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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.162 OF 2002

The State of Maharashtra	]	..	Appellant
vs.			
1. Pramod Sudam Kode	]		
2. Pravin Pandurang Kode	]		
3. Vinayak Sadanand Kode	]	..	Respondents

Mrs.M.M. Deshmukh, App for State/Appellant.

Mr.Pravin Gole i/b Mr.Pradeep Patil for Respondent Nos.1 to 3.

**CORAM : PRASANNA B. VARALE &
N.R.BORKAR, JJ.**

DATE : 7TH JULY, 2021

JUDGMENT : (PER : N.R.BORKAR, J)

1] This appeal, at the instance of State, takes an exception to the Judgment and order dated 4th October, 2001, passed by the 2nd Ad-hoc Additional Sessions Judge, Raigad, Alibag in Sessions Case No. 162 of 2000.

2] By the impugned Judgment and order the respondent Nos.1 to 3, who were accused Nos.1 to 3 respectively before the trial Court, have been acquitted for the offences punishable under Sections 376 read with 109 and 506 read with 34 of the Indian Penal Code.

3] It is the case of the prosecution that the prosecutrix was residing with her parents at Village Pathershet, Taluka Roha, District Raigad. On the day of incident which took place on 5th September, 2000, at about 9.00 p.m. the prosecutrix had gone to the house of Narayan Lakhishre, which was two to three houses away from her house to watch the Television. At about 9.45 p.m. she came out of the house of Narayan Lakhishre to answer nature's call. It is alleged that while the prosecutrix was answering nature's call at some distance from the house of said Narayan Lakhishre, accused Nos.2 and 3 came there. They gagged her mouth with handkerchief. They removed her hair-band and tied her hands with the said hair-band. It is alleged that accused Nos.2 and 3 then lifted the prosecutrix and took her to lavatory near the Marathi school. The accused No.1 was already present there. The hands of the prosecutrix were untied and the handkerchief by which her mouth was gagged was removed. It is alleged that accused No.1 then removed the clothes which were on the person of prosecutrix. He then made her to lie down and then committed sexual intercourse with her, against her wish. It is alleged that, after the alleged act, accused No.1 again tied her hands by the hair-band and gagged her mouth by handkerchief. It is alleged that, at the time of alleged incident, accused Nos.2 and 3 were guarding the place of incident.

4] It is alleged that, accused then came out of the lavatory and while they were near the cattle-shed of Ramchandra Nadkar, they saw that father of the prosecutrix and villagers were searching for her. The accused, therefore, took the prosecutrix in the cattle shed of Ramchandra Nadkar. It is alleged that accused No.1 there again tried to commit sexual intercourse with the prosecutrix. However, this time

he could not commit the sexual intercourse with the prosecutrix due to her resistance. It is alleged that, after some time, accused No.1 pushed the prosecutrix out of the cattle shed. The prosecutrix came home and narrated the incident to her parents. Her parents took her to the police station and there she lodged the report in relation to the incident.

5] On the basis of report lodged by the prosecutrix, crime was registered against the accused vide Crime No.82/2000 for the offences punishable under Section 376, 506 read with 34 of the Indian Penal Code. On completion of investigation, the charge-sheet was filed against them for the said offences.

6] The accused were charged and tried for the offences punishable under Sections 376 read with 109 and 506 read with 34 of the Indian Penal Code. As stated earlier, the trial Court acquitted the accused of all the charges.

7] We have heard the learned APP for the State/Appellant and learned counsel for Respondent Nos.1 to 3.

8] Learned APP submitted that the trial Court acquitted the accused mainly on the ground that no injuries were found on the person of the prosecutrix during medical examination. It is submitted that absence of injuries on the person of prosecutrix by itself is not sufficient to discard the version of prosecutrix, if her version is otherwise cogent, reliable and convincing. It is submitted that the trial Court ought not to have disbelieved the prosecutrix, in absence of any reason for her to implicate the accused in a false case. It is submitted that the trial Court was, therefore, not justified in acquitting the accused. In support of the

submission, learned APP relied upon the judgment reported in **2019 ALL MR (Cri) 2353 in the case of The State of Maharashtra vs. Macchindra @ Babdu Gangadhar Sonawane.**

9] On the other hand, learned counsel for Respondents submitted that the version of the prosecutrix is not probable. It is submitted that according to the prosecutrix her mouth was gagged and her hands were tied. It is submitted that at the time of alleged incident, she was made to lie down on the floor and then alleged act was committed. It is submitted that the prosecutrix has admitted that she did not sustain any injury in the incident in question. It is submitted that absence of injury on the person of the prosecutrix, in the facts and circumstances of the case, creates doubt about the veracity of her version. It is submitted that the trial Court was, therefore, justified in acquitting the accused.

10] According to the prosecutrix while she was answering nature's call the accused Nos.2 and 3 came there, they gagged her mouth by handkerchief and tied her hands with her hair rubber-band. During the course of investigation said hair band was seized. We have perused the seizure panchanama of said hair-band at Exhibit 29. It is described as one small size white colour rubber (hairband). Considering the size of hairband mentioned in seizure panchanama, we find it difficult to accept the version of the prosecutrix in that regard.

11] According to the prosecutrix she was taken to lavatory near the Marathi school and there her hands were untied and the handkerchief by which her mouth was gagged was removed. However, it is not the

version of prosecutrix that after the handkerchief was removed she raised any hue and cry.

12] According to the prosecutrix from the Marathi school she was taken to the cattle shed of Ramchandra Nadkar. The accused No.1 there again tried to commit sexual intercourse with her. According to the prosecutrix this time the accused No.1 could not commit sexual intercourse with her due to her resistance. It appears from the evidence of the prosecutrix that this time her hands were tied by hair rubber band and her mouth was gagged by handkerchief. In spite of this she could prevent the accused No.1 from committing rape on her and she could not do so on the first occasion. Thus overall version of prosecutrix appears to be improbable.

13] Admittedly the prosecutrix was referred for medical examination after lodging of the report by her. In the medical examination no external injuries were found on her person. It is unlikely that the prosecutrix whose mouth was gagged and hands were tied for about six hours, as according to her she went back home at about 4.00 a.m., and was even subjected to sexual intercourse against her wish, would not sustain any external injury.

14] During medical examination of the prosecutrix no semen stains were found either on the genital region or on her undergarments. Thus, there is absolutely no corroborative evidence in the matter.

15] The Judgments relied upon on behalf of the State would not apply to the facts of the present case, as in the case of **Macchindra @ Babdu Gangadhar Sonawane**, the prosecutrix was found profusedly

bleeding, her hymen was found to be torn in all four directions and even there was slight tear on her fourchett and blood stained quilt was recovered from the house of the accused.

16] Considering overall facts and circumstances of the case, no interference is called for in the impugned Judgment and order.

17] In the result, the Criminal Appeal stands dismissed.

[N.R.BORKAR, J]

[PRASANNA B. VARALE, J]