

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 506 OF 2015 IN
CRIMINAL APPEAL NO. 173 OF 2015

Taukaram S/o Venkati Khandare
Age 24 years, Occu.: Agri.,
R/o Khandarwadi, Tq. Kandhar,
Dist. Nanded

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr. Anil M. Gaikwad, Advocate for applicant
Mr. R.P. Phatke, A.P.P. for respondent-State

CORAM : M.T. JOSHI, J.

DATE : 10/07/2015

ORAL ORDER :

Heard both sides. Perused the record.

2. Present applicant has been convicted by the learned Additional Sessions Judge, Kandhar vide judgment and order dated 21/09/2013 passed in Sessions Case No.30 of 2012 for the offences punishable under section 376(1), 506 of the Indian Penal Code and sentenced to

suffer rigorous imprisonment for 10 years and pay fine of Rs.20,000/- for the offence punishable under section 376(1) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.5,000/- for the offence punishable under section 506 of the I.P. Code.

3. The record would reveal that the 14 years old prosecutrix had alleged that on 18/2/2012 at about 1:30 pm., she alongwith two other girls had gone to collect firewood at certain open space. At 4:30 pm, the present applicant came there. He dragged her for about 10 feet. Thereafter, he lifted her on his shoulder and took her in a roadside ditch. Thereafter, after forcibly removing her dress, he started having forcible sexual intercourse with her. At that time, the victim started shouting and weeping. One another Manik Pilewad came to rescue her, however, the present appellant/applicant gave kick to him and driven him away from that place. On the basis of this complaint, offence came to be registered.

4. Learned counsel for the applicant submits that the statement of the Medical Officer namely Dr. Sonal Deshmukh would show that no injury at all were found on the person of the victim in the face of the allegations, that the victim was dragged for 10 feet and was made to lie in a roadside ditch. He further submits that the prosecution has examined Janabai Gite, who allegedly accompanied the victim at the time of the incident. She however does not support the prosecution case. The prosecution has not examined another girl Alka Puri and Manik Pilewad, who according to the prosecution, has seen the present applicant dragging the prosecutrix and even said Manik Pilewad was kicked by the appellant-applicant.

5. On the other hand, learned A.P.P. submits that the deposition of Dr. Sonal Deshmukh would show that the prosecutrix had fresh tear of hymen. The evidence however would show that Dr. Deshmukh has deposed about the fresh tear in the witness box, while in the injury certificate at Exhibit 37, only "*hymen ruptured at 06.00 'O' clock position*" is certified by the very same Medical Officer.

6. Considering all the facts on record and further finding that the present applicant was released on bail during the pendency of the trial, and further that hearing in the appeal may take its own time, the present applicant deserves to be released on bail. In the circumstances, the following order:-

7. The application is allowed. Substantive sentences awarded to the applicant are hereby suspended. Applicant be released on bail upon payment of fine, as imposed by the learned Additional Sessions Judge and also upon his executing P.R. bond and furnishing surety in the amount of Rs.20,000/- (Rs. Twenty Thousand) each.

8. Application stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/