



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 11 OF 2021
WITH
INTERIM APPLICATION NO. 43 OF 2021**

Rahul Ramchandra Satamkar ..Appellant
VS.
The State of Maharashtra and anr. ..Respondents

Mr. Unmesh A. Breed a/w Ms. Jovita Pereira, for the Appellant.
Adv. Simin Patil i/b Kunjal Patil, for Respondent No.2.
Mr. S. H. Yadav, APP for the State.
PSI- Mr. Deepak J. Mhashilkar, Revdanda police station present.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 02, 2024

JUDGMENT :

1. Heard learned counsel for the appellant, learned APP and learned counsel for the respondent no.2.
2. This is an appeal filed by the appellant to quash and set aside the impugned judgment and order dated 01/12/2020 passed by the trial Court convicting the appellant in connection with the C.R. No. 3 of 2015 registered with the Revdanda police station for the offences punishable under sections 354-A, 376(2)(i)(n), 506 of the

Indian Penal Code, 1860 (“IPC”, for short) and under sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (hereafter referred to as “POCSO Act”).

3. On 17/01/2015, the victim, then minor girl of 15 years of age was brought before the Revdanda police station alleging that the appellant committed an offence which is punishable under section 354-A and 506 of IPC. In the supplementary statement recorded on 05/02/2015, it was alleged that on 14/01/2015, the appellant who was under the influence of liquor threatened the victim with a knife and raped her. In the evidence before the trial Court, the victim had stated that her parents did not approve of her friendship with the accused and that they scolded her on that count several times.

4. The trial Court held the appellant guilty for the offence punishable under sections 354-A and 506 of IPC. The appellant was acquitted for the offence punishable under section 376(2)(i)(n) of IPC and under sections 3 and 4 of POCSO.

5. The victim is present in the Court today. The victim is identified by the advocate representing her. An affidavit is

filed by the victim which is taken on record and marked 'X'
stating thus:

" I personally know Mr. Rahul Ramchandra Satamkar. He is friend of mine. I know his since last many years. On 29.01.2021 we got married. Now, Mr. Rahul Ramchandra Satamkar is my Husband.

2. I say that, on 17.10.2015 I filed a Complaint with Revdanda Police Station against Mr. Rahul Ramchandra Satamkar. The case was filed with respect to the incident took place on 14.01.2015. On that day the Complaint filed under section 354-A and 506 of Indian Penal Code against Mr. Rahul Ramchandra Satamkar. That on 05.02.2015 my supplementary statement was recorded, on the basis of allegations made in the said statement, the Complaint under Section 376(2)(i)(n) of IPC and Sec. 3 r/w. 4 of the POCSO Act, 2012 was filed and was registered as Cr. No. 03/2015 and case was registered as Special (POCSO) Case No. 13 of 2020.

3. I say that, after filing of the said Complaint Mr. Rahul Ramchandra Satamkar was twice arrested and released on bail. First, he was arrested on two occasions and subsequently released on bail.

4. I say that, on or around September, 2020 I have shifted to Mr. Rahul Ramchandra Satamkar's place with my own free will. I say that since then I am staying with Mr. Rahul Ramchandra Satamkar and I am very happy.

5. I say that, in the said matter, the entire trial was conducted and I was examined before the Hon'ble Sessions Court under the said Special (POCSO) Case No. 13 of 2020.

6. I say that, on 01.12.202 the Hon'ble Sessions Judge passed final order under the Special (POCSO) Case No. 13 of 2020 and acquitted Mr. Rahul Ramchandra Satamkar under section 376(2)(i)(n) of IPC and section 3 and 4 of

Protection of Children from Sexual Offenses Act, 2012 and convicted him under Section 354A and 506 of IPC.

7. I say that, on 10.12.2020 I along with Mr. Rahul Ramchandra Satamkar filed an Application for intention to marry with the Registrar Marriage at Raigad. I say that, on 29.01.2021 we register our marriage with Registrar Marriage at Raigad. Now we are legally wedded couple and staying together. A copy of our marriage registration certificate is annexed as Annexure "A".

