

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CRIMINAL APPLICATION (APPA) NO.791 OF 2016 & 792 OF 2016

IN

CRIMINAL APPEAL NO.448 OF 2016

(Sadwali s/o Lingayya Kummari and another ..vs.. State of Maharashtra, through PSO Sironcha,
District Gadchiroli)

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

Court's or Judge's orders

Shri S.N. Nandeshwar, Advocate for applicants,
Shri C.A. Lokhande, Addl.P.P. for non-applicant.

CORAM : P.N. DESHMUKH, J.

DATED : 14-12-2016

Heard Shri S.N. Nandeshwar, learned Counsel for applicants and Shri C.A. Lokhande, learned Additional Public Prosecutor for non-applicant.

These applications are filed by original accused Nos.2 and 1 respectively for suspension of sentences imposed upon them by the learned Special Judge, Gadchiroli. Original accused No.1, applicant in Criminal Application No.792/2016, is found convicted for the offences punishable under Sections 363 and 366 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for three years on both these counts and is directed to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for two weeks. Said accused is further convicted for the offence punishable under Section 3 read with 4 of POPCO Act and is sentenced to

suffer rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month.

Applicant Mahakali, who is original accused No.2 is found convicted for the offences punishable under Sections 363 read with 109 and 366 read with 109 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for three years on both these counts and is directed to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for two weeks.

It appears to be case of prosecution that prosecutrix was minor at the time of incident, had visited her village during holidays and on 03-11-2014 her parents on returning home at about 5-00 p.m. found their daughter missing and from one Kondayya Kummari learnt that applicant/original accused No.1 Sadwali had kidnapped her. After searching her till 06-11-2014, missing report came to be lodged and during the course of same she was found in the house of applicant Mahakali and was thus given into the custody of her parents. Admittedly Kondayya Kummari is not examined by prosecution.

From the evidence of complainant, who is father of prosecutrix, it has come on record that four days after the incident he spoke to applicant Sadwali and informed

him that if he would not search for the victim girl, he would lodge report against him. It, therefore, appears that though complainant was suspecting against applicant Sadwali, no report was lodged against him for a period of four days. Complainant has further admitted that since the incident till lodging of report, both the applicants were in village.

From the evidence of prosecutrix, it appears that she on her own went to the house of applicant Mahakali and has admitted that whenever she used to come to her village in holidays she used to go to the house of applicant Sadwali with her younger sister to watch television and admitted that she used to write love letters to said accused and had demanded to new clothes from him and by sending letters she used to ask to come to see her. She further admitted that she had left her house without knowledge to her parents and admits to have went to the house of Mahakali who is related to accused Sadwali.

In the background of evidence as aforesaid and having considered the fact that applicant Mahakali is found to be sentenced with short term sentence of three years while applicant Sadwali is found to be sentenced for the period of seven years, pending appeal their sentences are liable to be suspended on their making payment of fine amounts as per order below :

Order

- (i) Both applications are allowed.
- (ii) Substantive sentences imposed upon applicants shall stand suspended pending appeal.
- (iii) Applicants shall be released on bail on their executing P.R. Bond in the sum of Rs.25,000/- each with one surety each in the like amount, subject to payment of fine amount imposed upon them each.
- (iv) While on bail, applicants shall mark their presence with Gadchiroli Police Station, Gadchiroli quarterly on the first day of each such month pending appeal.

JUDGE