

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL APPLICATION NO. 1011 OF 2016
IN
CRIMINAL APPEAL NO. 87 OF 2015

Ishwar s/o Laxman Rakhunde

...Applicant

VERSUS

The State of Maharashtra

...Respondent

Shri U.S.Patil, advocate for applicant
Smt. R.K.Ladda, A.P.P. for respondent/State

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CORAM : INDIRA K.JAIN, J.
DATED : 12th APRIL, 2016

ORDER :

This is an application for suspension of substantive sentence of imprisonment awarded by the learned Special Judge, Jalgaon vide order, dated 4.11.2015, passed in Special Case No. 54 of 2014.

2] By the said judgment and order applicant is convicted of the offences punishable under Sections 363, 366, 376(2)(i) of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

3] Heard Shri U.S.Patil, learned counsel for applicant and Smt. R.K.Ladda, learned A.P.P. for respondent/State.

4] PW 7 is the prosecutrix. She was a 16 year old girl. She stated in her evidence that on 1.5.2014 at 5.00 p.m. she was at home. That time accused came and threatened her that in case she does not marry him he would attack on her father. Being frightened she accompanied the accused. They moved from place to place. During their stay accused had sexual intercourse with her.

5] The father of prosecutrix lodged report alleging that she was kidnapped by the accused. Offence was registered. On 7.5.2014 whereabouts of prosecutrix could be traced. Her statement was recorded by police. In her statement under Section 161 of the Code of Criminal Procedure she did not state that accused had given threats to attack her father. This material omission is brought on record in the evidence of prosecutrix.

6] It appears that statement of victim was also recorded by the Magistrate under Section 164 of the Code of Criminal Procedure. In this statement she stated that she on her own accompanied the accused and accused promised to marry her. The changing version of prosecutrix shows that she is not coming before the Court with consistent stand. Further medical evidence does not support the allegations of sexual assault. No external injury was found on the person of prosecutrix.

7] Considering the marginal age, inconsistent stand taken by victim and the medical evidence, this court is inclined to suspend the substantive sentence of imprisonment. Hence the following order.

ORDER

- (i) Criminal Application No. 1011 of 2016 is allowed.
- (ii) Substantive sentence of imprisonment is suspended till the decision of appeal.
- (iii) Applicant is released on bail on P.B./S.B. of Rs.20,000/- each.
- (iv) Bail before the Trial Court.
- (v) Parties to act on the authenticated copy of the order.

[INDIRA K.JAIN, J.]

dbm/crap1011.16