

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 177 OF 2017
IN
CRIMINAL APPEAL NO. 92 OF 2017**

Parshuram @ Balu Sonyaba Chavan	Applicant
Versus	
The State of Maharashtra	Respondent

Mr. Kuldeep S. Patil for the applicant.
Mrs. N.S. Jain, APP for the State.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 20th NOVEMBER, 2017***

P.C. :

1. The applicant was an accused in Sessions Case No. 129 of 2015 on the file of Special Judge & Addl. Sessions Judge-2, Sangli. By this application, the applicant has sought suspension of execution of substantive sentence imposed vide judgment dated 04th January, 2017 and has prayed for release on bail.

2. Heard Mr. Kuldeep S. Patil, learned counsel for the applicant and Mrs. N.S. Jain, learned APP for the State. Perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3. The applicant was convicted for offences under Section 376(2)(I) of the Indian Penal Code and sentenced to suffer rigorous

imprisonment for ten years and to pay fine of Rs.10,000/- in default to suffer simple imprisonment for one month.

4. The case of the prosecution in brief is that, on 16th April, 2015 at about 08:30 p.m., the applicant herein committed rape on the victim who is suffering from mental disability. The prosecution has examined PW1-Ranjana Uttam Kapase who is the mother of the victim. Her evidence *prima facie* indicates that her daughter is mentally retarded and she is under treatment. She has further stated that on the relevant date, at about 08:30 p.m., her daughter, who is the victim, had gone to answer nature's call. Since her daughter did not return, she went in search of her. She saw her daughter with the applicant herein in the veranda of Z.P. High School. Her testimony, *prima facie*, indicates that she had seen the applicant having sexual intercourse with the victim.

5. Mr. Kuldeep S. Patil, learned counsel for the applicant submits the testimony of PW5-Dr. Anil Dinkarrao Patil does not indicate that there were external or internal injuries on the body of the victim.

6. It is true that generally the presence or absence of injury on the body of the rape victim is one of the relevant factors to decide whether the coitus was consensual or not. For instance, absence of injury on private parts or on other parts of the body may suggest that the victim had not resisted. But want of resistance is wholly inconsequential when the victim is of unsound mind as consent of such victim is immaterial. Such submission, even if voluntary, cannot be considered to be 'consent' as understood in law.

7. In the instant case, the victim is a mentally retarded woman. Hence, the fact that there were no injuries on body of the victim would at the most indicate that she had not resisted. However, want of resistance or consent is inconsequential in view of the mental condition of the victim.

8. Considering the aforesaid facts and nature of the offence and the evidence in support thereof, in my considered view, this is not a fit case to suspend the execution of substantive sentence and or to release the applicant on bail. Hence, Criminal Application No. 177 of 2017 is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)