

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2109 OF 2021
IN
CRIMINAL APPEAL NO. 669 OF 2020

JIJA LALSING RATHOD
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Salunke Sudarshan J
APP for Respondent/State : Mr. S. D. Ghayal

...

ALONGWITH

CRIMINAL APPLICATION NO. 2058 OF 2020
IN
CRIMINAL APPEAL NO. 605 OF 2020

AMOL MADAN KASTE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Rajendrraa Deshmukh, Senior Advocate a/w Mr.
Govind A. Kulkarni i/by Mr. V. P. Sawant.
APP for Respondent/State : Mr. S. D. Ghayal

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AND

CRIMINAL APPLICATION NO. 2408 OF 2020
IN
CRIMINAL APPEAL NO. 671 OF 2020

KUNDLIK S/O BANSI RATHOD

VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Rajendrraa Deshmukh, Senior Advocate a/w Mr.
Govind A. Kulkarni i/by Mr. S. P. Rathod.
APP for Respondent/State : Mr. S. D. Ghayal

...

AND

CRIMINAL APPLICATION NO. 2213 OF 2020
IN
CRIMINAL APPEAL NO. 630 OF 2020

NAVNATH BABURAO JADHAV
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Rajendrraa Deshmukh, Senior Advocate a/w Mr.
Govind A. Kulkarni i/by Mr. Vinod N. Rathod.
APP for Respondent/State : Mr. S. D. Ghayal

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CORAM : SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.

DATE : 14th JULY 2022.

Per Court :

1. All these applications are decided by this common order because they arise out of the same incident, same judgment and order. For the sake of convenience, all the Accused/Applicants are referred to by their names and original status in the trial Court. The Applicant No.1 – Jija

Rathod was the Accused No.1. The Applicant – Amol Kaste was the Accused No. 2. The Applicant No.3 – Kundlik Rathod was the Accused No.3 and the Applicant No.4 – Navnath Jadhav was the Accused No.4. The date of incident is 01.01.2015.

2. The prosecution case is that the prosecutrix had gone to house of one Godabai Barbade. She started going to Beed via Padalsingi. She reached Pachegaon Phata at 6 pm., at that time, one jeep of Accused No.1 – Jija Rathod, was parked there. She was knowing him. She therefore asked him to take her to Padalsingi. She sat in the jeep. Accused No.1 took the jeep via Kurla and stopped at Dhangar Kotha. She was also knowing the Accused No.2 Amol Kaste. He entered the jeep. When they travelled some distance and reached at Wahegaon, two persons entered into the jeep. Those persons were knowing Accused No.1 and 2. After travelling further for some time, they started misbehaving with her. They took the jeep at a secluded spot and committed rape on her. Thereafter she was taken to her house and in the night they again repeated their act. They assaulted her. Her head was banged against the wall. She suffered head injury. Before leaving

her, they threatened her and told her if she informed the police, next time the act would be repeated by ten persons. On the next day at about 03:00 pm, she went to Gevrai Police Station and lodged the FIR.

3. The investigation was carried out. During the course of investigation, her statement under Section 164 of Cr.P.C. was recorded. After investigation, the charge-sheet was filed and the case was committed to the Court of Sessions. At the conclusion of the trial, all the Applicants were convicted. The major conviction was under Section 376-D of IPC and they were sentenced to suffer rigorous imprisonment for life, besides other sentences for other offences. The prosecutrix was examined as PW-1. She had deposed that on 18.02.2015, identification parade was held and she identified accused No.4 Navnath Jadhav and Accused No.3 – Kundlik Rathod.

4. Learned Counsel for the Applicants and Learned Counsel Mr. Salunkhe for Accused No.1 submitted that the medical evidence does not support the case of the prosecutrix as there was no injury and it was impossible that in such incident there would be no injury to the

prosecutrix. They submitted that medical opinion does not give a clear opinion that it was a case of rape. They submitted that her evidence is not believable. It was a *bazar* day and it was not possible that nobody could have witnessed the incident. The evidence of PW-2 is not very material and in fact it is doubtful. The relationship of husband and wife between PW-2 and the prosecutrix is not established. There is variance in her statement at different places.

5. Learned APP and learned Counsel for the original first Informant opposed these applications strongly. They submitted that there is no reason to disbelieve the evidence of first Informant.

6. We have considered these submissions and we have perused the evidence produced before us in the form of notes of evidence. The deposition of PW-1 – first Informant/prosecutrix is clear enough. She has described the incident in detail. She was knowing Accused No.1 and 2. As far as Accused No.3 and 4 are concerned, they were identified in the test identification parade as well as during her deposition before the Court. These four accused had been in her

company for a long period of time on the date of incident. There can hardly be dispute about their identification by PW-1. As far as the medical evidence is concerned, it is mentioned that the examination was suggestive of sexual intercourse. There was a head injury in the form of CLW on right parietal region of the size 2 x 1 cm. There was an abrasion of right forearm and right elbow joint of size 2 x 1 cm. To that extent, the medical evidence supports her case. In this view of the matter at this stage it is not possible to observe that the Applicants have not committed this offence and therefore it is not possible to release them on bail during pendency of these appeals. The evidence of the prosecutrix is sufficiently strong against them. In this view of the matter, the applications are rejected.

[BHARAT P. DESHPANDE, J.]

[SARANG V. KOTWAL, J.]

Najeeb...