

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.475 OF 2021

Keshav Madhav Thombre	...	Appellant
Vs.		
State of Maharashtra and another	...	Respondents

Mr. Kuldeep Patil i/b. Ms. Saili Dhurn for Appellant.
Mr. V. B. Konde-Deshmukh, APP for Respondent No.1-State.
Mr. Rohan Surve for Respondent No.2.

**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.**

DATE : APRIL 28, 2022

P.C. :

1. The appellant is seeking his release on bail in connection with C.R.No.658 of 2020 dated 21.12.2020 registered at Lasalgaon Police Station, District Nashik. The investigation is over and the charge-sheet is filed. The appellant was arrested on 08.01.2020 and since then he is in custody. The charge-sheet is filed under Sections 376, 294, 504 and 506 of the Indian Penal Code as also under Sections 3(2)(v), 3(2)(va) and 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'S.C. & S.T. Act').

2. Heard Mr. Kuldeep Patil, learned counsel for the appellant, Mr. Konde-Deshmukh, learned APP for respondent No.1-State and Mr. Surve, learned counsel for respondent No.2.

3. The FIR is lodged by the prosecutrix herself, who was 20 years of age. She has stated that, for the first time, on 14.09.2020, she received a

phone call from the appellant on her birthday. Since then he used to call her frequently. They developed friendship. By that time, they were only talking on the phone and had not actually met. In October 2020, for the first time, they met and went to Chandwad. They visited a temple but it was closed. Therefore, they went near a waterfall. When they started coming back to Lasalgaon in a car, he asked for physical relations. The informant refused but he insisted, and therefore, she agreed. He took the car to a Lodge between Chandwad and Lasalgaon. He booked a room. They went to the room. At this point, the specific case of the informant is that, she got scared and she refused to keep physical relations with him. At that time, the appellant threatened her that if she did not keep physical relations with him, he would show the photographs which he had taken at the waterfall to her family members. Under that threat, he established physical relations with the informant. At that time, he also took further photographs of the informant when she was not wearing proper clothes. After that he left her at Lasalgaon. After that incident, the appellant used to call her but since he had forced himself on her, the informant started avoiding him. After that, the appellant threatened her that he would make the photographs viral, and under that threat, he used to compel her to speak to him. In November 2020, he asked her to make a video call. When she refused, he told her that he had opened an account on a social networking site with the name of the informant and if she did not make the video call, he would make those photographs viral and he in fact posted a photograph which he had clicked in the lodge and made it viral. He further told her that if she did not make a video call, he would not delete that photograph. The informant pleaded to delete the photograph, but

he refused and insisted that she should make a video call to him without wearing any clothes. Though she was not willing to accede to his demand, she was forced to do so under threats that the photograph would not be deleted. When she made a video call as per his demand, again he recorded that video call. After that, he continuously insisted her to marry him. However, by that time, the informant had realized his true nature, and therefore, she refused to marry him. The informant is belonging to scheduled caste and the appellant was aware of that. On 16.12.2020, the appellant came in front of her house and created disturbance. He even threatened her father. He abused the informant's father. The people in the locality somehow managed the situation. When the informant was checking her mobile phone, she opened the social networking site and she saw her indecent video which was made by the appellant. The informant took a screenshot, and then approached the police and lodged the F.I.R. on 22.12.2020 at around 1:30 p.m.

4. Learned counsel appearing for the appellant submitted that the FIR shows that the physical relations were established only after the informant had given her consent. The physical relations were the result of the consent given by the informant, and therefore, no offence under Section 376 of the IPC is made out. He submitted that there were no allegations that the appellant had committed those acts because the informant was belonging to scheduled caste, and therefore, the provisions of S.C. & S.T. Act are not attracted in this case. He further submitted that for any other offence, the maximum punishment is not beyond 5 years of jail. As far as allegation that

he had threatened her father is concerned, a N.C. is lodged on 17.12.2020 and at that time no allegations were made that he had abused the informant's father about his caste. Mr.Kuldeep Patil further submitted that the charge-sheet does not contain any material to show that any such photograph or video was uploaded by the appellant. There is no certificate of any scientific expert to show that such video or photograph was ever uploaded by the appellant.

5. Learned APP opposed this appeal. He submitted that there is one more offence viz. C.R. No.659 of 2020 dated 22.12.2020 pending against the appellant under the Arms Act at the same police station.

5.1. Learned APP as well as learned counsel for respondent No.2 submitted that the offences alleged are clearly made out. The consent was not given by respondent No.2 voluntarily. The conduct of the appellant gave rise to a reasonable apprehension that, if he is released on bail, there will be further disturbance and danger to the informant and her family. Learned counsel for Respondent No.2 also relied on the statement of the neighbour Sonawane, who had actually seen the video on his mobile.

6. We have considered the submissions made by learned counsel appearing for the parties. As far as the main allegation of commission of rape is concerned, the incident had taken place in a lodge between Chandwad and Lasalgaon. If F.I.R. is read carefully, it can be seen that though the informant had initially agreed to have physical relations and therefore, had gone to the lodge, in the lodge itself she had second

thoughts and out of fear, she had clearly refused to have any physical relation with the appellant. At that point, he had threatened her that he would show the photograph clicked near the waterfall to her family and under that threat she was forced to have physical relations. Considering this narration, it can be said that there was no consent on the part of the informant to have physical relations, and therefore, the offence under Section 376 of the IPC is clearly made out. The subsequent conduct of the appellant also shows that he was continuously harassing the informant. Her indecent photographs and video which he had taken himself under threats were made viral. There is a witness who had seen such video on social networking site. The informant herself had taken a screenshot of such photograph. The appellant was continuously keeping the informant under threats. We, therefore, agree with the submissions of learned counsel for the respondents that there is reasonable apprehension of further disturbance and danger to the informant and her family, if the appellant is released on bail.

7. Considering the aforesaid discussion, no case is made out for grant of bail to the appellant. The appeal is dismissed. However, considering the young age of the appellant, the trial is expedited.

8. Needless to observe that these observations are made only for deciding this appeal.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)