

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.885 OF 2023

Mukesh Kumar Sanjaykumar Bind .. Appellant

Versus

The State of Maharashtra & Anr. .. Respondents

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Ms.Mallika Sharma with Mr.Tohid Shaikh i/b Ms.Anjali Patil
for the Appellant.

Mr.Y.M.Nakhwa, A.P.P. for the State/Respondent.

Mr.Kartik Garg, Appointed Advocate for the Respondent No.2.

PSI Tanwar attached to Kulgaon Police Station, present.

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CORAM: BHARATI DANGRE, J.

DATED : 11th OCTOBER, 2023

P.C:-

1. The Appellant is charge-sheeted in C.R.No.132 of 2022 registered with Kulgaon Police Station, which has invoked Sections 376(2)(n), 315, 328 of the Indian Penal Code (for short, **“the IPC”**) read with Sections 3(1)(a) (w)(i), (ii) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, **“The Atrocities Act”**). He came to be arrested on 20/08/2022 and seek his release on bail, by claiming parity with co-accused Sagar Kadam, who is released on bail, by this Court on 16/02/2023.

2. The prosecution case has surfaced through the statement of the victim, aged 21 years, working in a private company, who alleged that five other persons, whom she had named, were working with her in the company. She referred to an incident, when one day, she went to the lunch room and she was told by Accused-Sagar that she should finish her lunch and at that time, Accused Samshad entered the room and watched her, while she was having her lunch. According to the prosecutrix, some stupefying food was mixed in her food and this made her unconscious. When she gained her consciousness, she found herself in a room, which was locked and her clothes were stained with blood. When she inquired with Accused Samshad, he disclosed to her that he had committed sexual intercourse with her and also videographed the act and he would make it viral. He also told her that it is not only he alone, but the owner of the unit, Sagar and the present Appellant Mukesh, had participated in the act with him. Thereafter, it is her version that by showing her the video, on many occasions, Accused Samshad had physical intercourse with her.

When she missed her menses, she visited the doctor and upon check-up, realized that she had conceived. It is her version that Sagar, Mukesh and Samshad threatened her and she was forced to have an abortion and was taken to the sonography clinic, but it could not be performed, as the Doctor refused to perform the procedure.

The above narration resulted in registration of an F.I.R., implicating three persons as accused.

3. During the course of hearing, my attention is invited to the statement of the victim recorded before the Magistrate, where she categorically states that on one occasion, the present Appellant accompanied her to Badlapur for the purpose of carrying out procedure for abortion, but the Doctor declined to perform abortion.

In these circumstances, it is not understood as to on what basis, Section 315 of the IPC has been invoked against the present Appellant. The other Sections, which are invoked, are also attributed to Accused Samsahd and this is the specific reason why the Division Bench of this Court has granted indulgence in favour of the co-accused, Sagar Kadam, by clearly recording that the prosecutrix has attributed the role and/or act, as contemplated under Section 376 of the IPC to the principal Accused Samshad and it was observed that at the most, the Appellant can be attributed with the role of screening the evidence for offence under Section 315 of the IPC.

I see no reason why the benefit extended to co-accused Sagar, in the wake of the material in the charge-sheet, shall not be extended to the present Applicant. Hence, the following order.

: ORDER :

- (a) Criminal Appeal is allowed.
- (b) Appellant-Mukesh Kumar Sanjay Kumar Bind shall be released on bail in connection with C.R.No.132 of 2022 registered with Kulgaon Police Station on

furnishing P.R. Bond to the extent of Rs.25,000/- with one or more sureties in the like amount.

(c) After his release on bail, the Appellant shall not enter the jurisdiction of Ambernath Taluka, except for marking his presence with Kulgaon Police Station, Badlapur as specified hereinbelow.

(d) After his release on bail, the Appellant shall attend Kulgaon Police Station, on first Monday of every month between 4.00 p.m. and 5.00 p.m.

(e) The Appellant shall attend the trial on regular basis.

(f) The Appellant shall not attempt to contact the victim by any mode and shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant shall not tamper with evidence.

(g) On being released on bail, the Appellant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

4. Before I part, I record the words of appreciation for Advocate Kartik Garg, who has effectively represented the cause of Respondent No.2 before this Court. The Legal Services Authority is directed to pay legal remuneration due and payable to him, within a period of six months from today.

(SMT. BHARATI DANGRE, J.)