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

CRIMINAL APPEAL NO.473 OF 2004

The State of Maharashtra].. Appellant/Org.Complainant
vs.
Sunil Keshav Kakad]... Respondent/Org.Accused

Ms.M.H.Mhatre, APP for State/Appellant.
None for the Respondent.

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

DATE : 3rd FEBRUARY, 2021.

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

1] This appeal, at the instance of State, takes an exception to the Judgment and order dated 26th December, 2003 passed by the Additional Sessions Judge, Palghar in Sessions Case No. 124 of 2002. By the impugned Judgment, the respondent, who was an accused before the trial Court, came to be acquitted for the offence punishable under Section 376 read with 511 of the Indian Penal Code.

2] It is the case of the prosecution that at the relevant time the complainant (PW 1), was residing with her mother (PW 3), her

younger brother (PW 2) and her two children - son and daughter (victim in the present matter).

3] The accused was residing alongwith his parents in the neighbourhood of the complainant. The complainant was working as a labourer and her brother was working in MIDC. The complainant and her brother used to go to their workplace at about 7.30 to 8.00 am and used to return back at about 8.00 to 8.30 p.m. In their absence, PW 3, the mother of the complainant used to look after the victim.

4] It is alleged that the victim who at the relevant time was 4 ½ years old used to go to the house of accused to play with the children of brother-in-law of accused. It is alleged that on 13th July, 2002, at about 10.00 a.m. the victim went out to play towards the house of the accused. It is alleged that at about 11.00 a.m. the accused took the victim to his house and attempted to commit rape on her.

5] On the basis of complaint lodged by PW 1 police registered crime No.61/2002 against the accused for the offence punishable under Section 376, 511 of the Indian Penal Code. On completion of investigation the charge-sheet was filed against him.

6] The accused was charged and tried for the above-stated offence by the trial Court. By the impugned Judgment and order, the trial Court acquitted the accused of above-stated charges.

7] We have heard the learned APP for the State. None appeared for the respondent/accused.

8] With the assistance of the learned APP, we have perused the evidence on record.

9] In the present matter, victim has not been examined. PW 3 to whom the victim had first disclosed about the incident has stated that, on the day of the incident, at about 10.00 a.m. the victim went out to play towards the house of the accused. At about 11.00 a.m. the victim came back and at that time she was weeping. On enquiry by PW 3 the victim told her that accused discharged some milk like white liquid over her undergarment. The victim also complained to her difficulty in passing urine. She then removed the undergarment of the victim and saw that it was wet with some liquid like semen.

10] PW 3 in the cross-examination has admitted that house of accused is adjoining to their house and one can listen to the talk taking

place in the adjoining house. She has admitted that she did not hear any sort of crying or weeping sound of the victim proceeding to the alleged incident. She has further admitted that there was no bleeding from the private part of the victim. According to PW 3 she disclosed the incident to PW 1, in the evening i.e. after she came back home from her workplace.

11] PW 1 in her evidence, reiterated the disclosure made to her by PW 3, in relation to the incident.

12] In the cross-examination, PW 1 has admitted that prior to the incident she was unwell and she was brought to KEM Hospital by ambulance and at that time the father of the accused paid the expenses of the ambulance. It thus appears that there was some financial transaction between PW 1 and father of the accused.

13] Admittedly, after lodging of the FIR the victim was sent for medical examination and she was examined by PW 5 Dr.Prafulla Vaidya. PW 5 has stated in his evidence that on examination he found following injuries on the private part of the victim :

- i] Inflammation of right sided labia majora
- ii] Congestion over labia minora (redness) .

14] PW 5 has admitted in his cross-examination that he did not find any injury over private part of the victim. He has further admitted that injury which was found on the private part of the victim is possible in case of fall.

15] The undergarment of the victim was sent for forensic examination. The CA Report is at Exhibit 29. Result as regards ABO Grouping is inconclusive.

16] The trial Court has found evidence on record deficit to prove the charges against the accused.

17] We are also of the view that considering the evidence on record, the view taken by the trial Court cannot be said to be perverse. In absence of evidence of the victim and in absence of any corroborative evidence to the evidence of PW 1 and PW 3, no interference is called for in the impugned Judgment and order of acquittal. Hence, following order is passed :

ORDER

i] Appeal is dismissed.

ii] The Judgment and order dated 26th December, 2003 in Sessions Case No.124 of 2002 passed by the learned Additional Sessions Judge, Palghar, is confirmed.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]