

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
915 CRIMINAL APPEAL NO.49 OF 2020
WITH APEAL/62/2020 WITH APPLN/1134/2020 WITH
APPLN/1139/2020

REKHA MOHAN DIWATE
VERSUS
ANNA @ ANIL S/O. HIRALAL MAGARE AND OTHERS

...

Mr.M.P. Kale, Advocate for the appellant
Mr.R.V. Dasalkar, APP for the respondent-
State.

...

CORAM : RAVINDRA V.GHUGE
AND
B.U.DEBADWAR, JJ.

DATE : 19th March, 2021

PER COURT :-

1. The first two appeals have been filed by the first informant, seeking to challenge the common judgment and order dated 13.12.2019, delivered by the learned Sessions Judge at Aurangabad.

2. Criminal Application No.1134/2020 and Criminal Application No.1139/2020 have been filed by the State of Maharashtra, seeking condonation of delay of three days, caused in preferring the applications for leave to appeal against the impugned judgment.

3. The trial Court has acquitted all the three accused from the charges of having committed offences punishable under sections 376(2)(n), 493, 323, 504 and 506 r/w section 34 of the Indian Penal Code and under section 5 of the Immoral Traffic (Prevention) Act, 1956.

4. We have considered the submissions of the learned Advocate for the informant and the learned Prosecutor. With their assistance, we have gone through the impugned judgment and the record available.

5. The case of the informant was that she had filed an application dated 06.10.2016 before the Commissioner of Police, Aurangabad, alleging that, on 18.10.2008, accused no.1 had executed a stamp paper in her favour and promised her to maintain her for life. She had physical relations with him since 2006. For the last four years, i.e. prior to the complaint, the accused had been regularly assaulting her and her daughter, and is compelling the informant to maintain physical relations with rich persons and extort money from them. Her refusal led to

further physical assaults. At the behest of accused no.1, unknown male persons used to enter her room and used to commit the offences punishable under section 376. Several details are set out in the said complaint.

6. The Commissioner of Police, Aurangabad directed API Archana Patil to record the statement of the victim, which was done on 18.10.2016. Subsequently, after verifying the contents of the complaint and her statement recorded by the API, PSO Pawar registered the offence vide C.R. No.1079/2016.

7. After completing the trial, the Court below has passed the following order :-

"ORDER

1. The accused No.1 Anna @ Anil Hiralal Magare No.2 shyam Karbhari Ghorpade in Session Case No.34/2017 and accused Abhishek Vinaykumar Bade in Sessions Case No.264/2017 are acquitted of the offences punishable under 376(2)(n), 493, 323, 504, 506 r/w 34 of the Indian

Penal Code and under section 5 of the Immoral Traffic (Prevention) Act, 1956, vide Section 235(1) of the Code of Criminal Procedure.

- 2. Their bail bonds stand cancelled.*
- 3. The accused are directed to execute P.R. Bond of Rs.25,000/- (Rs. Twenty-five Thousand only) each and to execute surety in the like amount, in compliance of section 437-A of the Criminal Procedure Code, 1973.*
- 4. Property being worthless be destroyed after appeal period.*
- 5. Copy of this Judgment be kept in Session Case No.264/2017.*

Dictated and pronounced in the open Court."

8. We find that the daughter of the informant, born out of her wedlock prior to her divorce, was PW-4. She was about 12 years of age. She narrated some of the events, which she had seen by her own eyes. Her testimony corroborates the case of the informant. The trial Court has discarded the said evidence on the ground that she could be a tutored witness. The prosecution also examined API Archana Patil. The bond paper

was also recovered. PW-7, the doctor, who examined the victim, noticed few wounds and cigarette burn marks. PW-5, father of the informant, had testified that he was present in the house on 05.10.2015, when the accused persons entered the house, molested the victim and threatened her by holding a revolver on the forehead of the daughter of the victim, who is a grandchild of PW-5.

9. Considering the above, we are of the view that the appeals deserve to be admitted and the informant and prosecution would be entitled to avail of the appeal remedy.

10. As such, both the appeals are **ADMITTED**. Issue notice to the respondents. The learned Prosecutor waives service of notice on admission on behalf of respondent no.3.

11. We direct the compliance of section 390 of the Cr.P.C. against all the three accused.

12. We request the Court of Sessions at Aurangabad to prepare the appeal paper book in Sessions Case No.34/2017, as expeditiously

as possible, and preferably on or before 30th September, 2021. Thereafter, the appeal paper book and the original R. & P. with muddemal property, if any, be transmitted to this Court on or before 30.11.2021.

13. Criminal Application No.1134/2020 and Criminal Application No.1139/2020, by which the State prays for condonation of three days delay, are allowed. The delay stands condoned.

14. Considering our order admitting these two appeals, we find that leave to the State for preferring an appeal deserves to be granted and as such, the applications for seeking leave to prefer appeals are allowed.

15. Keeping in view the judgment delivered by this Court vide order dated 10th February, 2009, in the matter of **Satesh H. Chandiramani V/s Sadashiv Namdeo Kharabi & Anr.** in Criminal Application No.1201/2007 and Criminal Application No.1200/2007, the State need not file separate appeals and these applications are treated as appeals.

16. Consequently the appeals are **ADMITTED.** Issue notice to all the three accused.

(B.U.DEBADWAR,J.)

(RAVINDRA V. GHUGE,J.)

SGA