

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

CRIMINAL APPEAL NO.121 OF 1999

Sampat Laxmirajan Narkula ...Appellant

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL APPEAL NO.16 OF 1999

Smt. Gurvi Gurppa Golar ...Appellant

Versus

The State of Maharashtra ...Respondent

....

Ms Ameeta Kuttikrishnan for the Appellants appointed from Legal Aid Panel.

Mr. S.V. Gavand, APP for Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th DECEMBER, 2021.

ORAL JUDGMENT:-

1. The Appellant -Sampat Laxmirajan Narkula and Appellant-Smt. Gurvi Gurppa Golar (hereinafter referred to as accused No.1 and accused No.2 respectively) have challenged the judgment dated 20/11/1998 passed by the learned Additional Sessions Judge, Greater Bombay, in Sessions Case No.662 of 1996.

2. By the impugned judgment, the learned Additional Sessions Judge, Bombay has held the accused Nos.1 and 2 guilty of offences punishable under Sections 363, 366A and 376 of the IPC. The accused No.1 has been sentenced to suffer:-

- (i) rigorous imprisonment for 5 years with fine of Rs.500/- i/d. simple imprisonment for six months for offence punishable under Section 366A,
- (ii) rigorous imprisonment for 5 years with fine of Rs.1000/- i/d. simple imprisonment for six months for offence under Section 376 of the IPC; and
- (iii) rigorous imprisonment for three years with fine of Rs.500/- i/d. simple imprisonment for six months for offence punishable under Section 363 of the IPC.

3. The accused No.2 has been sentenced to suffer :-

- (i) rigorous imprisonment for two years with fine of Rs.500 i/d. simple imprisonment for three months for offence punishable under Section 363 of the IPC,
- (ii) rigorous imprisonment for two years with fine of Rs.500/- i/d. simple imprisonment for three months for offence

punishable under Section 366A of the IPC; and

(iii) rigorous imprisonment for 2 years with fine of Rs.500/-

i/d. simple imprisonment for six months for offence punishable under Section 376 of the IPC.

4. The crime against accused Nos.1 and 2 was registered pursuant to the FIR lodged by PW1-mother of the prosecutrix (PW2). The Complainant had alleged that she had learnt from the prosecutrix that on 08/04/1996 at about 3.30 p.m. accused No.2 had taken her to his room and had forcible sexual intercourse with her. Upon registration of the crime PW7-Bhagwan Kamble, who was the police inspector attached to Worli Police Station took over the investigation. He recorded the statement of the prosecutrix and other witnesses, referred the prosecutrix for medical examination, seized all the incriminating material and upon completion of the investigation filed charge sheet against both the accused for committing the aforesaid offences.

5. Charge was framed and explained to the accused. Accused pleaded not guilty to the charge and claimed to be tried.

The prosecution in support of its case examined 7 witnesses. Statements of the accused were recorded under Section 313 of the Cr.P.C. The defence of the accused was that of total denial and of false implication. The learned Judge upon considering the evidence adduced by the prosecution held the accused guilty and convicted and sentenced them as stated above. Being aggrieved by this conviction, the accused have filed these appeals under Section 374 of Cr.P.C.

6. The appeal is of the year 1999 and the Appellants are not represented by any Advocate. Hence, Ms Ameeta Kuttikrishnan, an Advocate from Legal Aid Panel, is appointed to represent the Appellants.

7. Heard Ms Ameeta Kuttikrishnan, learned counsel for the accused and Mr. S.V. Gavand, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. The records indicate that PW1-Complainant is the mother

of the prosecutrix. She had lodged a complaint against the accused on the basis of the information given by her daughter (PW2). It is to be noted that PW2 has not supported the case of the prosecution. She has stated that some people, who had gathered near her house were talking about rape on her. She further states that she had not visited the house of the accused and she had not seen them on the date of the alleged incident. She does not claim that she was kidnapped and raped by the accused or that accused No.1 had sexual intercourse with her. She has also denied having informed her mother or any other person about the incident. She has stated that both the accused are her neighbours. She has stated that she has not been pressurised by any person. She has stated that she wants to marry accused No.1 and that she will not marry any other person.

9. The prosecutrix has herself turned hostile and has not supported the case of the prosecution. The evidence of the other witnesses does not prove the charge of kidnapping or of rape. Under these circumstances, conviction and sentence of the accused under Sections 363, 366A and 376 of the IPC cannot be sustained.

10. Hence, the appeals are allowed. Impugned judgment and order 20/11/1998 passed by the learned Additional Sessions Judge, Greater Bombay, in Sessions Case No.662 of 1996 is quashed and set aside. The accused are acquitted of offences punishable under Sections 363, 366A and 376 of the IPC. Bail bonds of the accused, if any, stand discharged. Fine amount, if deposited, be refunded to the accused.

11. Ms Ameeta Kuttikrishnan, learned counsel, appointed through Legal Aid Panel for the Appellants be paid fees as per rules.

(SMT. ANUJA PRABHUDESSAI, J.)