

BIBHISHAN
v.
STATE OF MAHARASHTRA

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SEPTEMBER 19, 2007

[A.K. MATHUR AND MARKANDEY KATJU, JJ.]

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Penal Code, 1860:

s. 376 r/w s. 511—Rape—Benefit of doubt to accused—Prosecutrix alleged to have been raped by accused in his house—No mark of sexual assault on the person or clothes of prosecutrix—Medical evidence not supporting the prosecution version—Conviction by Trial Court affirmed by High Court—Held: Trial Court and High Court have not correctly appreciated the evidence and have wrongly convicted the accused—Accused is entitled to benefit of doubt—Conviction set aside.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1262 of 2007.

From the Judgment and Order dated 09.02.2007 of the High Court of Judicature at Bombay, Bench at Aurangabad in Crl. Appeal No. 392 of 2006.

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Sudhanshu S. Chaudhari and Naresh Kumar for the Appellant.

Dr. Rajeev B. Masodkar and R.K. Adsure for the Respondent.

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The following Order of the Court was delivered :

ORDER

We have heard counsel for the parties.

Leave granted.

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We have perused to order passed by the Division Bench of the High Court of Bombay at Aurangabad whereby the accused-appellant was convicted under Section 376 read with Section 511 of the Indian Penal

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A Code (IPC) and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5,000/-, in default to undergo further rigorous imprisonment for one year.

The brief facts which are necessary for the disposal of this appeal are as under:-

B The prosecutrix Anita, aged about 18 years is the daughter of Arunabai and Ashruba. They are the residents of Chikhali, Taluka Patoda, District Beed and they are cultivators by profession. The appellant is the resident of the same village. The case of the prosecution is that the girl
C Anita was asked by her mother Arunabai to fetch water from a water bore situated in the school compound. On 23.7.2005 in the afternoon at about 3.00 P.M. Anita went with a steel pot to fetch water from the bore. The accused, whose house was by the side of the road, saw Anita and called her. The accused told her that her father was in his house. Anita
D went close to the house and wanted to know where her father was. The accused told her that her father was inside. The moment the girl Anita entered the house, the accused caught hold her and took her inside the house and bolted the door. The girl shouted for help but without any result. It is alleged that she was subjected to sexual intercourse by the accused.
E The accused was arrested, prosecuted and ultimately convicted by the Trial Court for the offence punishable under Section 376 IPC and was sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 4,000/- in default to suffer rigorous imprisonment for 1-1/2 years.

F Aggrieved by the judgment of the Trial Court, an appeal was preferred before the High Court, The High Court partly allowed the appeal and convicted the appellant under Section 376 read with Section 511 IPC and was sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs. 5,000/- in default to suffer further rigorous
G imprisonment for one year. Hence the present Special Leave Petition.

H We have gone through the judgment of both the Courts below and also perused the necessary record. As per the evidence of the doctor, there was no injury on the body of the prosecutrix Anita. There was no sign of semen on the private part of the body. Neither her clothes were

torn nor there was any presence of hair of the accused on the private part of the prosecutrix. The doctor after examining the prosecutrix deposed that the girl was habituated to sexual intercourse. In view of this evidence, we are of the opinion that the High Court as well as the Trial Court has not correctly appreciated the evidence and has wrongly convicted the accused-appellant. The accused who has been charged under Section 376 read with Section 511 IPC is entitled to benefit of doubt.

In the facts and circumstances of the case. we give the benefit of doubt to the appellant-accused as of the charges framed against him are not proved beyond reasonable doubt.

Consequently, we allow this appeal, set aside the judgment and order of the High Court as well as of the Trial Court and acquit the accused of the charges levelled against him.

This appeal is accordingly allowed.

If the accused is in jail, he may be released forthwith if not required in any other case.

R.P.

Appeal allowed.