



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 150 OF 2018

The State of Maharashtra,
Through P.S.O. Topkhana Police Station,
Ahmednagar.

... Applicant
[Ori. Complainant]

Versus

1. Kiran Suresh Shinde,
Age 24 years,
R/o Police Head Quarter,
Sarjepura, Ahmednagar.
2. Vinod @ Bala Raghu Kamble,
Age 22 years,
R/o Municipal Colony,
Nalegaon, Ahmednagar.

... Respondent
[Ori. Accused Nos. 1 and 3]

.....

Mr. S. M. Ganachari, APP for the Appellant-State.
Mr. Shaikh Mazhar A. Jahagirdar, Advocate for Respondent Nos. 1
and 2.

.....

WITH
APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 33 OF 2018

The State of Maharashtra,
Through P.S.O., Topkhana Police Station,
Ahmednagar.

... Applicant

Versus

1. Kiran Suresh Shinde,
Age 24 years,
2. Akash Rajendra Wandhekar,
Age 19 years
3. Vinod @ Bala Raghu Kamble,
Age 22 years,

Nos. 1 and 2 R/o Police Head Quarter,
Sarjepura, Ahmednagar.

No. 3 R/o Municipal Colony,
Nalegaon, Ahmednagar.

... Respondents
[Orig. Accused]

.....

Mr. S. M. Ganachari, APP for the Applicant-State.

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for Respondent Nos. 1 to 3.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 05.02.2024

Pronounced on : 09.02.2024

JUDGMENT :

1. By way of above mentioned proceedings, State is seeking leave to file appeal questioning the acquittal of accused no.2 from offence under Sections 354-D, 452 r/w 34 of the Indian Penal Code [IPC] as well as acquittal of all accused from offence under Sections 11, 12 and 16 r/w 17 of the Protection of Children from Sexual Offences Act, 2012 [POCSO Act] and also seeking enhancement of punishment awarded to accused nos. 1 and 3.

2. Learned APP pointed out that prosecution was launched by Topkhana Police Station against three accused persons i.e. namely, Kiran Shinde, Akash Wandhekar and Vinod Kamble i.e. for offences

punishable under Sections 354-D(1)(i)(2) and Section 452 r/w 34 of IPC and Section 11 r/w 12, Section 16 r/w 17 of the POCSO Act. He pointed out that victim was a minor i.e. below 18 years of age and was taking education in 12th standard. Main accused i.e. accused no.1 was following, stalking and intercepting her way with intention to develop relations with her. Accused nos. 2 and 3 also accompanied him in such attempts. That, finally on 18.12.2015, accused persons entered her class while she was there and all accused persons approached her. Accused no.1 expressed his liking, sought time to talk and even sought her mobile number. Therefore, the girl got frightened and she left the class. Immediately her friends came. They were also informed and finally, college authorities were informed, who called police. Accused were apprehended and on complaint of victim, crime was registered bearing no. 381/2015. It was investigated and finally accused persons were chargesheeted and tried before Additional Sessions Judge.

3. Learned APP further submitted that as many as seven witnesses were examined by prosecution. Complainant-victim and her friend were examined as PW1 and PW3 respectively. Professor of the College who had apprehended accused no.2, has also deposed in the capacity of PW2. Thus, involvement of all three accused was brought home.

Age of victim was also established. It is pointed out that offence under Section 354-D IPC as well as under POCSO Act were made out. It is pointed out that, however, learned trial Judge has held only accused nos. 1 and 3 guilty and moreover, in spite of holding they guilty, has given them benefit of Section 4 of the Probation of Offenders Act, 1958, whereas accused no.2 has been completely given clean chit and therefore above proceedings.

4. In answer to above, learned counsel for the accused would submit that there is false implication. That there is no evidence about sexual harassment by following complainant-victim or by any conversation with her. It is pointed out that still guilt has been recorded as against accused nos. 1 and 3. However, it is pointed out that learned trial court, after considering the circumstances in which the incident took place, the nature of accusations, age of accused and their track record, in stead of sentencing them, has given them benefit of Section 4 of the Probation of Offenders Act, 1958 and hence it is submitted that there is no error on the part of the learned trial Judge in extending such benefit. He would further submit that there was no evidence as against accused no.2 and so he is rightly acquitted. Hence both, appeal as well as leave application, are sought to be dismissed and refused respectively.

