

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 731 OF 2002

MOHD RAFIQ and ORS.

VERSUS

STATE OF MAHARASHTRA

...

Advocate for Appellants : Adv. A. N. Ansari

APP for Respondent/State : Mr. P. N. Kutti

...

CORAM : KISHORE C. SANT, J.

DATE : 14th MARCH 2023.

Per Court :

1. This is an appeal. The prosecution was launched against five persons for the charges under Section 366 and Section 376 of the Indian Penal Code. The learned Sessions Judge, Nanded in Sessions Case No.168/1996 held the accused no.1 and 2 guilty of the offence punishable under Section 366 and imposed the sentence to suffer rigorous imprisonment for three years and to pay fine of Rs.3000/- each and in default to suffer rigorous imprisonment for six months. So far as Section 376 of IPC is concerned, they are acquitted.

2. The learned Sessions Court after considering the evidence, has come to conclusion that the prosecutrix was in fact had eloped with accused no.2 and thus she on her own had left company of her parents and went to the accused persons. Only looking to the fact that the prosecutrix on the date of offence was a minor as her date of birth was 20.01.1976, whereas the offence has taken place on 02.12.1995 and therefore the accused had convicted by the learned trial Court only under Section 366 of IPC.

3. There is no dispute that the accused no.2 and the prosecutrix were having an affair. Later on the prosecutrix and the accused no.2 even got married. Now the prosecutrix, who is the wife of appellant no.2 has also filed an affidavit in this appeal stating that she is living happy married life and she has no grievance against the accused. There are two daughters and one son from the marriage. Now the daughters have even attained marriageable age. Now sending the accused after these many years to the jail, would not be in the interest of justice. This Court finds that since on the date of the incident, the prosecutrix was minor, conviction needs to be upheld. While considering the point of

sentence, this Court finds that the accused no.2 was arrested on 26.12.1995 and was subsequently released on bail. Therefore this Court finds that interest of justice can be served by reducing the sentence, to the sentence already undergone and by directing the appellant no.2, who has already deposited fine amount of Rs.3000/-, be directed to deposit further Rs.12000/- towards fine. So far as accused no.1 is concerned, it is seen that his role was only that he was a driver of the vehicle, in which the accused no.2 had taken the prosecutrix with him. He was arrested on 07.12.1995 and was released on 18.12.1995. Considering that his sentence is modified only to the sentence already undergone. He has already deposited a fine and the same is maintained. Thus, the appeal stands disposed off with this modification.

4. This order will take effect only on depositing fine amount by accused no.2 within eight weeks from today in the lower Court.

5. With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]