

rkmore

RAJSHREE
KISHOR
MORE
Digitally
signed by
RAJSHREE
KISHOR
MORE
Date:
2021.08.09
14:59:32
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.190 OF 2004**

The State of Maharashtra] .. Appellants
(Original Complainant)

vs.

Sharad @ Pintya Shamarao Javeer]
Age : about 21 years, Occ. Driver,]
R/a, Gomewadi, Taluka – Atpadi,] .. Respondent
District – Sangli.] (Original accused)

Ms.M.H. Mhatre, APP for State/Appellant.

Ms.Vaishnavi M. Gujarathi i/b Mr.Uday P. Warunjikar, for Respondent.

**CORAM : SMT.SADHANA S. JADHAV&
N.R.BORKAR, JJ.**

**RESERVED ON : 5TH APRIL, 2021.
PRONOUNCED ON : 9TH AUGUST, 2021.**

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

1] This appeal takes an exception to the Judgment and order dated 19th November, 2003 passed by the Adhoc Assistant Sessions Judge, Sangli in Sessions case No.112 of 2003.

2] By the impugned Judgment and order, the respondent who was accused before the trial Court has been acquitted of the offence punishable under Sections 363, 366 and 376 of the Indian Penal Code.

3] We have heard learned APP for the Appellant/State and learned counsel for the respondent/accused.

4] According to the prosecutrix, on 27th December, 2002 at about 5.30 p.m. the accused made her to sit in one Jeep, while she was going for answering nature's call. By the said Jeep, the accused took her to ST stand of Village Atpadi. The accused then compelled her to board ST Bus which was going to Akluj. The accused then took her to his relative's house at Akluj. They stayed there overnight and on the next day the accused took her to Pandharpur. From Pandharpur the accused took her to Karad. At Karad they stayed in one lodge for about two days. According to the prosecutrix, during their stay in the lodge the accused committed sexual intercourse with her against her wish. According to the prosecutrix, the accused then took her to Kundal. While they were staying at Kundal, her father alongwith police personnel came there and then they both were brought to Atpadi Police Station.

5] The prosecutrix in her cross-examination has admitted that other passengers were there at the ST Stand of Atpadi. Similarly other passengers were also there in the ST bus which they boarded for going to Akluj. She has further admitted that she went alongwith the accused in one Jeweller's shop at Pandharpur. She has further admitted that the lodge at Karad was at the distance of about 500 ft. from the ST Stand Karad and they went there on foot.

6] It is not the version of the prosecutrix that at any point of time she tried to escape from the custody of the accused or tried to raise any hue and cry.

7] The defense of the accused is that there was love affair and thus, the prosecutrix accompanied him on her own accord.

8] Considering the totality of the facts and circumstances of the case, the defense of the accused appears to be probable.

9] According to the prosecutrix, during their stay at the lodge at Karad the accused committed sexual intercourse with her against her wish. The prosecutrix has however, in her cross-examination has admitted that in her statement to the police, she has not mentioned that the accused had committed sexual intercourse with her against her wish. The act, therefore, appears to be consensual.

10] According to the prosecution, at the time of incident, the prosecutrix was aged about 14 years. Therefore, her consent, if any, is immaterial. The father of the prosecutrix has admitted in his evidence that he had performed the marriage of the prosecutrix within a month after the incident. According to the Ossification Test (Exhibit 9/10) age of the prosecutrix on the date of incident was about 15 to 17 years. It is thus difficult to conclude that the age of the prosecutrix on the date of incident was below 16 years.

11] As regards the offence punishable under Section 363 of the Indian Penal Code, the Hon'ble Supreme Court in the case of S. Vardarajan vs. State of Madras, reported in AIR 1965 SC 942 has held that where a minor knowing and having the capacity to know the full impact of what she is doing voluntarily joins the accused, she could not be said to have been taken or enticed from her lawful guardianship.

12] Considering over all facts and circumstances of the case, no fault can be found with the impugned Judgment and order. In the result following order is passed :

ORDER

Criminal Appeal No.190 of 2004 stands dismissed.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]