5. Having heard both sides and on going through the papers before the trial court as well as the judgment under challenge, it seems that Topkhana Police have registered crime for above offences on complaint by victim. The sum and substance of her complaint is that she was staying in hostel and was taking education in 12th standard. According to her, since two to three months prior to the incident dated 18.12.2015, accused no.1 used to stand outside her hostel and follow her whenever she went to college. He used to seek permission to talk with her and even said that he liked her. On 18.12.2015 while she was in the class room, she alleged that, accused nos. 1 and 3 came there and drove other students from the class room and thereafter accused no.1 approached her saying that he wants to talk and that he likes her. He also sought her mobile number. Getting frightened, she immediately went out of the class and thereafter college authorities were informed, who summoned police. Thereafter, she lodged complaint Exhibit 15.

6. On re-appreciating the evidence, it is emerging that, amongst 7 witnesses, whose oral testimonies are adduced by prosecution, crucial evidence is of victim PW1, her friend PW3 as well as PW2 Professor of the college to whom the incident was immediately reported and

subsequently accused seem to be apprehended in the very college premises and information was passed to police.

7. On going through the substantive evidence of victim PW1, her friend PW3 and Professor PW2, they are found to be consistent. PW1 while attending class, after the episode with her, rushed out, out of fright and while she was crying, she has reported occurrence to her friend. Friend too has supported complainant's version. In spite of both witnesses being cross examined, nothing adverse has been brought. In fact, there is no effective cross on actual occurrence. PW2 has also deposed about hearing the victim, catching hold of accused and summoning police. On evaluation of even his testimony, there is nothing to disbelieve his testimony. Consequently, these three crucial witnesses have remained steadfast while facing cross. There is no reason to doubt their versions. Evidence of victim inspires confidence. She is shown to be below 18 years of age. Therefore, finding necessary ingredients in the testimonies of above witnesses, there is no hesitation to hold that the charge for which guilt has been established are cogently proved.

8. Learned trial Judge has appreciated the evidence of victim in para 16. Learned trial Judge has also discussed the answers given by

victim in cross in para 17. Taking the same into account and even the statement of victim under Section 164 of the Code of Criminal Procedure, learned trial Judge has held that evidence of victim has remained intact and nothing adverse has been brought by the defence. On careful scrutiny of evidence, learned trial Judge has held that victim is 17 years of age. There was evidence about she being followed, harassed and therefore finding accused nos. 1 and 3 alone, approaching her on 18.12.2015, they seem to be held guilty of offence under Sections 354-D and 452 of IPC. Cross of victim has also been taken into account wherein she has admitted that accused nos. 2 and 3 had not uttered anything. Accused no.2 not being attributed any role and there being no material to show his accompaniment with accused no.1 at any time for commission of this offence, learned trial Judge has acquitted him. However, holding accused no.3 to be accompanying main accused no.1, he is also held guilty. After finding both accused nos. 1 and 3 guilty, they are heard on sentence and thereafter learned trial Judge has extended benefit of probation by making clear observations and assigning reasons in para 38 as to why they are entitled for said benefit.

9. Therefore, on going through the available papers and judgment under challenge, in the considered opinion of this court, guilt has

been rightly fastened against accused no.1. Though there is nothing as regards to accused no.3, his mere role of accompanying accused no.1 while approaching the girl seems to be the ground for roping him also. However, accused no. 3 has not distinctly preferred appeal against the said conviction. Be it so. As there was no material relating accused no.2, even this court is of the considered opinion that no role being played by accused no.2, more particularly in view of admission given by victim herself regarding his role, no fault can be found in the appreciation by learned trial court for acquitting him. No fruitful purpose would be served in granting leave to the State to file appeal against his acquittal.

10. Now the question that remains is that whether for offence under Section 354-D, 452 r/w 34 of IPC, there is insufficient sentence.

11. This court has carefully gone through the reasons assigned by learned trial Judge in the judgment, more particularly para 38. It transpires that accused were 24 years and 22 years of age respectively. Taking the nature of accusations and absence of antecedents, benefit available under Section 4 of the Probation of Offenders Act, 1958 seems to have been extended to them. Even this

Court endorses the view taken by the trial Judge. Therefore, no fault can be found in extending the benefit. It was a case deserving such benefit in view of their young age and there being no bad track record. Resultantly, this court also does not find any infirmity in the said order. No case being made out for enhancement as well, appeal to that extent also requires to be dismissed. Accordingly, I proceed to pass the following order :

ORDER

- I. Criminal Appeal No. 150 of 2018 is hereby dismissed.
- II. Application for Leave to Appeal by State No. 33 of 2018 stands rejected.

[ABHAY S. WAGHWASE, J.]