

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPEAL NO. 343 /2014

* Ku. Anuradha D/o Shivaji Nagre
Aged about 20 years, occu; Household
R/o Bramhanwada Police Station and
Tahsil Malegaon Dist. Washim (Mah) .. **..APPELLANT**

v e r s u s

1. Vikas s/o Babarao Ghuge
Aged about 38 years, occu: service
R/o Bramhanwada Police Station and
Tahsil Malegaon, Dist. Washim (Mah)

2. The State of Maharashtra
Through Police Station officer
Police Station Malegaon, Dist.Washim
(Mah). .. **RESPONDENTS**

.....
Mr E.W. Nawab, Advocate for appellant
Mr. C.A. Joshi, Advocate for Respondent no.1
Mr. I. J. Damle, APP for respondent no.2-State
.....

**CORAM: MRS. SWAPNA JOSHI &
AVINASH G. GHAROTE, JJ.
DATED : 17th August, 2021.**

JUDGMENT: (PER MRS.SWAPNA JOSHI, J.)

1. This Appeal has been preferred has been preferred at the
instance of victim, (hereinafter referred to as “the prosecutrix”) against

the respondent no.1-Vikas (hereinafter referred to as “the accused”) , challenging the judgment and order dated 25th March, 2014 delivered by learned Sessions Judge, Washim, in Sessions Case No.12/2013, whereby the learned Judge acquitted the accused of the offence punishable u/ss. 366 and 376 of the Indian Penal Code.

2. The prosecution version as unfolded during the trial can be summarized as under:-

At the relevant time, the prosecutrix was aged about 19-years and the accused was aged about 38-years and both were residing the same vicinity. The accused at the relevant point of time was a married person having two grown up children. It is alleged that on 10.08.2012, the accused abducted the prosecutrix from Malegaon and took her at several places like Shirdi, Pune, Savargaon, Risod with intent to have sexual intercourse with her under the pretext of marrying her and during the period between 18.8.2012 and 30.08.2012 committed sexual intercourse with her.

3. As per the prosecution case, on 10.08.2012, the prosecutrix went from Bramhanwada to Malegaon with her cousin brother-Vishal by means of an auto to the hospital of one Dr. Satish Ghuge. The accused came to that place and asked her to accompany him at Shirdi so as to enable them to perform marriage. The prosecutrix sent back Vishal to

the village and accompanied accused to Shirdi. They stayed there in a '*Bhakta Nivas*'. On the next day, they both left for Pune and then they then proceeded to the Savargaon, Dist.Akola, at the house of cousin of the prosecutrix. They stayed there for two days and then they proceeded to the Risod and stayed for two days. On 22.08.2012, the prosecutrix was called at the Police Station. She accordingly went to the Police Station along with the accused on 23.08.2012. The prosecutrix requested the accused to marry with her, however, he refused. According to the prosecutrix, the accused since last ten months used to promise to marry with her and therefore she accompanied the accused to Shirdi and at plethora of places in order to perform the marriage. The prosecutrix then lodged report against the accused. On the basis of the said report, the offence came to be registered. Formal investigation was carried out. In her further statement, the prosecutrix informed to the police that the accused committed sexual intercourse with her at Risod, on allurement of marriage. After the supplementary statement of the victim was recorded, Section 376 of the IPC was incorporated.

4. After completion of investigation, charge-sheet was filed. The case was committed to the court of Sessions. On analysis of the evidence and after hearing both the sides, the learned trial Judge

acquitted the accused, as aforesaid.

5. We have heard Mr. E.W. Nawab, learned Advocate for the appellant; Mr.C.A. Joshi, learned Advocate for the accused and Mr. I. J. Damle, learned Additional Public Prosecutor for the respondent no.2-State. With their able assistance, we have carefully gone through the entire record and proceedings of the case.

6. Learned Advocate for the prosecutrix vehemently contended that the accused although was a married person having two grown up children, has taken away the prosecutrix at various places and committed sexual intercourse on the pretext of performing marriage with her. The learned APP too, supported the contention of the learned Advocate for the appellant.

7. The learned Advocate for the accused, however, stoutly opposed the said contention and submitted that the prosecutrix was a matured girl, aged 19-years and was very well aware that the accused was a married person having two grown up children. They are residing in the same vicinity and as there were love affair between them, the prosecutrix on her own accord, accompanied the accused at various places and when the father of the prosecutrix came to know that the prosecutrix is staying at Risod, she was called to the Police Station and then the report came to be lodged against the accused.

8. The testimony of the prosecutrix speaks about the recitals narrated in the complaint. The testimony categorically states that she had fallen in love with the accused and was aware that the accused was a married person having children. She deposed that though the accused was married he used to promise to marry with her and keep physical relationship with her.

9. It is significant to note that the cross-examination of the prosecutrix shows that till lodging of the report, she had not told her parents about the proposal of the accused to marry with her. She admitted that she had not stated before the police while lodging her report that the accused used to keep physical relations with her. The said version of the prosecutrix goes to the root of the prosecution case and creates serious doubt about her credibility. Thus, the testimony of the prosecutrix clearly indicates that she was a matured girl of 19-years and although she was aware that the accused is a married person having two grown up children, she used to love him and she on her own, accompanied the accused at different places and it appears that only when the police contacted her, she went to the Police Station along with the accused and lodged her complaint. It is quite ridiculous to believe that the prosecutrix on the pretext of promise of marriage, accompanied the accused at different places and established physical

contact with him. As discussed hereinabove, the prosecutrix had not stated before the police in her report about the accused keeping physical contact with her. The improvement with regard to the accused establishing sexual relationship with the prosecutrix is an improvement in the testimony of prosecutrix which goes to the root of the case and, therefore, it is doubtful whether the accused committed sexual intercourse with the prosecutrix on the pretext of performing marriage and had taken her to various places.

10. In the case of **Mahendra Pratap Singh vs. State of Uttar Pradesh**, reported in **(2009) 11 SCC 334**, the Hon'ble Apex Court has given a rule of prudence that if on appraisal of evidence and on considering relevant attending circumstances, it is found that two views are possible, one for acquitting accused and other for convicting accused, in such a situation rule of prudence should guide High Court not to disturb the order of acquittal made by the trial court, unless conclusions of trial court drawn on evidence on record are found to be unreasonable and perverse or unsustainable, High Court should not interfere with the order of acquittal.

11. In the case of **Harbeer Singh vs. Sheeshpal and others**, reported in **(2016) 16 SCC 418**, it is observed by the Hon'ble Supreme

Court on the same facts that another view could also have been taken on the evidence on record, is not a ground for reversing an order of acquittal. In view of the aforesaid facts and circumstances, no interference is warranted with the order of acquittal.

12. Thus, the appellant has failed to prove her case against the accused. The learned trial Judge has rightly appreciated the evidence before him and needs no interference. In view of the facts and circumstances, the entire edifice of the case comes under the shadow of doubt and, therefore, the appeal needs to be dismissed. Hence the following order :-

ORDER

Criminal Appeal No. 343/2014, at the instance of prosecutrix, is hereby dismissed.

JUDGE

JUDGE