

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.210 OF 2024

XYZ

.. Applicant

Versus

Ganesh Kamlakar Godase

.. Respondent

...

Mr.Ravindra S. Pachundkar for the Applicant.

Mr.D.J.Haldankar, A.P.P. for the State/Respondent.

...

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

DATED : 28th NOVEMBER, 2024

P.C:-

1. In the Appeal filed by the Complainant raising a challenge to the judgment of acquittal delivered by the Additional Sessions Judge, Karad in Sessions Case No.35 of 2019, an Application is filed seeking leave to Appeal.

2. We heard the learned counsel for the Applicant and the learned A.P.P. for the State i.e. Respondent No.5 and perused the impugned judgment dated 31/07/2024, acquitting all the four accused persons of the charge framed under Sections 376, 376-D, 420 read with Section 34 of the Indian Penal Code (for short, “IPC”).

In support of the case, the prosecution has relied upon the evidence of six witnesses and also the documentary evidence.

3. The prosecution case was instituted at the instance of the prosecutrix (the present Applicant), who alleged that in the month of October 2016, while she was travelling, she got acquainted with Accused No.1 and he assured her that he will solve all her problems. Thereafter, he called the prosecutrix at Karad for solving her problems and was taken to a flat, when he committed forcible sexual assault on her.

As per the version of the prosecutrix, he took Rs.60,000/- by way of cheques to solve her problem and even further, he extracted a sum of Rs.31,000/-, Rs.51,000/- and Rs.21,000/- for the purpose of performing a pooja and also took further sum of Rs.50,000/-, which he expended for meeting his personal expenses. It is her further allegation that he forced her to pay a sum of Rs.2,00,000/- by assuring that her son shall be admitted in Sainik School at Satara. Further, a sum of Rs.50,000/- was also demanded for celebrating his son's birthday and he forced the prosecutrix to sell her ornaments of 40 tolas.

It is this accused, who is alleged to have introduced her to another Accused and some money was parted even to him and it is her allegation that she paid cash amount of Rs.4,30,000/- to Accused No.2-Sampatrao. It is her allegation that Accused No.1 and Accused-Akash Sawant committed sexual assault on her in the year 2016. It is further alleged by her that Accused-Anil Thorat took her to one hotel towards Kolhapur Road and indulged in forcible sex.

In respect to the aforesaid incident, she registered a complaint only in the year 2018 and to be precise on 25/10/2018, which resulted in registration of FIR against four

persons, who on completion of investigation, faced the charge under Sections 376, 376-D and 420 of IPC. The Accused persons pleaded not guilty and were tried.

4. In the trial, the prosecutrix entered into witness box as PW 1 and deposed that it is Accused No.1, who assured her that he will solve all her problems and this included getting her daughter back to her, who had performed court marriage. In the examination-in-chief, she informed that when she went to visit him, they had long discussion about her problems and she went to his flat, when he sexually assaulted her and the act was against her will.

In addition, she has given narration about the money transaction with the accused persons and the repeated sexual assault, which she faced at their instance and how helpless she had become. In the cross-examination, she admitted that she was a married women and her husband was serving in Army, but he went missing since 2007 and she had one son, aged 20 years and one daughter, aged 26 years.

In the cross-examination, she categorically admitted that she did not remember as to how many times she came to Karad to meet Accused No.1 and she also admitted that she had not given complaint against any of the accused persons, when they had sexual intercourse with her forcibly.

She admit that she is not an income tax payee and in her exhaustive cross-examination, she is unable to provide explanation about the source of money, which according to her, she had given to the accused persons. To a specific question

put to her, whether she had made complaint against Accused No.1 about the alleged sexual assault, she has responded by saying that she went to give complaint, but was convinced not to do so and, resultantly, no complaint was filed.

5. These admissions by the prosecution in the cross-examination are specifically relied upon by the learned Judge in paragraph 25 of the Judgment, when he record that she had clearly admitted in the cross-examination that at the time of sexual assault, she never raised any resistance and never lodged any complaint soon after the incident of sexual assault. Apparently, it is seen that for the incident of the year 2016, for the first time in the year 2018, she approached the police station.

Construing that this admission plays vital role and goes to the root of the case, the trial Judge has posed a question, as to what circumstances prevented her to lodge the complaint at the relevant time and why she did not seek help of the neighbours.

On the contrary, appreciating her evidence, a conclusion is derived that she herself joined the company of the accused in his house as well as in various Lodges on her own accord and that clearly establish that the ingredient of force/coercion in the sexual relationship is missing.

The pertinent observation of the learned Judge in paragraph 26 resulted in acquittal of the accused persons and we reproduce the same :-

“26. The very material fact which cannot be side lined that, the prosecutrix is fully grown up lady having maturity to understand the nature and consequences of the act to which she is consented too. In this case, it is not once, twice or thrice but, from October 2016 till lodging of complaint she surrendered herself to physical relationship with accused. Therefore, it cannot be said that, the consent of prosecutrix was obtained by force. Considering the length of relationship and the acts complained in such period takes away the rigor of ingredients of Section 375 of the IPC. In present case the consensual physical relationship between the parties would not constitute the offence under Section 376 of the IPC. Therefore, I am constrained to answer all points accordingly and pass the following order.”

6. On appreciating the evidence, the learned Judge has derived a conclusion that the charge against the accused persons under Section 376, 376-D and 420 of IPC is not proved and as a result, the accused persons stood acquitted.

Accepting the verdict delivered by the trial Court, the State has chosen not to file Appeal against the acquittal.

7. In the wake of the above, we are of the opinion that the learned Judge has rightly appreciated the evidence that has surfaced before him through the evidence and, particularly, focusing the attention upon the admissions given by the prosecutrix herself, we do not find any ground to interfere in impugned judgment, acquitting the Accused.

Resultantly, the Application is dismissed, by rejecting the leave, as prayed for.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)