IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.432 OF 2010

SURYA@SURESH MAHADEV SURYAVANSHI)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Sandeep Singh, Advocate for the Appellant.

Mr.Deepak Thakre, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 16th JUNE 2015.

ORAL JUDGMENT :

1 This appeal is directed against the judgment and order delivered by the Ad-hoc Additional Sessions Judge at Sewree in Sessions Case No.690 of 2009, convicting the appellant, who was the accused in the said case, of an offence punishable under Section 376 of the Indian Penal Code (IPC) and sentencing him to

suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.400/-, in default, to suffer Rigorous Imprisonment for 3 years. The appellant was also charged of an offence punishable under Section 376 of the IPC read with Section 511 of the IPC for the acts allegedly committed by him, but the Ad-hoc Additional Sessions Judge acquitted him of the said charge.

2 When the appeal came up for hearing, the learned counsel for the appellant submitted that, in the light of the evidence adduced during the trial, he would not canvass that the incident as alleged by the victim (name not mentioned to prevent disclosure of identity), who was, at the material time, of about 8 years, did not take place at all. He, however, submitted that, the evidence adduced during the trial did not show a completed offence punishable under Section 376 of the IPC, and that, the appellant could be held guilty only of attempt to commit rape punishable under Section 376 of the IPC read with Section 511 of the IPC.

3 In view of the concession made by the learned counsel for the appellant, it is not necessary to discuss the entire evidence adduced during the trial. I have, however, glanced through the evidence. The contention raised by the learned counsel for the appellant is based on an admission given by the victim in her cross- examination. This is sought to be supported by referring to the evidence of Smt.Sharda Santosh Raut (PW4). A reference is also made to the medical evidence, as also the history of the incident, as given to the Medical Officer by the victim.

4 I have carefully considered this aspect of the matter. Indeed, it is difficult to hold that the evidence was sufficient to hold that a completed act of sexual intercourse had taken place between the appellant and the victim. There was no satisfactory evidence of penetration of male organ in the vagina of the victim. The injuries found on the body of the victim are medically opined to be not attributable solely to that, and could be caused be caused by insertion of fingers in the vagina of the victim. Therefore, the penetration of the male organ cannot be held to be

proved on the basis of the medical opinion, when the victim has given certain admissions in the cross-examination.

5 In this view of the matter, the contention advanced by the learned counsel for the appellant, needs to be accepted.

6 It may, however, be added, that considering the heinous nature of the offence, I am not inclined to reduce the sentence imposed upon the appellant considerably, as a result of the alteration in respect of the charge of the offence for which the appellant is liable to be convicted.

7 The appeal is partly allowed.

The conviction of the appellant, as recorded by the learned Ad-Hoc Additional Sessions Judge, is altered to that of an offence punishable under Section 376 of the IPC read with Section 511 of the IPC. The substantive sentence imposed upon the appellant is reduced to Rigorous Imprisonment for a period of 6 years.

Save and except as aforesaid, no other order in this appeal, which stands disposed of in the terms of the aforesaid order.

(ABHAY M. THIPSAY, J.)