IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.940 OF 2014
IN
CRIMINAL APPEAL NO.974 OF 2013

Sandeep Jai Kumar Kamble & Anr .. Applicants
Versus
The State of Maharashtra .. Respondent

Mrs.Anjali Patil with Mr.Arun Rajput, Advocate for the applicant.
Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : P.N. DESHMUKH, J
DATED : 26th AUGUST 2016

P.C. :

1 This is an application by original accused nos.2 and 3 Sandeep Kamble and Sachin Shinge respectively for suspension of sentence and for release on bail. Earlier application filed by applicants was not pressed.

2 Heard learned counsel for both the sides at length.

3 Both the applicants are found guilty for the offence punishable under Section 376(2)(g) of IPC and are sentenced to suffer RI for 10 years and to pay fine of Rs.500/- each in default to suffer SI for six months. Applicants are further convicted for the offence punishable under section 342 of the IPC and are sentenced to suffer SI for six months and to pay fine of Rs.250/- each in

default to suffer SI for three months. Both the sentences are directed to run concurrently.

4 Original accused no.1 Reshma Kamble is convicted for the offence punishable under section 109 r/w with section 376(2)(g) of IPC and sentenced to suffer RI for five years and to pay fine of Rs.500/- in default to suffer SI for six months. She is also convicted under Section 342 IPC and is sentenced to suffer SI for six months and pay fine of Rs.250/- in default to suffer SI for three months. Said accused is released on bail by order of this Court on 8th October 2013.

5 Learned counsel for the applicant by referring to evidence of prosecutrix and her mother, had submitted that applicants are falsely involved, and no case of rape as alleged, is established against them, and by referring to the evidence of prosecutrix, had submitted that they are falsely implicated after 10 days after incident, which is alleged to have occurred on 30th March 2011 on which day in fact prosecutrix is found to have stolen one earing of co-accused no.1 Reshma and had sold it to the jeweller for Rs.950/-. It is further contended that after this incident, as in the joint meeting held between parents of prosecutrix, co-accused Reshma, in the jewellers shop, as prosecutrix was asked to apologize, she had lodged false report after 10 days against applicants who are related to accused no.1 Reshma.

6 It is further pointed out that accused are in custody since last more than 3 ½ years, and was on bail, pending trial and

thus, contended that application be allowed.

7 Learned APP opposed the application on the ground that there is nothing to disbelieve the version of the prosecutrix which is found corroborated with medical evidence, wherein she is stated to have found having injury on her wrist. Application is therefore, prayed to be rejected.

8 In the background of submissions advanced, as aforesaid, it appears that on the basis of report lodged by prosecutrix dated 10th April 2011, initially crime was registered for the offence punishable under section 354, 452, 504, 506 r/w Section 34 of the IPC. Thereafter, on 11th April 2011, on the strength of additional statement, offences punishable u/s.376(2)(g), 342, 506 r/w Section 34 of the IPC came to be added in the present crime.

9 In the background of submissions advanced by learned counsel, on perusal of evidence of PW 3 Nanda – mother of prosecutrix, it reveals that on 30th March 2011 after 5.00 pm when she returned back home, she found prosecutrix weeping, and on inquiry, she did not disclose anything. Her mother informed PW 3 – Nanda - that prosecutrix was weeping after she returned back from the house of co-accused no.1 Reshma in the evening. Therefore, mother of prosecutrix went to Reshma to enquire. However, she gave evasive replies. Her evidence further reveals that on 10th April 2011, both the applicants visited her house and outraged modesty of prosecutrix by indulging with her into scuffle, of which report was lodged, and offence came to be

registered under sections 354, 452, 504, 506 r/w Section 34 of the IPC, as aforesaid.

10 With reference to the specific case of applicants of their false implication, when evidence of prosecutrix is perused, she has stated that applicant Sandeep Kamble was on visiting terms with co-accused Reshma and on 30th March 2011, at about 2.00 p.m, has alleged to have committed rape on her one after another after she was called by co-accused in her house. She has also stated that she was threatened by the applicants as well as co-accused Reshma not to disclose the incident to anyone of which she claims to have lodged report after 10 days i.e. 11th April 2011.

