

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

CRIMINAL APPEAL NO.1167 OF 2019

**AVINASH S/O. DHANSING RATHOD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Appellant : Mr. Amol R. Gaikwad
APP for Respondent No.1 - State : Mrs. V. S. Chaudhari

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

DATED : 12 JANUARY 2023

PER COURT :

1. Heard learned advocate appearing for the appellant and the learned APP for Respondent No.1.
2. Present appeal has been filed under section 372 of the Code of Criminal Procedure (Cr.PC.), challenging the acquittal of respondent Nos.2 to 8, by the learned Additional Sessions Judge, Beed on 31.07.2019 in Sessions Case No.98 of 2016 for the offences punishable under sections 364(A), 363, 343, 323, 504 read with Section 34 of the Indian Penal Code.
3. The prosecution story in nutshell appears to be that the present appellant is the original informant, who had lodged the FIR in respect of kidnapping of his daughter who was then aged 16 years. It is stated that the

said kidnapping was for ransom and she was confined in the house of accused No.7, who is the sister of the accused no.1.

4. It has been vehemently submitted on behalf of the appellant that the victim as well as her sister, who is in fact the wife of accused No.1, have not supported the prosecution story due to fear and threat that was given was that PW-2 - wife of accused No.1 will not be allowed to cohabit and therefore, there is no proper appreciation of evidence, though their statements were recorded under section 164 of Cr.P.C. and though other documents on record which were proved by the prosecution.

5. As aforesaid, accused No.1 is the son-in-law of the appellant. He has married to the elder daughter of the appellant and the victim is the younger daughter.

6. Perusal of the impugned judgment would show that there is proper appreciation of evidence. The appellant had supported the prosecution story and proved his FIR. However, the fact of delay in lodging the report has been properly considered. In spite of there being opportunities to the appellant to lodge the FIR even prior to the actual date of FIR, he failed to do so. In fact, it is the contention of the appellant that accused No.7 had given phone call on 18.05.2016, i.e. prior to the FIR and it is stated that accused

No.7 had given the message about alleged abduction/kidnapping of younger daughter of the appellant by accused No.1. When appellant himself has not explained the said delay; benefit of the same has been rightly given to the accused persons.

7. The fact remains that PW-2 - wife of accused No.1 and victim the younger daughter of the appellant have not supported the prosecution story. Rather, the circumstances were brought on record showing that there was love affair between accused No.1 and the victim even prior to the marriage between accused No.1 and the elder daughter of the appellant. No doubt, the same has been considered by the trial Judge.

8. Interesting point to be noted that even after bringing those circumstances on record, yet PW-2 - wife has not supported the prosecution story. Now, the appellant has come with the case that as there was threat that PW-2 will not be allowed to cohabit with accused No.1, she has turned hostile. This fact was never brought on record by the prosecution during the trial, i.e. before the judgment was pronounced. Under such circumstance, nothing can be done by the appellate court in that matter.

9. Though statements of the victim as well as PW-2 were recorded under section 164 of Cr.PC., it appears that it has come on record that before

the said statements were recorded, they were beaten and therefore, they had told before the Magistrate as per prosecution story. The cross-examination of these witnesses has played vital role and therefore, we do not find that the trial Judge committed any error in appreciation of evidence. No case is made out to admit the appeal. It stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)