

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPLICATION NO.734 OF 2017
IN
CRIMINAL APPEAL NO.445 OF 2017**

Sanjay Chandrasha KambleApplicant
V/s.
The State of MaharashtraRespondent

Mr. Ritesh Thobde, Advocate for Applicant.
Mrs. G.P.Mulekar , APP for Respondent-State.

**CORAM : SMT. V.K. TAHILRAMANI, &
SANDEEP K. SHINDE, JJ.**

DATE : July 31, 2017.

P.C. :

The applicant has been convicted under Section 302 of IPC and Section 4 of the Protection of Children From Sexual Offences Act, 2012 (In short '**POCSO Act, 2012**') and sentenced to undergo life imprisonment and rigorous imprisonment for ten years respectively. He seeks bail and hence, this application.

2 Heard learned counsel for the applicant and the learned APP for the State. Perused the records and proceedings.

3 It is the prosecution case that on 8.4.2015, victim girl was sexually assaulted by the applicant. This act of sexual assault was alleged to be witnessed/seen by 3 years old sister of the victim girl by name Minakshi. It is alleged that the applicant-accused beaten Minakshi so much so that before removing her to the hospital by victim girl, she had died. Cause of death reported in post-mortem notes is 'blunt trauma to chest and abdomen'. It appears from the record that victim carried deceased to Ashwini Sahakari Rugnalaya, Solapur where P.W.5-Dr. Nilesh Upare after examining Minakshi found her dead and thus informed Vijapur Naka Police Station. Thereafter, on complaint of the victim girl, Crime No.110 of 2015 was registered against the applicant under Section 302, 363, 366(A) and 376 of IPC and under Section 4 of the POCSO Act, 2012.

4 Prosecution in all examined eight witnesses. Besides, place on record P.M.Notes, C.A.Reports in support of the charge framed against the applicant-accused.

5 Admittedly, victim girl, P.W.2-Sonali, a sole witness to the alleged incident did not support the prosecution at all. She denied the contents of the First Information Report and deposed that her younger sister, Minakshi suffered injuries because of fall on the road. She further deposed that Minakshi was removed to the hospital by her. She denied that the accused had sexually assaulted her. This witness, therefore, did not support the prosecution either on the charge under Section 376 and/or under Section 302 of IPC. It appears from the record that P.W.3-Pradip, Vada Pav Vendor did not remember that the accused and the victim girl had been to his stall on 8.4.2015, i.e., the date of incident. On similar lines, P.W.4-Parmeshwar, Tea Vendor in his deposition denied that on 8.4.2015 at about 1 to 1.30 p.m., one person came with blue coloured motor-cycle; one lady and a small child accompanying him stopped in front of his tea stall. Thus, there appears to be no evidence on record to establish a fact that on 8.4.2015, accused was in the company of the victim girl and her deceased sister, Minakshi.

The prosecution has largely relied upon the evidence of P.W.5-Dr. Nilesh Upare, who had occasion to examine the deceased Minakshi. He deposed before the Court

that on 8.4.2015, the victim girl-P.W.2 came with small baby aged 3 years by name Minakshi to his hospital and given history that child Minakshi was severely beaten by their maternal uncle which caused bleeding from her nose and mouth. Prosecution has placed on record the MLC papers at Exhibit 29 wherein it is noted that victim girl told P.W.5-Dr. Nilesh Upare that the applicant herein had beaten her sister Minakshi at around 3 p.m. on 8.4.2015. We have carefully perused MLC papers at Exhibit 29. In Exhibit 29 (MLC Papers) we found it is recorded that "No one was present at her residence around patient when informant saw the patient having bleed from nose and mouth". It is also recorded in the said MLC papers that "3 years old female baby brought by her sister Sonali in unresponsive state. History is not being given properly by informant sister (Sonali)".

The learned APP has referred to this MLC papers Exhibit 29 and submitted that this piece of evidence has more probative value, which has clearly established that the applicant-accused caused death of Minakshi.

In our view, it is difficult to accept the submission of the learned APP . We say so because even assuming P.W.5-Dr. Nilesh Upare has recorded correctly the history as

narrated by the victim girl; however, victim girl P.W.2 herself resiles from her statement and did not support the prosecution at all on an count. In the circumstances, the history recorded in the MLC papers (Exhibit 29) cannot be relied upon. It may be stated that in the MLC papers, P.W.5-Dr.Nilesh Upare has stated that victim girl did not give him history properly. Furthermore, the notings in the MLC shows that the victim girl saw the deceased in the house having suffered bleed from nose and mouth. Whereas, prosecution case is, victim was sexually assaulted at some other place, where he had beaten the deceased. Therefore, MLC papers at Exhibit 29 consist of intra contradictory statements which obviously cannot be looked into. More so, since P.W.2, victim girl herself even refused to identify the applicant-accused, in our view, Exhibit 29 would be of no help to the prosecution.

6 The learned APP has further taken us through Exhibit 40, i.e., Forensic Medical Examination report of the victim girl. We have gone through the said report wherein the victim girl had given history, which is wholly different than what she had stated and informed the police. In view of this fact, Exhibit 40, i.e., Forensic Medical Examination Report of

the victim girl, in our view cannot be relied upon. The learned APP has taken us through medical examination report of the victim girl wherein it is stated that no injuries were found on the genitals of the victim girl as there could be delay in reporting the incident.

7 That after perusing the evidence on record, in our view, since victim herself did not support the prosecution and circumstantial evidence brought on record through P.W.5- Dr. Nilesch Upare appears to be not cogent and consistent with case of prosecution hence, we are inclined to allow the application and accordingly, the application is allowed. Hence, the following order:

(I) The applicant-accused be released on bail in the sum of Rs.30,000/- with one or two sureties in the like amount and P.R.Bond of same amount.

(II) The applicant-accused shall attend concerned police station once in a month commencing from September,

2017 on 1st Monday of every month between 11 a.m. to 1 p.m.

(SANDEEP K. SHINDE, J) SMT. V.K. TAHILRAMANI, J)