

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

CRIMINAL APPLICATION NO. 3026 OF 2015

The State of Maharashtra

...Applicant

VERSUS

Jitendra Vilas @ Liladhar Baviskar

...Respondent

.....
Shri S.P.Sonpawale, A.P.P. for applicant/State
.....

CORAM : INDIRA K.JAIN, J.

DATED : 2nd February, 2016

ORDER :

Heard learned A.P.P. for applicant/State. None for sole respondent.

2] Perused the record.

3] Here is an application for leave to appeal under Section 378 (4) of the Code of Criminal Procedure against the judgment and order, dated 2.2.2015 passed by the learned Additional Sessions Judge, Bhusawal in Special (POCSO) Case No. 34 of 2014 for the offences under Sections 452, 354, 306 of the Indian Penal Code, Section 12 of Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4] Prosecution case, in brief, is as under :-

Deceased Suvarna Balu Bhalerao, a 14 year girl, was resident of Taluka Raver, District Jalgaon. On 3.6.2013 her parents

and brother had left for agricultural work. She was alone in the house. According to prosecution, respondent/accused entered the house of victim. He asked her to allow him to have sexual intercourse with her. He also threatened that in case she refuses he would kidnap her. It is alleged that he manhandled the victim. She pushed him and escaped.

One Bablu Prakash Mahajan was a neighbourer. He saw accused embracing the girl. She was frightened that fact would be disclosed to her parents and they would beat her. She, therefore, poured kerosene on her person and set her ablaze. Neighbourers extinguished the fire. She was admitted in the hospital. The dying declaration of victim was recorded. The same was treated as first information report. Investigation was conducted and charge sheet was submitted to the court.

5] Charge was framed vide Exh.9. Accused pleaded not guilty and claimed to be tried. During trial, prosecution examined in all 9 witnesses. Prosecution placed strong reliance on two dying declarations Exhs. 25 and 42 and evidence of PW 1 Bablu Prakash Mahajan. The Trial Court disbelieved the dying declarations on various reasons recorded in the judgment and held that prosecution could not prove the guilt of accused beyond reasonable doubt.

6] With the assistance of learned A.P.P. this court has gone through the evidence of PW 3 Chagan Murlidhar Wagh, Naib Tahsildar who recorded dying declaration (Exh.25) and also the evidence of PW 7 Keshav Dhanu Surwade who recorded another dying declaration (Exh.42). Prima facie, it appears that in both the dying declarations victim had named the accused. Some of the reasons assigned by the learned Additional Sessions Judge in

paragraph 34 of the judgment for rejecting the dying declarations appear to be too technical and do not stand in law in view of the decision of the Hon'ble Supreme Court in **Laxman vs State of Maharashtra [(2012) 11 SCC 158]**. It is pertinent to note that PW 1 Bablu had seen the accused with the victim girl just before one hour of the incident.

7] In the above premise, this court finds that prosecution has an arguable case against the respondent. Hence the following order.

ORDER

- (i) Criminal Application No. 3026 of 2015 is allowed.
- (ii) Leave granted
- (iii) Appeal Admitted.
- (iv) Action under Section 390 of the Code of Criminal Procedure.

[INDIRA K.JAIN, J.]

dbm/crap3026.15