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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 445 OF 2022

Ranjit Dattatray Kolekar,

Age : 25 years, Occ. Agri.,

R/a: Ugdewadi, Tal - Malshiras,

Dist.: Solapur. (Presently in Solapur

District prison, Solapur)

.. Appellant

Versus

1. The State of Maharashtra,

At the instance of Velapur Police Station

District - Solapur.

2. Reshma Dattatray Londhe,

Age - 35 years, Occ. - Housewife,

R/a: Ugdewadi, Tal.: Malshiras,

Dist.: Solapur.

.. Respondents

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- Mr. B.A. Lawate, Advocate for the Appellant
 - Ms. P.P. Shinde, APP for the Respondent - State
 - Mr. Ghansham S. Jadhav, Advocate for Respondent No. 2
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**CORAM : SMT. SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.**

RESERVED ON : APRIL 29, 2022.

PRONOUNCED ON : MAY 06, 2022.

ORDER : (PER MILIND N. JADHAV, J.)

1. This is an appeal under Section 14(3) of the Scheduled Caste and Scheduled Tribes (Prevention and Atrocities) Act, 1989 (for short "**SC & ST Act**"). The Appellant herein is arrested in Crime No. 355 of 2021 registered at Velapur police station for the offence

punishable under Sections 376, 366A, 506 of the Indian Penal Code, 1860, (for short "**IPC**"), Sections 3(1)(w)(i), 3(1)(w)(ii) of the SC & ST Act and Section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short "**POCSO Act**").

2. On 31.10.2021, Respondent No.2 - complainant, mother of the victim who is a minor (13 years) lodged a complaint with the Velapur police station under the provisions of Sections 376, 366A, 506 IPC and Sections 3(1)(w)(i), 3(1)(w)(ii) of the SC & ST Act and Section 4 and 8 of the POCSO Act against Yuvraj Godase, the Appellant herein and one unknown person. The charge against the Appellant is that he facilitated the commission of offence against the victim i.e. daughter of the complainant.

3. It is stated in the complaint that on 30.10.2021, Respondent No.2 left for Pandharpur at about 10.30 a.m. to purchase sarees leaving behind her daughter Ms. X, brother Laxman his wife Rupali and their children at home and returned back at about 4.00 p.m. on the same day. On 31.10.2021, her daughter Ms. X appeared to be in a disturbed state of mind and upon enquiry she disclosed that she was ravished by the three accused on the previous day i.e. 30.10.2021 when she had been to the Civil Hospital to bring cotton. The victim told her that while she was going towards the Civil Hospital, she saw

Yuvraj Godase, Ranjit Kolekar (the Appellant herein) and one unknown person standing near the Civil Hospital; that she was accosted by them and forcefully taken to a nearby under building construction; that Yuvraj Godase seized her violently, attempted to kiss her and and molest her but she kicked him and tried to flee from his clutches; however the Appellant and unknown person were standing guard at that time and both of them caught hold of her and pushed her towards Yuvraj Godase, after which she was ravished by Yuvraj Godase. Accordingly Crime No.355 of 2021 was registered by Respondent No.2.

4. According to the prosecution, the Appellant facilitated and aided the offence committed by Yuvraj Godase by standing guard and pushing the victim towards Yuvraj Godase when she had attempted to rescue and flee from his clutches. The victim has identified the Appellant by name who was known to her as he resided in the same village. The Appellant was arrested on 01.11.2021. The act attributed to the Appellant is that of facilitating the offence punishable under Section 376 of IPC.

5. The prosecution has completed the investigation and filed the charge-sheet on 21.12.2021 before the learned Special Judge and Additional Sessions Judge - 1, Malshiras.

6. Mr. B.A. Lawate, learned counsel appearing for the Appellant has submitted that in the present case, Yuvraj Godase (accused No.1) and the victim (daughter of Respondent No.2 - complainant) were having a love affair. He has placed on record the CDR pertaining to Cell Phone No.9021100224 of the victim from 01.10.2020 onwards obtained from the Telecom Company which showed that the victim was in constant and regular conversation with Yuvraj Godase. He has pointed to the CDR of phone No. 9021100224 which was used to call phone No.9832759696 of Yuvraj Godase several times and on a daily basis since 01.10.2020. He submitted that even on the day the incident the victim had last called Yuvraj Godase at 2.43 p.m in the afternoon and in the complaint the allegation is that the incident had taken place at about 3.05 p.m. Mr. Lawate has submitted that the Appellant was never present at the spot of incident alleged by the complainant and was working in his farm land at that time in the said village. He has also placed on record a list of documents pertaining to the whatsapp chat between Yuvraj Godase and the victim beginning from 26.08.2021 to 09.09.2021. Perusal of the said whatsapp messages clearly reveal that the victim knew Yuvraj Godase and therefore had received his messages; that the victim could have blocked the number if she had not known Yuvraj Godase but did not do so. Learned counsel has also relied upon photographs of the spot of incident and argued that the under construction building

