IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.161 OF 2013
[FOR LEAVE TO APPEAL]

The State of Maharashtra ..Applicant
(orig.complainant)

Versus

Eknath Ranu Patil ..Respondent
(orig.accused)

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Smt. V.R. Bhonsale, APP, for the Applicant – State.
None present for the Respondent.

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CORAM : SMT. V.K. TAHILRAMANI
AND A. R. JOSHI, JJ.

DATE : 30th SEPTEMBER, 2013

P.C.

1. The applicant - State of Maharashtra has preferred this application for leave to appeal against the judgment and order dated 7th March, 2013 passed by the Additional Sessions Judge, Sangli in Sessions Case No.217 of 2010. By the said judgment and order, the learned Sessions Judge acquitted the respondent/accused of the offence punishable under Sections 376, 342, 323, 506(2) of Indian Penal Code.

2. The prosecution case briefly stated is as under :-

First informant Raju Mali was resident of Sainath Colony, Punadi Road, Tasgaon. He was residing there along with his mother,

wife, son and daughter (PW-8). PW-8 was about nine years old at the time of the incident. PW-8 had a friend PW-7. PW-7 was residing near the house of PW-8. PW-7 was about eight years old at the time of the incident. The respondent runs a grocery shop near the house of PW-1.

It is the prosecution case that on 5.6.2009 at about 4:00 p.m. the respondent called both the girls to his house which was situated in front of his grocery shop. He took the girls into the house. He latched the door from inside. Thereafter he committed rape on both the girls. Thereafter the respondent threatened them not to tell anything to their family members otherwise he would kill them. It is the prosecution case that the respondent first had sexual intercourse with PW-7 then he had sexual intercourse with PW-8. When PW-8 started shouting, she was assaulted by the respondent. Both the girls were inside the room for considerable period of time. Then the respondent gave them biscuits and sweets and warned them not to tell anybody. It is further the prosecution case that PW-4 Chabutai who is grand-mother of PW-8 heard both the girls discussing that the respondent was not a descent person. She made enquiries with both the girls. That time her grand-daughter (PW-8) told her that the respondent had committed rape on both of them. Chabutai examined the private part of PW-7 and PW-8 and she saw reddishness and swelling on their private part. Then she took both the girls to the hospital of Dr.Patil (PW-5). Dr.Patil examined both the girls and told that there was reddishness on the private part of both the girls and advised them to go to Government Hospital at Tasgaon. They went to the Government Hospital at Tasgaon on the same day. Both the girls were

admitted in the hospital and they were examined by the doctor. Thereafter the FIR was lodged by PW-3 Raju.

3. We have heard the learned APP for the applicant – State of Maharashtra. We have perused the evidence which has been furnished by the learned APP. After carefully considering the matter, for the below mentioned reasons we are of the opinion that there is no merit in the appeal.

4. According to PW-8 there was swelling and reddishness on her private part and said problem persisted till she was taken to Civil Hospital. However, the evidence of PW-14 Dr. Deshpande and the medical certificates (Exh.47 & Exh.48) are not at all corroborating her testimony. From the medical evidence it is seen that there was no evidence of any injury over the vulva region. The hymen was intact. Though the evidence of PW-8, and PW-4 Chabutai – grandmother of PW-8 shows that there was swelling and reddishness on the private part of both the girls till they were taken to civil hospital, however, the evidence of the Doctor from Civil Hospital does not support the story put forward by PW-8 as well as PW-4 Chabutai.

5. Though PW-7 was about eight years old at the time of the incident and PW-8 was nine years old at the time of the incident and it is the prosecution case that the respondent had forcible sexual intercourse with them, no injuries at all were seen on their person. The testimony of PW-5 Dr. Patil and PW-11 Dr. Deshpande shows that there was no sexual assault on the victim girls. PW-11 Dr. Deshpande has stated that it is true that there was no injury or injuries on the

private part of both the victims and considering that no external or internal injuries were found on the private part of both the victims and as the findings of gynecologist Dr. Gaikwad were in negative, therefore in his opinion there was no sexual assault on both the victims. Dr. Deshpande has further stated that considering the age of minor victims as well as considering the age of the accused, if sexual assault would have been there, then there is every possibility of external and internal injury on the private part of both the victims. Dr. Deshpande has further stated that it is true that there was no complaint from both the victims of difficulty in passing urine or having pain or irritation.