8. I say that, I am legally married to Mr. Rahul Ramchandra Satamkar and residing with him and his family. I say that, I do not wish to continue the above said Complaint against Mr. Rahul Ramchandra Satamkar."

6. After the order of the trial Court convicting the appellant, learned counsel for the parties submitted that the appellant and the victim married on 29/01/2021. The Marriage Registration Certificate is produced on record.

7. It is hence submitted that the complainant does not wish to continue with the prosecution and the appellant be acquitted. For the offence punishable under section 354A of IPC, the appellant was sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs.10,000/-, in default of payment of fine, to undergo simple imprisonment for further 1 month. For the offence punishable under section 506 of IPC, the appellant was sentenced to suffer

rigorous imprisonment for 1 year and to pay fine of Rs.5,000/-, in default of payment of fine, to undergo simple imprisonment for further 1 month.

8. The appellant is acquitted for the offence punishable under sections 3 and 4 of the POCSO as well as sections 376(2)(i)(n) of the IPC. The appellant married the victim on 29/01/2021. They are residing together since then. The victim is present in the Court through her counsel. It is submitted that she is residing with the appellant who is taking good care of her. She states that the affidavit is filed voluntarily without any pressure exerted on her.

9. Learned APP submitted that the offence against the appellant is not compoundable. It is submitted that merely because the matter is compromised between the appellant and the prosecutrix and they are now married is not sufficient to compound the offence and acquit the appellant. It is submitted that even on merits, the trial Court has for cogent reasons and upon appreciation of evidence convicted the appellant. According to learned APP, the impugned judgment and order does not warrant interference.

10. Instead of addressing the question whether the appellant should be acquitted on the basis of the compromise entered into between the parties on account of their marriage, keeping this question open, I proceed to consider the appeal on merits.

11. I have perused the evidence of the victim. As per the FIR Exhibit 35, the victim stated that the appellant outraged the modesty of the prosecutrix on the date of the incident i.e. 14/01/2015. As observed by the trial Court the FIR Exhibit 35 is silent on the allegations of rape on the date of the incident i.e. 14/01/2015 or in the past. The FIR was registered only under section 354A and 506 of IPC. On 05/02/2015 when the victim's supplementary statement was recorded, the offence of rape came to be added. The trial Court observed that no plausible reason was given by the victim why she did not disclose the incident of rape to her parents immediately. It is further observed by the trial Court that though the victim has given history to the Doctor about the sexual intercourse in the year 2014 twice and once on the day of the incident, none of these incidents are proved nor are they corroborated by the medical evidence

since medical certificate is not on record. Moreover, the trial Court has observed that the person whose name the victim had stated where the accused had sexual intercourse with her in their house, does not match with the spot panchanama since the names are different. It is therefore that the trial Court held the offence of rape as alleged is not proved. It is pertinent to mention that there is delay of 3 days in lodging the FIR. The victim deposed that she was unconscious for 3 days on account of the trauma suffered. This explanation does not sound convincing. The victim has stated that her parents were against her friendship with the appellant. In my opinion, in the facts of the present case, the delay in registering the FIR creates a doubt about the version of the prosecutrix. The delay will have to be regarded as fatal to the prosecution. The possibility that her parents instigated the victim to lodge the FIR cannot be ruled out. In the facts of the present case as they did not approve of her friendship and often scolded her, the version of the victim cannot be regarded as free from doubt. I am therefore inclined to hold the charge against the appellant as not proved on the principle of benefit of doubt. The

appeal is accordingly allowed. Hence the following order.

ORDER

(i) The appeal is allowed.

(ii) That part of the impugned judgment and order dated 01/12/2020 passed by the trial Court convicting the appellant is quashed and set aside. The appellant is acquitted.

(iii) The fine amount be refunded to the appellant.

(iv) The bail bonds stand cancelled.

11. The appeal is disposed of in the above terms. Interim application also stands disposed of.

(M. S. KARNIK, J.)