



CORRECTED ORDER VIDE SPEAKING TO MINUTES ORDER DT. 11th OCTOBER, 2024

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

CRIMINAL APPEAL NO. 700 OF 2024

XYZ

..APPELLANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. K.T. Shirurkar, Advocate for appellant

Mr. S.J. Salgare, A.P.P. for respondent no.1 - State

....

CORAM : R.G. AVACHAT AND

NEERAJ P. DHOTE, JJ

DATE : 04th SEPTEMBER, 2024

PER COURT :

1. This is an appeal filed by maternal uncle of the victim (original informant) against the order of acquittal passed by Additional Sessions Judge, Ahmedpur in Special Case No. 12 of 2021. The charge-sheet was filed for the offences punishable under Sections 363 and 376 of the Indian Penal Code, under Sections 4 and 6 of Protection of Children from Sexual Offences Act and under Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. It is submitted by learned counsel for the appellant that though the victim has not deposed anything in support of the charge, there are no observation made by the trial Court regarding efforts taken to secure the presence of Respondent No.2 – accused before the trial Court. He further

submits that there are no observations regarding personal bond of the accused.

3. The learned trial Court in the impugned judgment and order has made the following observation :-

“6. Charge is framed against accused under sec. 366 of the Indian Penal Code in regard to the kidnapping of victim age about 17 years. Further accused has committed rape on victim, penetrative sexual assault, aggravated penetrative assault. So, charges are framed for the offence punishable under section 376 of the Indian Penal Code as well as sec. 4 and 6 of the POCSO Act. Further, charge is framed under sec. 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, being victim belongs to scheduled caste.

7. On perusal of entire evidence referred by prosecution on record, victim has not made any whisper about the commission of rape or penetrative sexual assault on her. Further, she has not made any whisper to infer that accused known victim belongs to scheduled caste. Thus there is no iota of evidence to constitute the offence punishable under sec. 376 of the Indian Penal Code as well as sec. 4 and 6 of the POCSO Act. When we referred evidence of victim as a whole as well as statement recorded by Judicial Magistrate under section 164 of the Cr.P.C. (Exh.31) indicates that the victim child age about 17 years herself on her own accord visited the place of accused at Sinnar District Nashik. Even accused was not willing to meet her when she reached at Sinnar, Bus-stand, when victim was waiting. So accused got ready to meet her. Further statement of victim recorded by Judicial Magistrate under section 164 of the Cr.P.C. indicates that “दिपक याने माझ्यासोबत कसल्याही प्रकारचे गैरवर्तन केले नाही. तसेच, त्याने मला पळवून देखील नेले नाही.”. Thus, there is no iota of evidence on record to the constitution of offence of kidnapping. In short, evidence on record does not establish guilt of accused for the charges levelled against him.

8. *In the light of above discussion, there is no sufficient evidence on record to establish charges against accused for the offence punishable under section 363, 376 of the Indian Penal Code as well as sec. 4 and 6 of the POCSO Act and Sec.3(2)(va) of the Prevention of Atrocities At. So, accused Deepak Vinodkumar Nayak, R/o Kanpur (State) Uttar Pradesh is acquitted for the said offence.”*

4. In view of the above observations, we do not find any merit in the submissions made by learned counsel for the appellant. The appellant is the maternal uncle and not the victim. Hence, the order :-

Criminal appeal is dismissed. Record and proceedings be sent back to the trial Court.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD