



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

CRIMINAL APPEAL NO. 44 OF 2020

Dyandev Trimbak Ukirde
Age: 32 years, Occu.: Labour,
R/o Zopadpatti, Karmad, Aurangabad ..APPELLANT

VERSUS

State of Maharashtra ..RESPONDENT

**WITH
CRIMINAL APPEAL NO. 845 OF 2023**

State of Maharashtra ..APPELLANT

VERSUS

Dyandev Trimbak Ukirde
Age: 32 years, Occu.: Labour,
R/o Zopadpatti, Karmad, Aurangabad ..RESPONDENT

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Mr. R.A. Jaiswal, Advocate for appellant in APEAL/44/20 and for respondent
in APEAL/845/23
Mr. S.D. Ghayal, Add.P.P. for State
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 01st MARCH, 2024**

ORAL JUDGMENT (PER : R.G. AVACHAT, J.) :

1. Both these appeals are being decided by this common judgment since they are interconnected. Criminal Appeal No. 44 of 2020 has been preferred by the appellant against his conviction for offence punishable under Section 307 of the Indian Penal Code ('I.P.C.') and consequential sentence of five years rigorous imprisonment and fine of Rs.2,000/- with default stipulation, while Criminal Appeal No. 845 of 2023 has been preferred by State for enhancement of sentence.

2. Facts giving rise to the present appeals are as under :-

First Information Report ('F.I.R.') (Exh.22) was lodged by P.W.1 – Sangita, victim herself. It is her case that she originally hail from village Bori, Dist. Burhanpur, State of Madhya Pradesh. She was previously married. The appellant was working as a mason at one construction site. She too was working as assistant / labour on the very work. Acquaintance between her and the appellant developed. They got emotionally involved as well. Since it was stated by her that she was below eighteen years of age, the appellant had come to her parental home in Madhya Pradesh and enticed her away. She started residing with the appellant as his wife. The appellant had sexual intercourse with her many a time. She even conceived. She wanted to go back to her parental place in Madhya Pradesh. She expressed the same to the appellant. The appellant, instead of allowing her to go back to her parental home, slapped and even strangled her. She became unconscious. She went to a nearby hotel, after having gained consciousness. The hotelier called the police. Police came. She lodged the F.I.R. (Exh.22) against the appellant.

3. Based on the F.I.R., crime vide C.R. No. 196 of 2016 came to be registered for offences punishable under Sections 363, 366(A), 376(2)(j) (n) and 307 of the I.P.C. and under Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO'). Scene of offence panchanama (Exh.27) was drawn. P.W.1 – Sangita (victim) was medically screened. The appellant was arrested. Upon completion of investigation the

appellant was proceeded against by filing charge-sheet before the Court constituted for offence committed under POCSO (trial Court). The trial Court framed the charge (Exh.15). The appellant pleaded not guilty. His defence was of false implication.

4. The prosecution examined eight witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence, convicted the appellant for offence punishable under Section 307 of the I.P.C. and consequently sentenced as stated above. The appellant was acquitted of rest of the offences he was charged with. This Court did not grant State leave to appeal against acquittal.

5. Learned counsel for the appellant would submit that the appellant is behind the bars for little over four and half years. Within a few months the appellant would be serving out the entire sentence. According to him, the offence is not such warranting imposing sentence of five years of imprisonment. He, therefore, urged for partly allowing the appeal.

6. Learned Add.P.P. would, on the other hand, submit that evidence of the victim indicates the appellant to have attempted to commit her murder. Fortunately, the victim survived. According to learned Add.P.P., the facts and circumstances of the case warrant enhancement in quantum of sentence.

7. Considered the submissions advanced. Perused the evidence on record.

8. P.W.1 – Sangita's (victim) evidence indicates that she hail from village Bori, Dist. Burhanpur, State of Madhya Pradesh. She was previously married. The appellant was working as a mason. Both of them would work at a common construction site. Acquaintance between them developed. It resulted into emotional relationship between the two. The appellant had even come to her parental house. He enticed her to join him. She, therefore, started residing with him. She even conceived.

