

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.698 OF 2016
IN CRIMINAL APPEAL NO.396 OF 2016
(Rahul Tularam Walde vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri S.M. Ghodeswar, Advocate for applicant/appellant.
Shri V. Gangane, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : NOVEMBER 24, 2016

Heard learned Counsel for both sides.

This application is filed for suspension of conviction and sentence of applicant, who is convicted for the offence punishable under Section 5 read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1000/-, in default to suffer simple imprisonment for one month.

Shri Ghodeswar, learned Counsel for applicant, submits that applicant is acquitted of the offences punishable under Sections 363, 366-A and 376 of Indian Penal Code, however, is convicted as aforesaid by learned Special Judge on relying upon evidence of prosecutrix. It is contended that on considering evidence of prosecutrix, by no stretch of imagination it can be said that applicant by using force, indulged in sexual act with her against her wish. It is submitted that on the contrary, prosecutrix was in love with applicant. It is

thus submitted that pending appeal, substantive sentence and conviction imposed upon applicant be suspended and applicant be released on bail.

Shri Gangane, learned Additional Public Prosecutor for respondent, has opposed the application by contending that as age of prosecutrix is admittedly below 18 years of age, her having consented to the act of sexual intercourse is without any basis. It is thus submitted that application may be rejected.

Having considered the facts as aforesaid, it is noted that incident took place on 8/6/2015, of which report was lodged by P.W.1 Shamrao, father of prosecutrix, two days thereafter. It has come in the cross-examination of prosecutrix that Police officials of Chamorshi Police Station had visited the place where she was residing, however, in spite of seeing Police officials, she did not meet them and preferred to stay in the room. The conduct of prosecutrix as such establishes that she was staying with applicant as per her own wish. Even otherwise, in the evidence of prosecutrix, there is nothing to establish that applicant had forcibly took her from her house or subjected her to sexual intercourse against her wish. From the evidence of prosecutrix, what is revealed is that it is prosecutrix herself, who made phone call to accused, called him to her house and thereafter she took her clothes in a bag, went away with accused to Gadchiroli and stayed in the house of friend of applicant from 8/6/2015 to 19/6/2015, during which period, they were engaged in physical relation. In cross-examination, prosecutrix has admitted that she was

having love affair with applicant since one year prior to incident and she was afraid her parents would not marry her with applicant. She has also admitted to have called applicant at her house on 8/6/2015.

Having considered the evidence of prosecutrix as aforesaid, though she appears to be aged about 17 years at the time of incident, application is liable to be allowed as there is no possibility of appeal being heard in near future. In that view of the matter, following order is passed :

The application is allowed. The substantive sentence imposed upon applicant stands suspended. Applicant be released on bail on his executing P.R. bond in the sum of Rs.25,000/- with one surety in like amount. Applicant, while on bail, shall attend Police Station, Saoli, District Chandrapur once in three months, i.e. on 1st day of three months. The applicant shall provide proof of his residential address to Police Station and shall up-date the same in the event of change in his residential address.

JUDGE

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