11 With reference to the case put forth on behalf of applicant, her evidence further reveals that on being suggested that on 30th March 2011, she had sold earing of co-accused Reshma to goldsmith Mahadev Patil. She has denied the suggestion, however, has admitted that she has pawned the ornament with said jeweller. She has further admitted that co-accused Reshma had informed Mahadev Patil, that one of her earing was missing, and if anyone comes to his shop to sell the same, he should inform her. Though prosecutrix has denied that Mahadev Patil informed Reshma that she has sold said earing on 30th March 2011 for Rs.910/-, she admits that said sale was effected by her on 1st April 2011, and further admits that by returning the amount, she got said earing back on the same day. Thus, from her evidence, it has come on record that there was some incident dated 30th March 2011 as aforesaid, on which day or on 1st April 2011, she had pawned one earing of Reshma with

jeweller, Mahadev Patil, and had obtained Rs.910/-, and on the same day had returned back said amount and took back the ornament. Her evidence further reveals that in the background of above incident, there was a meeting between her parents and brother of Reshma which was held in the shop of Mahadev Patil, where she was directed to admit her mistake. Her evidence does not establish, if as directed, she had admitted her mistake or otherwise, but from her evidence, it has come on record that there was incident of prosecutrix on getting in possession of earing of Reshma, had pawned it with Mahadev Patil and on the same day, by returning it received back amount of Rs.910/-, for which there was some meeting and prosecutrix was made to realize her mistake. In the background of case of applicants as put forth, it thus appears that it is only with reference to above incident, though on 10th April 2011 there was report lodged by prosecutrix against applicants alleging to have outraged her modesty, on following day i.e. 11th April 2011, additional statement of prosecutrix is recorded, involving applicants in a case of gang rape.

12 Having considering facts, as aforesaid, *prima facie*, it is found that applicants are falsely implicated in a statement of prosecutrix recorded on 11th April 2011, in the background of incident of 30th March 2011.

13 Though from the record, alleged incident of rape is stated to have occurred on 30th March 2011 at 2.00 p.m, it could not be pointed out as to at what time meeting came to be held in the shop of Mahadev Patil on the same day. In any case, fact

remains that incident of gang rape as alleged by prosecutrix is of the same day on which day there was a meeting in the shop of Mahadev Patil.

14 Above facts thus substantiates the case of applicants of their false implication.

15 Though learned APP has opposed the application on the ground of availability of medical evidence, evidence of PW 5 - Dr.Deepali Patil reveals that there was old injury on her body in the form of abrasion on the left wrist, which according to the Medical Officer may be also self inflicted. Medical Officer has specifically admitted that she did not notice any injury to *labia majora* as same was found to be normal and according to her, if a minor girl was subjected to rape, then there has to be injury to *labia majora* and *labia minora.*

16 In that view of the matter, and as apparently there is no reason put forth for lodging belated FIR in respect of incident dated 30th March 2011 after 10 days, and as the case put forth on behalf of applicant thus appear to be probable, application is liable to be allowed by suspending substantive sentence imposed upon the applicants who even otherwise were admittedly on bail pending trial, and it is no case of prosecution that applicants while on bail has misused liberty granted to them. Moreover, both the applicants have already undergone sentence of 3 ½ years uptil now.

17 In that view of the matter, application is allowed.

18 Applicants shall be released on bail on their executing P.R. Bond in the sum of Rs.25,000/- each with one surety in like amount each.

19 Both the applicants shall mark their presence with the Sessions Court, Kolhapur once in three months on the first day of each such month till the disposal of Appeal.

20 On failure of applicants attending Sessions Court, Kolhapur on any two consecutive dates, prosecution shall be at liberty to move for cancellation of bail.

(P.N. DESHMUKH, J)