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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.1295 OF 2019

XYZ

APPELLANT

VERSUS

The State of Maharashtra and Another

RESPONDENTS

.....
Mr. Anand P. Bhandari, Advocate for the appellant
Mr. R. D. Raut, APP for respondent - State
Mr. Sanjay B. Dushing, Advocate for respondent No.2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th OCTOBER, 2024

ORDER :

1. By this appeal, filed under section 372 of the Criminal Procedure Code, the appellant - victim challenges judgment and order of acquittal dated 17th August, 2019, passed by learned Judge Special Court (POCSO), Ahmednagar in Special Case No. 259 of 2018.

2. Respondent No. 2 - accused was charged for offence punishable under sections 354-A, 452, 363, 504, 506 of the Indian Penal Code and under section 7 read with section 8 of the Protection of Children From Sexual Offences Act.

3. It is alleged by the prosecution that on 27th May, 2018, at about 5 to 5.15 p.m. door of their house was knocked by

somebody and it was opened by the victim. The accused, armed with knife, entered their house and started abusing. Mother and sister of the victim came from their respective rooms. At that time, accused caught hold of hand of sister of the victim and outraged her modesty. Accused threatened that even if his sister lodges number of reports in police station, he will take her with him one day. The accused also threatened the victim by showing knife and forcibly took him on moped. Accused then threatened the victim that his sister should withdraw the complaint lodged against him, otherwise, he will kill his family. Accused kissed the victim and committed sexual assault on him, by touching his private part. Thereafter, the victim rescued himself and came back. The incident was informed to the father of the victim on phone call, as his father was out of station. After his father came home, report was lodged in the police station.

4. In support of its case, prosecution has examined 6 witnesses. Trial Court, after recording the evidence, acquitted the accused. Hence, the appeal.

5. Heard learned advocate for appellant – victim, learned APP for the State and learned advocate for respondent No.2 – accused. Perused the notes of evidence placed on record by the learned advocate for appellant.

6. Learned advocate for appellant assailed the impugned judgment and order of acquittal, by submitting that the Trial Court has based its judgment of acquittal on presumption, surmises and conjectures. Direct evidence brought on record by the prosecution is not properly appreciated by the Trial Court. There is sufficient material on record to warrant conviction of the accused. The impugned judgment and order is, therefore, liable to be quashed and set aside and the accused is required to be convicted.

7. Learned advocate for respondent No. 2- accused, on the other hand, supported the impugned judgment and order, submitting that the prosecution has failed to bring on record cogent evidence to sustain the charge.

8. Learned APP submits that appropriate orders may be passed.

9. Perusal of the record indicates that there is delay in lodging the FIR. Though footage of CCTV in respect of the alleged incident could have been brought on record by the prosecution, the same is not produced. It is a matter of record that prior to this incident, sister of the victim had lodged FIR against the accused for offence punishable under section 354-D, 327, 504,

506 read with 34 of the Indian Penal Code and under sections 11 and 12 of the POCSO Act. Hence, there is a reason for false implication of the accused in the present crime. Though the alleged kidnapping has taken place during the day time, from a thickly populated locality, not a single independent witness is examined by the prosecution in support of its case. The victim himself has admitted that he did not raise any hue and cry while he was being kidnapped. These aspects render the prosecution case doubtful.

10. Trial Court, after assessing evidence on record, has come to a conclusion that the prosecution has failed to prove the charge and it is not safe to rely upon the testimonies of PW-3 to PW-5, in absence of cogent, credible and convincing evidence, there is no evidence to prove guilt of the accused.

11. The Trial Court has passed a well reasoned order and has rightly acquitted the accused. The view taken by the Trial Court is a possible view. No case is made out by the appellant to interfere. Appeal being devoid of merit, is dismissed.

**[NITIN B. SURYAWANSHI]
JUDGE**

