

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 189 OF 2016
IN
CRIMINAL APPEAL NO. 69 OF 2016

SIDDESH JUVEKAR, PRESENTLY
LODGED IN CENTRAL JAIL, COLVALE. ... Applicant
Versus
STATE THR. POLICE INSPECTOR,
COLVA POLICE STATION,
COLVA AND ANR. ... Respondents

Shri S.G. Desai, Senior Advocate with Shri
Pavithran A.V., Advocate for the Applicant.
Shri Pravin Faldessai, Additional Public
prosecutor for the Respondents.
Shri Aires Rodrigues, Advocate for the
Intervenor.

Coram:- C. V. BHADANG, J.

Date:- 16th September, 2016

ORAL ORDER :

Heard Shri Desai, the learned Senior Counsel
for the applicant and Shri Faldessai, the
learned Additional Public Prosecutor for the
respondents. I have also heard Advocate Shri
Rodrigues, who is appearing for the
intervenor/victim.

2. The applicant/appellant has been convicted
for the offence punishable under Section 376 and

Section 420 of IPC. For the offence punishable under Section 376 of IPC, the applicant has been sentenced to suffer simple imprisonment for a term of seven years and to pay a fine of Rs.10,000/- and in default to undergo further imprisonment for three months and for the offence punishable under Section 420 of IPC, the applicant has been sentenced to undergo simple imprisonment for three years and to pay Rs.7.00 lakhs to the victim PW1 as compensation. The applicant has also been directed to pay a fine of Rs.5,000/- and in default of payment of compensation and fine, to undergo further imprisonment for a period of six months.

3. The Criminal Appeal challenging the said judgment and conviction has already been admitted.

4. The prosecution case in brief is that since the year 2009, the applicant had repeated sexual intercourse with the victim under the pretext of

getting married to her. It is the further prosecution case that under the false proposal of starting a business the applicant induced the victim to sell her flat situated at Shirvodem, Navelim and took Rs.5.00 lakhs from her which he failed to return. It is further the prosecution case that the applicant failed to keep his promise of marrying the victim.

5. At the trial, the victim was examined as PW1 along with other witnesses. The learned Sessions Judge after considering the evidence of PW1 has observed in para 10 of the judgment that the version given by PW1 that the applicant had raped her in hotel 'Jyoti Plaza', seems to be doubtful. The learned Sessions Judge has further observed that, if this was so, the victim would not have believed in the promise held out by the applicant of marrying her. The learned Sessions Judge has found in para 11 of the judgment that the evidence of PW1 would clearly bring out that the victim had fallen in love with the applicant

and it is "impossible that the applicant had committed rape on her on the very first occasion when they went out together". The learned Sessions Judge has further found that thus the claim of the victim that she was offered some stupefying drink by the applicant and having taken her to the hotel and raped her is suspicious and cannot be accepted. Lastly, it has been found that there is no medical evidence or any evidence to corroborate this claim of the victim.

6. After holding this, the learned Sessions Judge has considered the provisions of Section 90 of the IPC and found that the consent given on the basis of false promise of marriage would not be a free consent in law and has proceeded to convict and sentence the applicant as aforesaid.

7. It is submitted by Shri Desai, the learned Senior Counsel for the applicant that the

reliance placed by the learned Sessions Judge on Section 90 of the Code is misplaced. The learned Senior Counsel has pointed out that the first complaint lodged by the victim on 2/05/2012 was withdrawn which was followed by a Deed of 'Amicable Settlement', entered into between the parties on 4/05/2012. He submits that on the basis of the recitals in the said Deed it would be clear that the applicant and the victim had decided to marry. He submits that within a month of the execution of Deed of Settlement the second complaint dated 5/06/2012 came to be lodged which is the basis of the present prosecution. He submits that the applicant was all along on bail during the course of the trial and is ready and willing to abide by any conditions which may be imposed by this Court, while granting bail including the deposit of compensation and fine.

8. On the contrary, the learned Additional Public Prosecutor has submitted that the offence

is serious and merely because the applicant was on bail during the course of trial, is not a sufficient ground for suspension of sentence and for grant of bail.

9. Shri Rodrigues, the learned Counsel for the intervenor/complainant has relied upon the decision of the Supreme Court in the case of ***Dhariwal Industries Ltd. V/s. Kishore Wadhwani & Ors. in Criminal Appeal No.859 of 2016*** and has submitted that the victim has a right to appear and oppose the bail. He submits that the victim has been abused for a period of about four years and no case for grant of suspension is made out. The learned Counsel has fairly pointed out a decision of this Court in ***Criminal Application No.4820/2013 in Criminal Application No.4556/2013*** in which the issue whether a private party/complainant should be allowed to intervene/address in bail/anticipatory bail proceedings in which the State has given charge of matter to Public Prosecutor/Additional Public

Prosecutor/Special Public Prosecutor, is referred for decision of the larger Bench. He submits that in the facts of the present case, the sentence may not be suspended.

10. I have carefully considered the rival circumstances and the submissions made. As noticed earlier, the appeal challenging the order of suspension and conviction has already been admitted. It Prima facie, appears that the victim was aged about 24 years on the date of the incident as alleged and had thus attained the age of consent. According to the prosecution, the applicant had forcible sexual intercourse with the victim over a period of four years, purportedly on the basis of a promise of marriage. The first complaint lodged by the victim on 2/05/2012 was withdrawn which was followed by the Deed of Amicable Settlement which prima facie shows that the parties had decided to marry. However, it did not

materialise which led the victim to file the second complaint on 5/06/2012 giving rise to the present case. The complainant/victim has stated in her evidence that she had no intention to marry the accused when the complaint was filed and she does not intend to marry the accused "even now". The applicant was on bail during the course of trial. The applicant can be put to appropriate conditions in order to take care of the apprehension expressed on behalf of the prosecution. In such circumstances, the following order is passed:

O R D E R

(i) The substantive sentence of imprisonment is hereby suspended pending disposal of the appeal on condition of the applicant furnishing a PR bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.

(ii) The applicant shall deposit the amount of fine, if not already deposited, before the learned

Additional Sessions Judge.

(iii) The applicant shall also deposit the amount of compensation of Rs.7.00 lakhs before the learned Additional Sessions Judge, within a period of two weeks from today.

(iv) The applicant shall deposit his passport before the learned Additional Sessions Judge.

(v) The applicant shall not directly or indirectly contact the victim or any other witness.

(vi) In the event of breach of any of the conditions, liberty to the prosecution to move for cancellation.

(vii) Bail bonds to be furnished before the learned Additional Sessions Judge.

C. V. BHADANG, J.

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