

State of Maharashtra Vs. Arvind

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Court : Mumbai Nagpur

Decided On : Aug-28-2014

Judge : S.B. Shukre

Appeal No. : Criminal Appeal No. 366 of 2001

Appellant : State of Maharashtra

Respondent : Arvind

Advocate for Def. : Shri. Daga

Judgement :

Oral Judgment:

1. This is an appeal preferred against the judgment and order recording acquittal of the respondent passed by first Ad-hoc Assistant Sessions Judge, Amravati in Sessions Trial No.267 of 2000. The respondent was charged for offences punishable under Sections 363, 366 and 376 of the Indian Penal Code. It was the case of the prosecution that on 05/10/2000 at about 7.00 a.m., the respondent kidnapped the minor daughter of the complainant (hereinafter called as, 'the prosecutrix') and by giving false promise of marriage, the respondent took her from the custody of the lawful guardian-her mother, without her consent. It is also alleged that after unlawfully taking away the prosecutrix from the custody of her lawful guardian, the respondent, during the period from 05/10/2000 to 13/10/2000, committed rape upon the prosecutrix at various places where the respondent had

allegedly taken the prosecutrix.

2. As the respondent pleaded not guilty to the charge framed against him for offences punishable under Sections 363, 366 and 376 of the Indian Penal Code, he was tried by the first Ad-hoc Assistant Sessions Judge, Amravati. The prosecution examined eleven witnesses and after hearing both the sides, the learned Judge found that the minority of the prosecutrix could not be proved by the prosecution and that the prosecutrix appeared to be of the age of majority, who had voluntarily gone along with the respondent and indulged in the acts willingly, which were alleged against the respondent. Accordingly, the learned Ad-hoc Assistant Sessions Judge acquitted the respondent of all the offences with which he was charged by his judgment and order delivered on 23/8/2001. It is this judgment and order which are under challenge in the present appeal.

3. I have heard Smt. Mehta, learned A.P.P. for the appellant-State and Shri Daga, learned Counsel for the respondent. I have carefully gone through the impugned judgment and order and also the evidence available on record.

4. In this case, the record shows that no satisfactory evidence proving the age of the prosecutrix or proving the fact that at the time of incident, the prosecutrix was below the age of 18 years has come on record. P.W.-5 Nanasaheb Farkhade was the Headmaster of Saraswati Vidyalaya, Benoda where the prosecutrix used to study. Through him the prosecution has proved a certificate issued by the Headmaster of the school showing her date of birth as 30/10/1984. However, this witness, in his cross-examination, has admitted that the certificate (Exh.27) does not bear his signature. Apart from this evidence, there is absolutely no other evidence brought on record by the prosecution in relation to the proof of age of the prosecutrix. Admittedly, no ossification test is conducted in this case. Therefore, there is a reasonable doubt if the prosecutrix was really minor at the time of the incident.

5. If one carefully considers the evidence of the star witness of the prosecution, P.W.-6, the prosecutrix (Exh.31) herself, one is more convinced to say that the prosecutrix, at the time of incident, must have attained sufficient majority so as to understand what she was doing in the company of the respondent-accused.

6. Evidence of P.W.-6, the prosecutrix clearly shows that she had voluntarily left the house of her mother and joined the company of the respondent and then together with him embarked upon a long journey only to be brought by Nagpur police to Benoda on 20/10/2000. During this journey, the prosecutrix has moved along with the respondent from one place to another and had stayed for some days at the places of either the relative or the friends of the respondent. These places are the cities of Ahmedabad where the prosecutrix had stayed with the respondent at the place of respondent's maternal uncle for about 2 to 4 days, Sagar where the prosecutrix had stayed with the respondent at the place of respondent's friend for about 2 to 3 days and finally Nagpur, where the prosecutrix had stayed at the place of friend of the respondent for about 3 days. She has admitted that at these places she was in pleasant and joyous mood and that she did not confront the respondent when she was introduced by him to his relative or the friends as his own wife. While going to Ahmedabad, the respondent had initially gone to Morshi by Jeep then to Chandur railway also by Jeep and from Chandur railway, the prosecutrix boarded along with the respondent by a train going to Ahmedabad. She has admitted that at the Railway platform, as well as in the train, there were several persons and yet she did not take resort to the other persons to seek their help for getting out of the clutches of the respondent. She also had an opportunity to take the assistance of the relatives and friends of the respondent in getting out of the custody of the respondent. On the contrary, as stated earlier, the prosecutrix had stayed at all these places happily and without any complaint.

7. All the above-stated facts, which have appeared on record, would cumulatively show that the prosecutrix had of her own accord and voluntarily left the house of her mother and went along with the respondent and also willingly indulged in sexual intercourse with him, knowing fully well what she was doing and what were the consequences of her such conduct. This would indicate nothing but maturity of age on the part of the prosecutrix so as to call her a person of sufficient majority as described by the learned Ad-hoc Assistant Sessions Judge.

8. In the circumstances, I find that the impugned judgment and order cannot be termed as perverse or arbitrary or of the kind disclosing some impossible view

which cannot be taken at all in the facts and circumstances of the case. There is no merit in this appeal and it deserves to be dismissed.

Accordingly, the appeal stands dismissed.

Bail bonds are discharged.

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