, has vividly narrated the various criminal complaints and the

Judgments delivered in those criminal cases. In that view of the matter, the filing of false complaint against the accused persons as suggested by them, is not completely ruled out.

9. There is an unexplained delay of 3½ months. No plausible explanation is offered by the prosecution during the course of the trial to explain the delay. In that view of the matter, the Court below has rightly considered the aspect about the implication of the accused falsely. The delay assumes importance in the present case in view of the fact that even according to the prosecution, the girl delivered a female child, however, the blood grouping of the newly born girl and the accused was not done. That has also weighed in the mind of the Judge of the Court below while acquitting the accused persons. In my view, on available evidence on record, the approach on the part of the learned Judge of the

Court below in acquitting Respondent Nos.2 and 3 for the offence they were charged, cannot be said to be perverse one. Resultantly, there is no merit in the Revision Application. The Revision Application is dismissed. Rule is discharged.

[V.M. DESHPANDE, J.]

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