

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

CRIMINAL APPEAL NO. 235 OF 2000

State of Maharashtra	]	.. Appellant
Vs.		
1. Anand Vishnu Belurkar,	]	
Age-54 years, Occ.- Mechanic	]	
2. Sugrabai Munir Shaikh	]	
Age-43 years, Occ.-Business,	]	
Both R/at 1117, Shivajinagar,	]	
Pune-5.	]	.. Respondents

WITH
CRIMINAL APPEAL NO. 202 OF 2000

1. Shri Anand Vishnu Belurkar	]	
Age-54 years, Indian Inhabitant	]	
2. Smt. Sugrabai Munir Shaikh	]	
Age-43 years, Indian Inhabitant,	]	
Both R/at 1117, Shivajinagar,	]	
Pune-5.	]	.. Appellants
Vs.		
1. State of Maharashtra	]	
2. Ms. Maya Madhukar Nandgude,	]	
R/o. Dattawadi, Pune	]	.. Respondents

Mr. Ajay Patil, APP for the Appellant-State in Criminal Appeal No. 235 of 2000 and Respondent-State in Criminal Appeal No.202 of 2000.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 19th AUGUST, 2019.

JUDGMENT (*Per Pradeep Nandrajog, C.J.*)

1. The Appeal filed by the State seeks enhancement of the sentence

imposed upon A-1 and A-2 who were living together. Convicted for the offence punishable under Section 376 of the IPC, A-1 has been sentenced to undergo R.I. for the period of 4 years. A-2, convicted for the offence of abetting the rape has been sentenced to undergo R. I. for the period of one year.

2. A-1 and A-2 have filed Criminal Appeal No. 202 of 2000 challenging their conviction.

3. The entirety case of the prosecution could be seen from the statement (Exhibit 23) made by the prosecutrix (PW-1). In the statement she stated that in the year 1991 she was working in a propriety concern owned by one Vibhute. Her father had met with an accident and therefore he was not working. She had fallen in love with one Viju Salunkhe. Her uncle saw her talking to Viju Salunkhe. She got scared. Viju told her not to be afraid and go to her home, if anything happens, he will marry her. Viju kept on postponing the marriage. She left her house and moved with her friend Savita Dongare. Through an advertisement in a newspaper she learnt that one Walvekar, near Mhasoba Gate, Shivajinagar was searching for a maid. As she proceeded to house of Mr. Walvekar, she saw the accused sitting and sought direction to the house of Mr. Walvekar. She reached the house. There was a lady who told to come next day. On returning, A-2 called her and asked whether she had gone to house of Mr. Walvekar looking for the job. She told that Mr. Walvekar is not a good person to work with. She asked her to work with her in their canteen. She agreed. After five days, A-1 told her to accompany him to Bombay. She refused. A-2 slapped her. They went to Bombay and returned. She lived in the

house of her aunty for few days. She met the accused once again who took her to their house. A-2 pushed her inside a bathroom. A-1 entered. A-1 poured water on her. A-2 gave a gunny bag. At mid night, A-1 entered the room and locked the room from inside. He removed her clothes and pushed me on a cot. He removed her gown and did forcible intercourse. A-2 did not help her. A-1 left the room. A-1 and A-2 threatened her.

4. Rest is not important for the reasons she disclosed as to how she left the house and returned to her mother.

5. If one was believed the testimony of the prosecutrix, it would be evident that A-1 had raped her and there is no evidence of A-2 having abetted. At best A-2 would be seen to be aware of the fact that A-1 had an evil eye on the prosecutrix and A-2 was overlooking the same.

6. Learned Counsel for the State informs that A-1 has died, and thus as regards A-1 proceeding abated.

7. As regards A-2, we find no case made out to enhance the sentence imposed for the reasons, we find no abetment by A-2.

8. Dismissing Criminal Appeal No. 235 of 2000, we allow Criminal Appeal No. 202 of 2000 filed by A-2. We acquit the A-2 for the charge of abetment.

9. The conviction of A-2 for the offence of wrongful confinement for which she has been sentenced to undergo R. I. for three months is maintained with the observation that the period she spent in jail would be set off as per provisions of Section 428 Cr.P.C.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]