

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.33 OF 2021

The State of Maharashtra
Through Police Station,
Tadkalas, Dist. Parbhani

.. Applicant

Versus

1. Sagarsing s/o Suratsing Tak,
Age: 23 years, Occu.: Labour,
R/o. Guru Govindsing Nagar,
Doctor Colony, Station Road,
Parbhani.
2. Shaikh Salim Shaikh Jilani
Age: 27 years, Occu.: Auto Driver
R/o. Swachata Colony, Wangi Road,
Parbhani.
3. Shiva s/o Dilip Patle,
Age: 26 years, Occu.: Labour,
R/o. Irani Zopadpatti,
Near Bus Stand, Akola.
4. Shaikh Rafik @ Baba Shaikh Chand
Age: 27 years, Occu.: Auto Driver,
R/o. Khandoba Bazar, Parbhani.

.. Respondents

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Mrs. V. S. Choudhari, APP for the applicant – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 4th October, 2023.

ORDER :-

. Present application has been filed under Section 378(1)(b) of the
Code of Criminal Procedure seeking leave to file an appeal challenging the

judgment and order dated 11.01.2021 passed by the learned Additional Sessions Judge, Parbhani in Sessions Trial No.88 of 2017; thereby acquitting the respondents from the offence punishable under Sections 354, 354(A), 354(D), 323, 506, 366, 376(1), 376(2)(n), 342, 376(D), 343, 384 read with Section 34 of Indian Penal Code.

2. Heard learned APP Mrs. V. S. Choudhari for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. It is the case of the prosecution that the victim is married woman. She has three children. As she has no cordial relationship with her mother-in-law, she came to house of her mother. Since then she is residing with her mother. Her husband is taking care of all children. On 18.01.2019, at about 10.00 a.m., victim left from the house of mother and came to Parbhani Railway Station. She was going towards her sister who resides at Shirdi. When she was waiting for the train, accused No.1 came towards her and took her in one dilapidated house near Pedgaon Railway Station and made forceful intercourse with her. It is also alleged that thereafter accused No.1 dropped her again at Parbhani Railway Station at about 2.30 a.m. at night. Thereafter, accused Nos.2 and 4 came to Railway Station and took her to take tea. Thereafter, they took her on the motorcycle in one room situated at Khandoba Bazar. It is alleged that they both ravished her by

threatening to kill. Afterwards in the morning accused No.3 entered in the room and told that why she came along with these miscreant persons. He told her that he is ready to marry with her and also ready to take care of her children and thereafter, he made sexual intercourse with her. It is also alleged that she stayed along with accused No.3 in the said room upto 22.01.2019. On 23.01.2019, at about 10.30 p.m., they both went to Hyderabad. There he took one room on rent. It is also alleged that accused No.3 brought some domestic articles after selling her Mangalsutra. It is also alleged that on 24.01.2019 at 11.00 p.m., after receiving a phone call of Salim, they both departed for Parbhani. On 25.01.2019 at 9.00 a.m., when they both were going towards house of Salim, at that time, police caught them near the statue of Shivaji Maharaj. Police recorded her report as per her say on 25.01.2019 at 11.44 p.m. i.e. Exhibit-33.

4. In order to bring home the guilt of the accused, prosecution has examined in all six witnesses. At the outset, we would say that P.W.2 the mother of the victim/prosecutrix and P.W.4 brother of the prosecutrix are the hearsay witnesses. Of course P.W.4 says that while searching sister, he had gone to Railway Station and verified the CCTV footage. From the CCTV footage, he found that his sister is being taken by three persons and therefore he went to the office of Superintendent of Police along with the CCTV footage. Thereafter, he came to know that his sister is at Hyderabad

after he received call from her. However, it appears that he has not identified the accused persons on the basis of the said CCTV footage in his substantive evidence. The prosecution wants to rely on the testimony of P.W.1 the prosecutrix. As regards the prosecutrix is concerned, P.W.2 her mother has deposed that the prosecutrix is mentally disturbed and therefore, she had left the house in anger. Even in the FIR, the informant says that there was quarrel between herself and her mother just prior to Diwali on account of putting bangles in hand (as per the rituals of the villages), but if we consider the story in the FIR and her substantive evidence, there is total variance. In her testimony, she says that she came to Parbhani Railway Station for going to the house of sister at Shirdi at about 10.00 a.m., whereas in FIR, she says that she left the house to answer nature's call, then she went to a temple of lord Krishna situated at Warpud road. Thereafter, she took lift from a motorcyclist and went to Railway Station Pingli. Then she came to Railway Station Parbhani at 9.00 p.m. It also appears from her testimony that she was not knowing any of the accused persons. Under the said circumstance, it is hard to believe that a major married lady would accompany a strange person that too from a railway station and go to his home or will not raise human cry when she was allegedly dragged out of the train or from the railway station.

5. It is well settled law that even the substantial evidence of prosecutrix

can be relied, however, it should inspire confidence. Here, taking into consideration the variance between the FIR and the substantive evidence in respect of prosecutrix, the learned Trial Judge has rightly disbelieved P.W.1 prosecutrix. No case is made out by the prosecution for re-appreciating the evidence. Application therefore stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm