
(2015) 07 BOM CK 0343
In the Bombay High Court
Case No : Criminal Appeal No. 668 of 2015

Sheetal Rajaram Kadam	Vs	APPELLANT
The State of Maharashtra and Others		RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 313, 376, 417

Citation : (2015) ALLMR(Cri) 2930

Hon'ble Judges : V.K. Tahilramani, J; Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : Akhlak Abbas H. Khan, for the Appellant; A.S. Pai, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Shalini Phansalkar Joshi, J—This Appeal is preferred by the Original Complainant/Prosecutrix against the acquittal of Respondent No. 2 for the offences punishable under Sections 376, 417 and 313 of the IPC by the Additional Sessions Judge, Greater Bombay, vide her Judgment and Order dated 30th December, 2013 in Sessions Case No. 475 of 2012. Facts, as are necessary, for deciding this Appeal may be stated as follows:-

Original Complainant/Prosecutrix was serving as a Nurse in Aditya Nursing Home, Chembur, Mumbai in September, 2010. Respondent No. 2 joined there as Resident Medical Officer. Hence, they came to know each other and their acquaintance developed into friendship. In November, 2010, the Prosecutrix and Respondent No. 2 were alone in the hospital on night duty and were chitchatting with each other in the cabin. After some time, when Prosecutrix was sleeping on the bed, Respondent No. 2 had forcible sexual intercourse with her and told her not to disclose about the same to anyone. After this incident also, on each and every night, when they were together in the hospital, they had sexual intercourse. Respondent No. 2 gave her promise of marriage and on one occasion took her to his house to meet his mother, who refused consent for marriage of

Prosecutrix and Respondent No. 2. Thereafter Prosecutrix left Aditya Nursing Home but, they remained in contact with each other and continued their sexual relations.

2. In July, 2011, Prosecutrix came to know that she was pregnant. Respondent No. 2 took her to one Doctor for miscarriage of her pregnancy. He gave her some tablet, as a result of which, her pregnancy was aborted. Subsequent thereto, Respondent No. 2 informed her that as his mother was not ready to accept her as her daughter-in-law, he had performed marriage with another girl. However, he showed his willingness to continue the sexual relations with her even after the marriage. Prosecutrix was not ready for the same. Hence, she went to Govandi Police Station and lodged complaint (Exhibit-13).

3. On her complaint (Exhibit-13), C.R. No. 2 of 2012 came to be registered at Govandi Police Station, Mumbai against Respondent No. 2 by PW-7 API Vishwanath Jadhav. On the very day, he apprehended Respondent No. 2 under Panchanama (Exhibit-32) and referred the Prosecutrix for medical examination. On 4th January, 2012, he seized the clothes of Respondent No. 2 under Panchanama (Exhibit-17) and the clothes of the Prosecutrix under Panchanama (Exhibit-18). He then visited spot of the incident at Aditya Nursing Home and drew the Scene of Offence Panchanama (Exhibit-14).

4. Further investigation of the case was taken over by PW-8 PI Bhaurao Bagul. He recorded the statements of the witnesses, sent muddemal to Chemical Analyzer vide requisition (Exhibit-21) and further to completion of investigation, filed Charge-Sheet in the Court.

5. On committal of the case to the Sessions Court, the Trial Court framed charge against Respondent No. 2 vide Exhibit-5. Respondent No. 2 pleaded not guilty and claimed trial.

6. In support of its case, Prosecution examined in all seven witnesses and on appreciation of their evidence, Trial Court arrived at the conclusion that it being a case of consensual sex, no offence either under Section 376 or 417 of the IPC is made out against Respondent No. 2. Trial Court also acquitted Respondent No. 2 in respect of the offence punishable under Section 313 of the IPC on arriving at the conclusion that it was the independent decision of the Prosecutrix to abort the pregnancy.

7. This Judgment of the Trial Court is challenged in this Appeal by the Original Complainant/Prosecutrix. Learned A.P.P. has, however, submitted that there is no proposal of the State to challenge the said Judgment.

8. As deposed by the Prosecutrix, at the time of incident, her age was 28 years and she was serving as a Nurse in Aditya Nursing Home. Therefore, it is apparent that she was a major lady and being Nurse, fully aware of the implications and consequences of her own acts. According to her evidence, she was knowing Respondent No. 2 as he has also joined Aditya Nursing Home as Resident Medical

Officer. Both of them used to be on night duty and hence constantly being in contact with each other, their acquaintance developed into friendship. In Paragraph No. 11 in her cross-examination, Prosecutrix has specifically admitted that she was having love affair with Respondent No. 2. Hence, her evidence to the effect that on the date of incident, when she was chit-chatting with Respondent No. 2, he committed forcible sexual intercourse with her, becomes difficult to accept. Especially, in the light of the fact that the alleged incident had taken place in the hospital, which is a public place. There were eight beds in the said hospital. There was one Nurse and Sweeper also present there at the time of incident. Despite that, she has neither raised alarm for help when Respondent No. 2 forced her to have sexual relations, nor she disclosed about the said incident to anyone including her mother. She has also not lodged complaint about the said incident immediately thereafter or subsequent thereto for a period of about one year.

9. As per evidence of Prosecutrix, thereafter also, she continued to have sexual intercourse with Respondent No. 2 on each and every night. Even after she left the job in Aditya Nursing Home, they continued to remain in touch with each other. She had even gone to the house of Respondent No. 2, when his parents had been to native place, and had sexual intercourse with him. Her evidence further reveals that thereafter she started insisting on Respondent No. 2 to perform marriage with her. However, Respondent No. 2 told her that his mother may not accept her as his wife and, therefore, he was unable to marry her. Then she met his mother, but she was not ready for her marriage with Respondent No. 2.

10. Thus, it is pertinent to note that even when she came to know from Respondent No. 2 that her marriage with him is not possible, she still continued her sexual relations with him. Only when she became pregnant and by that time Respondent No. 2 has performed marriage with another girl and stopped having relations with her, she has lodged complaint (Exhibit-13) against him in the month of January, 2012.

11. Thus, bare perusal of the evidence of the Prosecutrix is more than sufficient to prove that whatever sexual relations Prosecutrix and Respondent No. 2 had, they were by her own consent and free will, she being in love with him. Her evidence further proves that her consent for sexual relations with him was not merely on the basis of the promise of Respondent No. 2 to get married with her, but it was out of her love and passion for him. The alleged promise of marriage, as per her own evidence, is given quite subsequently, in the month of July, 2010. It is also worth to note that even after she came to know that Respondent No. 2 is unable to marry with her, as his mother is not ready for the same, she continued to have sexual relations with him. In the light of this evidence on record, in our considered opinion, neither the ingredients of the offence punishable under Section 376 or of Section 417 of the IPC are made out.

12. As regards the charge under Section 313 of the IPC also, though the

Prosecutrix has deposed that Respondent No. 2 has given her some tablets, which she consumed and hence there was miscarriage, considering the fact that she was herself a Nurse and aware about the medicines, it becomes difficult to digest that she will consume the tablets given by Respondent No. 2 without knowing the effects of those tablets. It is clear that as Respondent No. 2 performed marriage with another girl, Prosecutrix no more wanted to carry the pregnancy and hence that appears to be the reason that she herself has consumed the tablets to avoid the pregnancy.

13. To sum up, therefore, we have no hesitation in holding that Prosecution has failed to prove its case against Respondent No. 2. Hence, the Appeal holds no merit and, therefore, is liable to be dismissed. Consequently, the Appeal stands dismissed, confirming the acquittal of Respondent No. 2 for the offences punishable under Sections 376, 417 and 313 of the IPC.