6. The evidence of PW-4 Chabutai who is the grand-mother of PW-8 shows that she examined both the girls and found that there was reddishness and swelling on their private part. Hence she took both the girls to Dr. Patil. Dr. Patil also found reddishness on the private part of both the girls. However, Dr. Patil who runs Lata Polyclinic has stated that on 8.6.2009 at about 9:00 p.m. two girls were brought to her dispensary by their relatives. The women who were with the girl then told that some misbehaviour was committed with the girls. This doctor has specifically stated that she did not examine the girls nor noticed any swelling on their private part and she referred those girls to the Rural Hospital at Tasgaon.

7. Thus it is seen that the medical evidence does not support case of the prosecution that the respondent had committed rape on both PW-7 and PW-8. The clothes of the respondent and the victim girls were seized and they were sent to C.A.. The CA report also does

not support the prosecution.

8. It is the prosecution case that the respondent committed rape on both the girls after taking them to his house. He committed rape on them one after another. According to PW-8 the respondent first committed rape on PW-7. Thereafter he committed rape on her i.e. PW-8. However, even though PW-7 claims that she was present she does not say that the respondent had sexual intercourse with her. If we consider the testimony of PW-7 it is seen that her story is totally different. According to PW-8 at about 4:00 p.m. when she went to fetch water, at that time PW-7 arrived there and told her that the respondent had called her. They went into the house of the respondent. The respondent then confined them in the house. He then shut the shop. He then again came into the house where they were present. He then closed the door by latching the upper side latch. The respondent then removed his clothes. He also removed the clothes of PW-7 and then slept on the person of PW-7. Thereafter he removed the nicker of PW-8 and penetrated his penis into her vagina. The respondent threatened to kill them if they shouted and or if they disclose the incident to anybody. He then gave them biscuits and chocolates. They then went to their respective houses.

However PW-7 gives an entirely different story. She has stated that at 4:00 p.m. she and PW-8 were playing. The respondent came there. He took her and PW-8 in his house. He then closed the door. He then removed his clothes and fell on the person of PW-8. The respondent removed the clothes of PW-8. Then the respondent took bath. The respondent threatened her not to disclose the incident

to anybody else otherwise he will kill them. Then the respondent took her and PW-8 to his grocery shop and he gave chocolates and biscuits to them. This witness is totally silent with regard to any act by respondent in relation to her. In the cross she has admitted as under :

> "It did not happen that about 3 years back myself and Bhagyashree were playing and we went into the said house. It also did not happen that the accused took myself and Bhagyashree into that house. It did not happen that the accused closed the door, removed the clothes of Bhagyashree and his clothes or lay on the person of Bhagyashree. It also did not happen that the accused took bath, or threatened to kill them or gave chocolates, tablets or biscuits. It also did not happen that I disclosed any such incident to my mother. A quarrel had taken place between the accused and the father of PW-8 on the day, on which we were taken to the hospital of Dr. Lata Patil. I know the father and grand mother of Bhagyashree. They had told me to tell the police as per their say. Today I have also deposed as per the say of police and father and grand mother of PW-8. They had also threatened me that I will be punished and myself and my parents will be detained in the jail in the event of my refusal to tell as per their say and I have deposed because of the said threat. I was neither examined by the doctor nor any treatment was given to me."

Thus, it can be seen that PW-7 has taken a total summer sault in her cross examination. In the cross-examination PW-7 has stated that she had never gone to the bungalow and in fact she goes on to state that she hardly knows PW-8 who is the other victim girl.

