

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 126 OF 2019

Shri Tukaram Balaso @ Balu Misal. ..Appellant.

V/s.

The State of Maharashtra & anr. ..Respondents.

Mr. Umesh R. Mankapure, advocate for appellant.

Mr. Ganesh Bhujbal, advocate appointed for respondent No. 2.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : MARCH 25, 2019.

P. C. :

1 Heard the learned Counsel for the appellant, the learned Counsel appointed for respondent No. 2 and learned APP for State.

2 This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant is in custody since 10/9/2018 in Crime No. 216 of 2018. It is the case of the prosecution that on 19/5/2018 Sandip Bhosale, father of the victim lodged a report at the police station alleging therein that on 18/5/2018 he was informed by his uncle that his minor daughter had left the house under the pretext of answering the nature's call and she had not returned home. At the same time, it was noticed that the present appellant was also missing and therefore, an offence was registered

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under section 363 of the Indian Penal Code.

3 On 8/9/2018 supplementary statement of the complainant was recorded. They had learnt that the victim was residing with the appellant and they were staying together at Sonand, Taluka Sangola. The statement of the victim was recorded. She has specifically stated that the appellant herein was residing in their neighbourhood. They had developed intimacy. That on 17/5/2018 the appellant had informed her that they would go to Pandharpur. She had accompanied the appellant to Pandharpur. She had contacted her paternal aunt namely, Manisha Kamble. She had informed her aunt that she had come to village Sonand alongwith the present appellant. Her paternal aunt was worried and therefore, she had called them home. The paternal aunt of the victim had contacted the owner of hotel Piyush Raj. He had given job of waiter to the appellant and had allowed them to live in one of the rooms of the said Hotel. They had lived as husband and wife for about 3 months. Thereafter, the victim had some medical problems and therefore, she was taken to Dr. Salunkhe. Pregnancy was diagnosed. The paternal aunt had taken the victim and the present appellant to Borgaon on 7/9/2018 and thereafter, on 8/9/2018 FIR was lodged.

4 The victim belongs to scheduled caste. It is pertinent to note

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that the date of birth of the victim is 14/10/2002. On the date of incident, she was about 16 years old.

5 The learned Counsel for the appellant submits that the victim had attained the age of understanding and she had voluntarily abandoned the custody of her parents. But in any case, she was living in the hotel alongwith the appellant only after informing her paternal aunt and that the appellant had also secured a job through her paternal aunt and therefore, it is apparent that there was consensual sex between the victim and the appellant.

6 As against this, the learned Counsel Mr. Bhujbal appointed through Legal Aid to espouse the cause of the victim has submitted that in any case, the victim was less than 18 years old and therefore, her consent cannot be taken into consideration. That there is medical certificate which indicates that she was carrying pregnancy. It is another thing that due to medical complications, pregnancy had to be terminated.

7 Reliance can be placed on the Judgment of the Apex Court in the case of **S. Varadrajan v/s. State of Madras (1965 SC 942)** **regarding the mental ability to understand the consequences of**

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her act. The Hon'ble Apex Court has held as follows :

It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of s. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

8 Be that as it may, investigation is completed and charge-sheet is filed. At the time of incident, the accused/appellant was also hardly 21 years old. He is in custody since 10/9/2018 and further incarceration is unwarranted.

9 In view of the above discussions and the above citation, the appellant deserves to be enlarged on bail.

10 The learned Counsel Mr. Bhujbal is entitled to the professional
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fees to be quantified by the High Court Legal Services Committee, Mumbai as per rule.

11 Hence, following order is passed:

ORDER

(i) The appeal is allowed.

(ii) The appellant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- and one or more sureties in the like amount.

(iii) The appellant shall report to the concerned police station as and when called and also inform the police about his place of residence.

12 The appeal is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]