



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.415 OF 2022

APPELLANT : XYZ (Major Victim) Crime No :
620/2019 Police Station Chikhali,
District Buldhana.

..VERSUS..

RESPONDENTS : 1 State of Maharashtra, through PSO
Chikhali, District Buldhana

2 Mangal Ashok Nakwal,
Age about 29 years, Occ: Sweeper
R/o Ramdev Baba Nagar, Chikhali,
Tq. Chikhali District Buldhana.

Mr M. N. Ali, Advocate for Appellant.
Mr A. M. Ghogare, APP for Respondent/State.
Mr A. S. Dhore, Advocate for Respondent No.2..

CORAM : **SMT. M. S. JAWALKAR AND**
M. W. CHANDWANI, JJ.

DATE : **29th NOVEMBER, 2024.**

ORAL JUDGMENT (PER : M. W. CHANDWANI, J.)

1. Heard.

2. This is an appeal filed by the appellant/victim
under Section 372 of the Code of Criminal Procedure
assailing the judgment and order passed by the learned
Additional Sessions Judge, Buldana, in Sessions Trial No.15

of 2020, thereby acquitting respondent No.2 (the original accused) from the charges of offences punishable under Sections 376(2), 376, 323, 504 and 506 of the Indian Penal Code, 1860.

3. The prosecution case before the Trial Court in a nut shell is that, the appellant is a married woman having a son and a daughter. She is residing separately from her husband and children. A divorce petition was pending between the appellant and her husband at Yavatmal Court. In the month of June 2018, after underwent an operation, the appellant had been to the house of her elder sister to take rest. Respondent No.2, who is a relative of the husband of the appellant's elder sister used to visit the house of her elder sister. Having developed an intimate relationship with the victim, respondent No.2 expressed his desire to marry her and also urged her to engage in sexual intercourse. There was an exchange of messages between them *via* WhatsApp and Facebook. It is the specific case of the victim that on 22.10.2018, respondent No.2 made a phone call to

the victim's cellphone and asked her to come to the backside of his house. Therefore, the victim, accompanied by PW-2, the daughter of her elder sister, went to the backside of the house of respondent No.2. Respondent No.2 asked her to get into a white van, while her niece - the daughter of her elder sister was asked to go back home. Respondent No.2 took the appellant to a pre-arranged location called "Theka" and forcibly committed sexual intercourse on the false pretext of marrying her. Thereafter, physical relations continued for a further period of three months.

4. On 20.01.2019, when the victim asked respondent No.2 to perform marriage with her, he refused and abused her in filthy language. Thereafter, on 27.09.2019, the appellant with the help of her parents lodged a complaint with Chikhali Police Station against respondent No.2. Consequently, the aforesaid offences came to be registered. The investigation culminated in filing of the charge-sheet. The Trial Court recorded the evidence of seven witnesses and on conclusion of trial, it recorded the

findings of acquittal by the impugned judgment and order. Feeling aggrieved with the impugned judgment and order, this appeal came to be filed.

5. Mr Ali, learned counsel appearing for the appellant/victim vehemently submitted that in spite of the appellant's testimony reciting the forceful sexual intercourse coupled with the promise of marriage, the Trial Court failed to consider the legal position enumerated under Section 375 of the IPC. The version of the appellant is corroborated by PW-2 with regard to the incident dated 22.10.2018. According to him, there is consistency in the version of the witnesses and there was no reason for the Trial Court to take a different view. According to him, the appellant was in the hope of marriage that was refused by respondent No.2. Therefore, he seeks to set aside the findings of acquittal by allowing the appeal and urged that the respondent No.2 be convicted as per law.

6. Per contra, Mr Dhore, learned counsel appearing for respondent No.2 vehemently submitted that the victim

kept mum after the alleged incident dated 22.10.2018 for about a year and there is a delay in filing of the FIR. The appellant is already a married woman and she is a mother of two children. The earlier marriage was still in subsistence, therefore, there is no reason for respondent No.2 to make the promise of marriage. Hence, he sought dismissal of the appeal.

7. Having heard the learned counsel for the respective parties, we have gone through the impugned judgment and order, the deposition in the record and proceedings of the case. It is transpired from the record that the appellant is a married woman having two children. At the time of lodging a report against respondent No.2, a divorce petition was pending in Yavatmal Court, which was filed between the victim and her husband. It appears from the version of the appellant that on 22.10.2018, when sexual intercourse occurred for the first time, she and her niece (PW-2) went to the rear end of the house of respondent No.2 on his request. However, the action of respondent

No.2 of abusing the appellant, making her to sit in a van and sending PW-2 home, as described by the appellant are not corroborated by PW-2's version of events. Rather, her version suggests that both the appellant and respondent No.2 asked PW-2 to go home. Considering that PW-2 was approximately 15 years old at the time of the incident, had she accompanied the victim, she would have reported the incident to her mother, who is the elder sister of appellant.

8. Be that as it may, the fact remains that after the alleged incident of forcible sexual intercourse, the appellant did not disclose this fact to anyone. On the contrary, she continued to have physical relationship with respondent No.2 for a period of three months thereafter. The reason is given that she was given a promise of marriage, therefore, she kept mum. It is highly improbable that a mature woman would remain silent and continue the physical relations on the promise of marriage, especially when her previous marriage was still in subsistence. Therefore, the Trial Court has rightly disbelieved the version of the appellant regarding

forceful rape and even consent of the appellant for sexual intercourse on the pretext of a promise for marriage by respondent No.2. In view of the facts appearing on record, the possibility of consensual sexual intercourse between the appellant/victim and respondent No.2 cannot be ruled out. Thus, we do not find any error in the impugned judgment and order of acquittal of the Trial Court. Therefore, no interference is required. Consequently, the appeal fails. Accordingly, it is **dismissed**.

(M. W. CHANDWANI, J.) (SMT. M. S. JAWALKAR, J.)

TAMBE.