

**IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL MISCELLANEOUS APPLICATION
NO.109/2014.**

State of Goa through the I.O. Applicant.

Versus

Shri Devobrat Sahu @ Babuli
and two others Respondents.

Mr. M. Amonkar, Additional Public Prosecutor for the applicant.
Mr. S. Shet, Advocate for the respondents.

**Coram:- K. L. WADANE, J.
Reserved on:22nd January, 2015.
Pronounced on:- 30th January, 2015.**

ORDER:

Heard Mr. M. Amonkar, learned Additional Public Prosecutor appearing for the applicant and Mr. S. Shet, learned Advocate appearing for the respondents.

2. This is an application filed by the prosecution seeking leave to appeal against the judgment of acquittal dated 1.07.2013 passed by the learned President, Children's Court, State of Goa in Special Case No.25/2005.

3. Learned President, Children's Court has acquitted the accused nos. 1 to 3 for the offences punishable under Section 376 read with Section 34 of IPC and Section 8 of the

Goa Children's Act, 2003. With the help of the learned Additional Public Prosecutor and Advocate for the respondent, I have gone through the entire evidence on record and I have carefully considered the submissions of both the Counsel.

4. Brief facts of the case are that Victim was brought from Bangladesh to Goa and she was sent with accused nos. 1 to 3 for prostitution. On 23.4.2005 accused no. 3 had sexual intercourse with victim in the hotel at Pernem. Thereafter, the other accused nos. 1 and 2 accompanied them to another hotel where there was some quarrel between the accused persons and the manager of the hotel therefore, the manager reported the matter to the police. Police arrived there accosted the accused no.1 and the victim and brought them to the police station.

5. After going through the entire evidence on record, it appears that to prove the offence of rape following witnesses were examined. PW1 Nitu Shaha, Victim, PW2 Nital B. Naik, Special Judicial Magistrate, PW3 Uday Prabhudessai, PW4 Upendra Deshprabhu, PW5 Chandrakant Morajkar, PW10 Sanjay Nair and other witnesses.

6. From the medical evidence it was brought on record that the victim was 16 years of age with minus or plus margin of 6 months. It is also brought on record that the victim was habituated o sexual intercourse.

7. On perusal of the evidence of victim, it appears that she identified the accused nos. 1 to 3 first time in the Court at the time of trial i.e after about two years. Victim had no occasion to see the accused persons either before the incident or after the incident till she identifies them in the Court.

8. PW3 Uday Prabhudessai has stated that after the incident in hotel all the three accused had ran away and he is unable to identify those three persons due to lapse of time and because of darkness outside the hotel. PW5 Chandrakant Morajkar has stated that he received information that a minor girl was roaming near the hotel in suspicious manner. When he went there he saw that one person is sitting in the car and when that person was brought to the police station he disclosed his name as D. Shahu i.e accused no.1. He handed over his visiting card to PW5 and therefore, that person was allowed to go. Even it is seen from the record that visiting card and the car was seized after about two months. Further more there is no record to

show that PW5 Chandrakant Morajkar noted this fact anywhere or in the case diary. Even there is no evidence on record to show that PW5 Chandrakant Morajkar had noted the number or other details of the said car in the case diary or any other register maintained by the Pernem Police Station. Even there is no record to indicate that he had reported the matter to any of his superior on the same day. So looking to the entire evidence on record there are serious infirmities in the oral evidence of prosecution witnesses, more specifically the evidence adduced by the prosecution with regard to identification of the accused persons is very weak. Therefore, no different view is possible than taken by the President, Children's Court. Therefore, no case is made out for grant of leave to appeal against the impugned judgment dated 1.07.2013 passed by the learned President, Children's Court.

9. In view of the above, application for leave to appeal stands dismissed.

K. L. WADANE,J.

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