

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 1320 OF 2016
IN APEAL/111/2016

MAROTI S/O. SAKHARAM KAKADE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Shailendra S. Gangakhedkar.
APP for Respondent : Mrs. R. K. Ladda.

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CORAM : **INDIRA K. JAIN, J.**
DATE : 30th March, 2016.

P.C.:

. This is an application for suspension of substantive sentence of imprisonment passed by the learned Sessions Judge, Nanded in Sessions Case No.133 of 2013. The learned Sessions Judge convicted Applicant for the offence punishable under Section 376 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment of 10 years and fine of Rs.1,000/- with a default clause. Applicant has preferred an appeal against the judgment and order of conviction.

2 Heard the learned counsel for parties. Perused record.

3 It is the case of prosecution that victim was 16 years old at

the time of occurrence. She alongwith her parents went to Dhangarwadi, District Nanded. They were residing in a room. Her parents used to go for work. She was to stay alone in the house during absence of her parents. Accused started visiting the house of prosecutrix under the pretext of drinking water. He developed relationship with victim and then had physical contacts with her during the period from 25th October, 2012 to 14th November, 2012. She was carrying pregnancy. After 5 months pregnancy she disclosed the incident and reported the matter to police.

4 On the basis of report crime was registered against the Accused and investigation was conducted. After completing investigation, charge-sheet was submitted to the Court of learned Judicial Magistrate First Class, Nanded who in turn committed the case for trial to the Court of Sessions.

5 Prosecution examined in all 11 witnesses in support of its case. Considering the evidence of prosecution witnesses Trial Court came to the conclusion that Accused was guilty of sexually assaulting the victim. It can be seen from the evidence of PW-7 Headmaster of Ashok Primary School, Nanded that prosecutrix was admitted to their school on 21st August, 2006. He proved entries in school register

showing her date of birth as 12th March, 1997. Before admission to Ashok Primary School it appears that prosecutrix was admitted to previous school. Entry in school register alongwith school leaving certificate of previous school was submitted at the time of admission of prosecutrix to Ashok Primary School. Photo copies of these documents were taken as proved by Trial Court though competent witness from earlier school was not examined. Relying upon the documents pertaining to earlier school Trial Court came to the conclusion that prosecutrix was under age.

6 It can be seen from the evidence of prosecutrix that she gave birth to a child. DNA report is in the negative. Report speaks that Accused was excluded to be the biological father of child. Trial Court observed that the report of handwriting expert cannot be accepted.

7 Fact remains that prosecutrix was of a marginal age. For a considerable time she did not disclose the fact to anyone including her mother. During trial Applicant was on bail. Considering the nature of evidence brought on record and punishment awarded this Court finds it fit to suspend the substantive sentence of imprisonment till disposal of appeal. Hence the following order –

ORDER

- I. Criminal Application No.1320 of 2016 is allowed and substantive sentence of imprisonment is suspended till disposal of appeal.
- II. Applicant Maroti s/o Sakharam Kakade is released on bail on P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand only) each.
- III. Bail before the Trial Court.

[INDIRA K. JAIN, J.]

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