

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 CRIMINAL APPEAL NO.792 OF 2022

X.Y.Z.

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. M.M. Parghane, Advocate for appellant

Mr. A.M. Phule, APP for respondent No.1

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

DATE : 31st JANUARY, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present appeal has been filed by the original informant challenging the acquittal of respondent Nos.2 and 3 by learned Sessions Judge, Nanded on 30.10.2021 in Sessions Case No.78/2015, for the offence punishable under Section 376(2)(n), 417, 366 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. M.M. Parghane for the appellant and learned APP Mr. A.M. Phule for respondent No.1.

3 With the able assistance of the learned Advocate for the appellant and learned APP for respondent No.1 we have gone through the copies of evidence and other documents produced. The informant/appellant contended at the time of lodging First Information Report that she is aged 17. Accused No.1 (present respondent No.2) is the son of her distant aunt. She had contended in her First Information Report that accused No.1 used to meet her whenever she used to go to school and he used to express love for her. He was insisting that she should marry him. They were talking with each other on mobile and the mobile was provided by him to her. According to the appellant, accused No.1 was insisting her to establish physical relations, but she had refused. But by giving threat to make her photographs, which he was having, viral on the internet and by defaming her he solicited sexual favour from the informant. It is stated that the accused No.1 had established the physical relations about three months prior to the First Information Report, when he had taken her to his friend's house at Vishnupuri as well as to his own house. It is then stated by her that accused No.1 had forcible sexual intercourse with her on 01.04.2014 in the house of accused No.2, and then accused No.2 had left her. Further, there was sexual intercourse between them at the house of accused No.1 on 08.04.2014 when informant's brother had come to the said place. He found the victim at that place and, therefore, her brother had called parents to the house of accused

No.1. A meeting was thereafter arranged for the purpose of marriage between accused No.1 and the victim. When such meeting was arranged the accused No.1 refused to perform marriage with the victim and, therefore, she lodged the report. It is also to be noted from the case of the victim that she was proceeding around 7.30 a.m. on 03.05.2014 to hospital where her sister's son was admitted, at that time, the accused No.1 intercepted and then he disclosed that he is ready to marry her. Then the maternal uncle of accused No.1 and accused No.2 promised that the marriage would be arranged between accused No.1 and the victim and then they called one auto rickshaw and she was forced to occupy a seat in auto rickshaw and it was taken to Basar in Andhra Pradesh. She found accused No.1 there along with accused No.2. But they had alighted at one place under the pretext that they would search the maternal uncle. Accused No.2 was then with the victim but she also then left from the said place. The victim then says that she introduced herself to a villager, who turned out to be a reporter, who had taken her to Basar Police Station, from where her father was contacted and brought to Nanded. Then she lodged the report with Police Station.

4 The prosecution has examined in all six witnesses to bring home the guilt of the accused. PW 4 Shankarrao is the Journalist from Basar, Dist. Naizamabad in Andhra Pradesh. He has categorically stated that on

04.05.2014 the informant met him and told that her relatives had left her there. He has made some improvement in respect of conduct of the informant in the Police Station, because in his statement under Section 161 of the Code of Criminal Procedure he has not stated that the girl was anyway frightened but in Examination-in-Chief he has told the said fact. However, his testimony as it is, is limited in respect of fact dated 04.05.2014. PW 3 is a father of the victim and the PW 1 is the victim. Other witnesses are panch to the spot panchnama, seizure of clothes and Investigating Officer. As regards the testimony of the father is concerned, he has no personal knowledge and the fact remains is that his testimony was depending on whatever was communicated to him by the victim. After his son i.e. brother of the victim had seen the victim as well as accused No.1 in compromising condition, he stated that he had given proposal for the marriage of the informant and accused No.1. But then he says that accused No.1 denied it. In fact, that was the opportunity even for the father to take the daughter in confidence and get the information as to how the relationship started and as to whether this being willingly done. Another glaring fact is that he does not say that the victim was minor on that day when her brother informed about the relationship to him and the other family members. If that would have been the fact, the father would have considered the seriousness and would have immediately lodged the report. But such action is not appearing to have

been taken.

5 Therefore, important testimony is that of the victim. Unfortunately, though she has stated about the date of birth in her testimony, there is no documents produced by the informant or prosecution. The prosecution was in fact, relying on the school leaving certificate of the victim issued by the school at Exh.33 and when it was confronted in her cross the victim has admitted that the contents thereof as true, in which her date of birth is different i.e. an year prior to whatever she has deposed in her examination-in-chief. The Trial Court has therefore rightly held that the victim had already completed 18 years of age on 14.06.2013. The learned Trial Judge has minutely scrutinized the evidence of the victim and though she was saying that accused No.1 established physical relations with her by giving threats, there was no documentary or any such material which could show that accused No.1 was putting her in fear. The cross-examination would show further that the girl was major and was in consensual relationship with accused No.1. The accused No.2 appears to have been roped in because the brother of the informant had seen the victim and accused No.1 in compromising position in the house of accused No.2. What was the impression that was given by the victim as well as accused No.1 to accused No.2 has not been disclosed at all. Therefore, her knowledge cannot

be attributed.

6 After considering the entire evidence we do not find any illegality or error committed by the learned Trial Judge in acquitting both the accused persons. There is no merit in the present appeal. It deserves to be dismissed. Accordingly, it is dismissed.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)

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