was adjacent to a developed bungalow / structure belonging to and the maternal uncle of the victim and there were several residential houses in the vicinity. He submitted that had the victim shouted and screamed as alleged, her relatives staying in the house adjacent to the spot of incident would have been alarmed and intervened immediately. He submitted that the complainant has filed a false case against the Appellant and indicted the Appellant without any basis. He reiterated that the Appellant was working in his farm land and field at the time of the alleged incident. He submitted that save and except the statement of the victim as told to the complainant there is no evidence to prove the presence of the Appellant at the spot of incident. He has thus submitted that the Appellant has been falsely implicated and the possibility of the alleged incident happening without the consent of the victim cannot be ruled out in the present case.

7. Ms. P.P. Shinde, learned APP appearing for the State has made submissions in support of the impugned order dated 02.03.2022 passed by the Special Judge and Additional Sessions Judge-1, Malshiras while rejecting the application for bail filed under Exhibit No.'15' by the Appellant and contended that the investigation done by the prosecution *prima facie* establishes that the Appellant used violence against the victim to prevent the victim from rescuing herself

and pushed the victim towards Yuvraj, thus aiding and facilitating the offence and there was no reason to disbelieve the victim's statement as told to the complainant.

8. Mr. Ghansham Jadhav, learned counsel appearing for the Respondent No.2 - complainant has vehemently stated before this Court that taking into consideration that the victim is a minor, even if she has any relationship with the principal accused, her consent cannot be taken into consideration. It is further urged that the Appellant seems to have facilitated the act of the principal accused and thus is equally liable.

9. We have heard Mr. B.A. Lawate, learned counsel for the Appellant; Ms. P.P. Shinde, learned APP and Mr. Ghansham Jadhav, learned counsel for Respondent No.2 and with their assistance perused the material placed on record.

10. Ms. P.P. Shinde, learned APP submitted that the documents shown by the Appellant do not form part of the charge-sheet and therefore the same cannot be relied upon. This submission cannot be taken into consideration for the simple reason that it is the duty of the Investigating Officer to take into consideration all aspects of the case and make a fair investigation.

11. We have perused the CDR record of phone No.9832759696 belonging to Yuvraj Godaase which has been placed on record by the Appellant for the period 01.10.2021 to 31.10.2021. Perusal of the said CDR record clearly shows that several calls were made to the victim on phone No.9021100224 during the aforesaid period on a daily basis. This evidence itself *prima facie* dilutes the allegation made by the complainant. That apart, there is no material placed on record by the prosecution to indict and show the complicity of the Appellant to have facilitated the offence.

12. The material placed on record clearly shows that the victim and the principal accused Yuvraj Godase used to chat with each other regularly for long hours and knew each other. Save and except the bare statement of the complainant, there is no cogent and reliable material brought on record to show the presence of the Appellant at the spot of the incident on 30.10.2021 at about 3.00 p.m. The investigation is completed and charge-sheet is filed. The learned counsel appearing for the Appellant has clearly demonstrated before the Court from the whatsapp chat and the CDR that the principal accused Yogesh Godase and the victim were known to each other and therefore the purported allegation against the Appellant of ravishing the victim becomes weak. The Appellant is in custody from 01.11.2021. His further incarceration is unwarranted in the given facts

and circumstances and hence the Appellant deserves to be enlarged on bail.

13. By order dated 22.04.2022 passed in Criminal Appeal No.312 of 2022, this bench allowed the Criminal Appeal of the accused No.3, the unknown person, i.e. Rohan Dattatray Bhosale in the same Crime No.355 of 2021 which is the subject matter of the crime in the present case.

14. In view of the above discussion and findings, the following order is passed:

- (i) Criminal Appeal is allowed;
- (ii) The Appellant i.e. Accused No.2 - Ranjit Dattatray Kolekar in Crime No.355 of 2021 registered at Velapur Police Station be enlarged on bail on furnishing P.R. bond in the sum of Rs.15,000/- and one or more solvent sureties in the like amount;
- (iii) The Appellant shall cooperate with the investigating agency and report to the investigating officer as and when called;
- (vi) Criminal Appeal is disposed of accordingly.

[MILIND N. JADHAV, J.]

[SMT. SADHANA S. JADHAV, J.]