9. It is further in her evidence that she wanted to go back to her parental house in State of Madhya Pradesh. She expressed her mind to the appellant. He, instead of allowing her to go back, slapped her and even strangled. She became unconscious. After having gained consciousness, she found herself in a hotel. The hotelier made a phone call to the police. The police arrived. She lodged the F.I.R. (Exh.22).

10. P.W.1 – Sangita (victim) was subjected to a searching cross-examination. She admitted to have been involved in emotional relationship with the appellant. She even intended to marry the appellant. The appellant had stayed at her parental house for two-three days. Both of them came back to Aurangabad and started living together at Karmad. Even there was no bickering between the two. She, however stated that after having gained consciousness, she herself went to a nearby hotel. Although she admitted

that the police had not read over the contents of the report, she stated that the police recorded her statement as per her narration. She was even suggested in her cross-examination that except the report in question (Exh.22), she did not lodge any other report against the appellant.

11. The aforesaid suggestion in the cross-examination of P.W.1 goes a long way to infer that the victim had to go a nearby hotel. She informed the hotelier, who in turn, called the police. She then lodged the F.I.R. (Ex.22).

12. P.W. 4 – Dr. Vikram testified that he examined the victim on 26th October, 2016. She was referred by police for medical examination. He issued Medical Legal Certificate (Exh.41) referring following injuries on her person :-

“Abrasion – around the neck, imprint abrasion over the antero lateral aspect of neck horizontally, injury was 18 x 1.5 cm., radish in colour, age of injury was less than 24 hours, weapon used by hard and blunt object and simple in nature,

Blunt Trauma – over abdomen, weapon by hard and blunt object

Abrasion – over right elbow, 3 cm., horizontally, injury was less than 24 hours, weapon used by hard and blunt object, injury was simple in nature,

Abrasion – over right iliac region, size 7 cm x 5 cm, simple in nature

Abrasion – over left buttock, size 9 cm x 3 cm, simple in nature”

13. True, the victim though gave P.W.4 – Dr. Vikram history of assault, did not name the appellant. He was even suggests that injuries on

the person of victim may even be possible by accidental strangulation. He, however categorically denied that such injuries could be caused in an attempt to commit suicide by strangulation.

14. P.W.6 – Ishwar was a hotelier. He would run hotel, “Jai Bhavani” near village Karmad. His evidence indicates that he was at his hotel in the evening on 25th October, 2016. According to him, a girl in the age group of 15-16 years came. Clothes on her person were torn. She was frightened. There was injury on her neck. He served her water. She was speaking in *hindi*. He informed the police station. The police arrived and took her with them.

15. Appreciation of the aforesaid evidence would indicate that the victim was staying with the appellant in live-in or marriage-like relationship. The victim was from village Bori, Dist. Burhanpur, State of Madhya Pradesh. She wanted to go back to her parental place. She expressed her mind to the appellant. The appellant, thereupon slapped her and even strangled. The F.I.R. (Exh.22) was lodged within hours of the incident. She rushed to a nearby hotel. Her evidence gets reinforced by evidence of the hotelier (P.W.6). Moreover, medical examination report of the victim (Exh.41) further reinforces her case. We, therefore, do not find the trial Court to have committed any error in convicting the appellant for the offence punishable under Section 307 of the I.P.C.

16. Considering the nature of injuries suffered by the victim and the fact that the appellant has been behind the bars for little over four years, we do not find it to be a fit case to allow State's appeal for enhancement of sentence. In our view, ends of justice would be met if the appellant is sentenced to suffer imprisonment for the period which he has already undergone. In the result, we pass the following order :-

ORDER

(I) Criminal Appeal No. 44 of 2020 is partly allowed.

(II) The judgment and order dated 16th December, 2019 passed by Special Judge (POCSO), Aurangabd in Special Case Child Protection No. 12 of 2017 thereby convicting the appellant for the offence punishable under Sections 307 of the Indian Penal Code is hereby confirmed. However, the sentence is reduced to the extent of the period, which the appellant has already undergone.

(III) The appellant be released forthwith, if not required in any other case.

(IV) Criminal Appeal No. 845 of 2023 filed by State for enhancement of sentence is hereby dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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