9. It is the prosecution case that the respondent committed rape on both the girls in his bungalow which was situated near his grocery shop. However, it has come on record that said bungalow was sold to one Raswanta Chandrakant Ghodke on 3.4.2008 and

since that date the bungalow was in the possession of Raswanta. The respondent has produced the certified copy of the sale-deed along with his statement under Section 313 of Cr.P.C. PW-3 the complainant who is the father of PW-8 has admitted that the bungalow where the incident took place was sold to one Raswanta Ghodke one year prior to the incident and since then nobody was residing in the bungalow and it was closed. He has further admitted that since the time of sale the accused and his family was residing at B.P. Patil Nagar which is 1 km away from the place of incident. Thus, it has come on record that the respondent had sold the said bungalow prior to the incident and that the bungalow was not in his possession on the day of the incident. Thereafter the respondent was not residing in that locality. It is also pertinent to note that no incriminating article was found in the bungalow.

10. It is submitted by learned APP that the spot panchnama (Exh.19) shows that the keys of the said bungalow were produced by the father-in-law of the respondent, which according to her shows that the respondent had access to the bungalow. In this context, it is pertinent to note that panch witness PW-2 Mohan Mali has stated that the said bungalow was open when he went there and he saw only one room in the said bungalow. The evidence of this witness does not show that the father-in-law of the respondent handed over the keys of the said bungalow. The evidence of PW-2 Mohan Mali does not show that the father-in-law of the respondent produced the keys of the said bungalow, as according to him when he reached the spot the bungalow was already open. PW-2 Mohan Mali has not stated that the spot was shown by any of the girls. In his cross, he has

stated that he was already present in the house of PW-3 Raju who is the first informant along with other panch when he was called by the police. All these facts raise great doubt about the said spot panchnama and about whether the incident actually took place in the said bungalow.

11. It is the defence of the respondent that PW-3 Raju Mali who is the first informant had taken many articles from his grocery shop and he had also taken loan from the respondent and the respondent had asked for repayment thereof. It has been admitted by PW-3 Raju Mali that he used to take grocery articles from the respondent on credit and he has also taken loan of Rs.7000/- from the respondent. PW-3 has further admitted that the respondent has asked for repayment of his loan. PW-3 is just a labourer. It has also come on record through the evidence of PW-7 & PW-8 that there was a quarrel between the first informant PW-3 Raju and the respondent in the morning of the day when the FIR was lodged. All these facts indicate that there is substance in the defence raised by the respondent that he has been implicated due to insistence by the respondent that PW-3 Raju should repay the money owed to the respondent.

12. Though it is the prosecution case that the respondent committed rape on both PW-7 & PW-8 on 5.6.2009 at about 4:00 p.m., the testimony of both these girls is entirely different. The admissions extracted from PW-7 clearly shows that she was subjected to tutoring. Same possibility cannot be ruled out in respect of PW-8. As stated earlier, the medical evidence and the CA report does not support the prosecution. All these aspects have been taken into

consideration by the learned Sessions Judge and thereafter he has acquitted the respondent accused.

13. Looking to the above facts, we find that the view taken by the learned Additional Sessions Judge is a reasonable and plausible view.

14. The plenitude of power available to the Court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction, but, however, the court hearing an appeal against acquittal, will not interfere solely because a different possible view may arise from the evidence. The Supreme Court in the case of ***C. Anthony Vs. K.G. Raghavan Nair***[1] has observed that while hearing an appeal against an order of acquittal, if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court.

15. We may also make useful reference to a decision of the Supreme Court in the State of ***Uttar Pradesh Vs Dinesh***[2] wherein in case of appeal against acquittal, it has been held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by trial court.

Thus, when two conclusions can be arrived at on the basis of the evidence on record, the conclusion which is favourable to accused should be accepted. Therefore, considering overall circumstances and evidence on record in this case, we are of the

1 (2003) 1 SCC 1
2 2009(3) SCALE 345

opinion that the view taken by the learned Additional Sessions Judge is a reasonable and possible view. Hence, we are not inclined to interfere in the judgment and order of acquittal. In view of the above, leave to file appeal, is refused. Application is rejected.

(A.R. JOSHI,J.) (SMT. V.K. TAHILRAMANI,J.)