

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 1005 OF 2019

X Y Z ... **Appellant**

VERSUS

The State of Maharashtra ... **Respondent**
Through Inspector,
Tophkhana Police Station, Ahmednagar

Mr. S. K. Adkine, Advocate for the appellant,
Mr. R. V. Dasalkar, APP for respondent-State

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

DATE : **15.02.2023**

JUDGMENT (Per Abhay S. Waghware, J.):

1. The prosecutrix is questioning the judgment and order of acquittal passed by the learned Additional Sessions Judge in Special Case No. 268 of 2017 by which the accused respondents are acquitted from the charges under section 376 (2) (n), 504, 506 r/w 34 of the Indian Penal code and section 3 (1)(r) and 3(1)(w)(i) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act,.

2. Brief facts of the case leading to sessions trial are as under:

3. The appellant prosecutrix is resident of Siddharthnagar, Ahmednagar. Her husband is addicted to liquor and he does not reside with her and therefore she is required to render labour work. Accused

No.2 Dilip is in her relation whereas accused No.1 is friend of accused No.2. According to prosecutrix, in the year 2011, her relative accused no.2 introduced her to accused No.1 as Ayurvedic Doctor and that he would fix a job for her. Thereafter, accused no.1 took prosecutrix to Karad and there, in a lodge, he had forcible intercourse with her. Since thereafter repeatedly accused no.1 was visiting the house of the prosecutrix, staying there for days together and against her will and wish, had sexual intercourse with her. Therefore, finally getting fed up with the same, she approached Tophkhana Police Station, Ahmednagar and lodged complainant, on the basis of which crime was registered being Crime No. I-330 of 2016.

4. After the investigation was completed, the accused came to be arrested and case came to be committed to before the Sessions Court, who framed the charges against the accused at Exhibit 15 and on its denial, undertook trial.

After appreciating oral and documentary evidence, the learned trial Judge, vide judgment and order dated 01.03.2019, declined to accept the prosecution case and acquitted the accused.

5. It is the above order of acquittal which is questioned before us by the informant- prosecutrix.

6. Following grounds are raised before us by the learned counsel for the appellant.

That there was strong evidence in the form of testimony of prosecutrix. She had narrated the deeds at the hands of accused persons but the same was not considered by the trial Court. That, the learned trial Court also did not consider the settled position in cases involving sexual exploitation and requirement of law for bringing home the charges. Therefore, the findings and conclusion reached by the learned trial judge being erroneous and against the settled canons of justice, it is submitted that the impugned order under challenge is required to be set aside by allowing the appeal.

7. The State also opposed the impugned order by raising objection to the manner of appreciation of evidence inspite of availability of evidence and prayed to set aside the judgment and order under challenge.

8. In the above backdrop, we are re-examining, re-assessing and reevaluating the evidence before the trial court, this being first appellate fact finding court.

9. On going through the entire evidence before the trial court, it is emerging that in support of its case, the prosecution has examined only prosecutrix. It is seen from the record of the trial court that there

is no dispute regarding spot panchanama, medical certificate, C.A. report at the commencement of trial itself that is under the provisions of section 294 of the Cr.P.C. Here, admittedly, the evidence or prosecutrix is decisive. According to her, in the year 2011, accused No.2 who happened to be her maternal uncle, introduced her to accused no.1 as a Doctor and further assured that through him she could get job and therefore she started meeting accused no.1. She in her testimony, clearly stated that she started keeping relations with accused no.1. According to her, he took her to Karad and in a lodge, they resided as husband and wife. She spoke about a quarrel in the backdrop of trifle matter and therefore she approached police station. It is pertinent to note that in her testimony she does not speak about forceful sexual assault or sexual intercourse without her consent or against her wish. Even in cross, she merely answered that accused no.1 kept relations with consent. She denied that accused no.1 forced her for sexual intercourse. She also does not speak about any insult or threat being given to her. At the conclusion, she seems to have answered that as of now she is residing with accused no.1 as his wife.

10. Above is the only evidence on behalf of the prosecution. It is evidence from her testimony that she is a full grown lady and she had accompanied the accused to the lodge, had stayed there and she does not whisper about forceful sexual intercourse or any relations without

her consent. The only inference that can be drawn from the above evidence is that she is a consenting party.

Now it seems that appellant is residing with accused Dilip as his wife and therefore, in the above backdrop, she does not seem to have supported the prosecution and has given up the allegations levelled by her in her complaint.

11. The above being the only evidence on record, we do not find any merit in the appeal. Therefore, no fault can be found in the judgment and order of acquittal passed by the trial court. Resultantly, we proceed to pass the following order:

O R D E R

The appeal is dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan