

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6173 OF 2015 IN
CRIMINAL APPEAL NO. 884 OF 2015

Dasu S/o Kisan Waghmare
Age : 49 years, Occupation : Labour
R/o : Chatgaon,
Tq. Dharur, Dist. Beed .. Applicant

Vs.

The State of Maharashtra .. Respondent

Mr. S.W. Munde, Advocate for the applicant
Mr. R.B. Bagul, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.
RESERVED ON : 29/01/2016
PRONOUNCED ON : 04/02/2016

ORDER :

Heard.

2. The present applicant is convicted by the learned Special Judge, Majalgaon vide judgment and order dated 08/05/2015 passed in Special Child Case No. 14 of 2014 for the offences punishable under section 452, 376(2), 323, 504, 506 of the Indian Penal Code. He is directed to suffer rigorous imprisonment for 10 years for the offence punishable under section 376(2) of the Indian Penal Code. For the rest of the offences,

lesser punishments are awarded and all these sentences are directed to run concurrently.

3. During the pendency of the appeal, the present application for release on bail is filed.

4. The prosecution case was that 17 years old mentally retarded girl, who is able to utter few words, was raped by the present applicant on 17/06/2014 at about 1:30 pm. During the rape, the present applicant has even allegedly bitten over the chin of the victim.

5. During the investigation, the Investigating Officer did not record the statement of the victim. Therefore, during the pendency of the trial on his application, the learned Special Judge got recorded the statement of the victim girl through an expert of mentally retarded child i.e. Special Teacher of Nivasi Matimand Vidyalaya, Dharur. Her statement was also recorded in the Court as PW12.

. The statement of the mother as well as the said victim girl would show that the appellant/applicant has

committed the rape. Earlier the victim girl has narrated the incident to her mother, on the basis of which the FIR came to be filed.

6. Statement of the Medical Officer PW9 – Dr. Priyanka Bhandare would show that hymen was found torn and tears were fresh. There were marks of biting on the chin of the victim also.

7. The learned Special Judge found that no satisfactory evidence regarding the age of the victim was placed on record and in the circumstances, though the appellant was acquitted from the offence punishable under section 8 of the Protection of Children from Sexual Offences Act, he was convicted for the other offences, as detailed supra.

8. Mr. Munde, learned counsel for the applicant/appellant made number of submissions before me. He has also filed written notes of arguments. He submitted that the prosecution case is totally false and improbable. The Medical Officer has not given the

age of the tears of the torn hymen. There is a vast improvement from the victim regarding the incident. Initially, she has not stated to the Police about any rape, however, when the Special Teacher has recorded her statement, she allegedly stated about the rape. He further submitted that the chemical analyzer's reports are not helpful to the prosecution.

. He further relies on the ratio in the case of **"Kiran Kumar V. State of M.P." 2001 AIR SCW 5130 and "Sharad Kashiram Rathod @ Babu V. The State of Maharashtra" 2014 ALL MR (Cri) 2356.**

9. Learned A.P.P. opposed the application.

10. The findings of the learned Special Judge coupled with the deposition of PW9 – Dr. Priyanka Bhandare would show that the victim has made a statement before the learned Special Judge regarding the rape. The Medical Officer has found that there was fresh tears to the hymen.

. At this stage, it is not necessary to comment

on the issue that the age of the said tears is required to be given. Besides this, the bite marks were found on the chin of the victim.

11. Reliance of Mr. Munde, learned counsel for the applicant on the ratio of "**Kiran Kumar**" (cited supra) is misplaced. In the said case, finding that short term sentences were awarded to the accused, it was observed that it is a normal rule that such sentences should be suspended.

. In the present case, the appellant/applicant is convicted for the offence punishable under section 376(2) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for a period of 10 years.

12. Similarly, in the case of "**Sharad Rathod**" (cited supra), inter-alia finding that the chemical analyzer's report does not support the prosecution case, the appellant therein was acquitted. Many other facts are naturally taken into consideration by this Court in the case of "**Sharad Rathod**" for recording acquittal of the appellant therein.

13. In that view of the matter, the Criminal Application is hereby dismissed.

14. Since the appellant would be in jail, preparation of the paperbook is hereby expedited.

[M.T. JOSHI]
JUDGE

arp/