

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.526 OF 2017

Vitthal Hari NalawadeAppellant

V/s.

The State of MaharashtraRespondent

Mr. Sachin Bharat Thorat , Advocate for Appellant.
Ms. M.H.Mhatre , APP for Respondent-State.

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

DATE : July 6, 2017.

ORAL JUDGMENT : [Per SMT. V.K.TAHILRAMANI, J.]

Heard learned counsel for the appellant and the
learned APP for the State.

2 This appeal has been preferred against the order
dated 12.5.2017 passed by the learned Additional Sessions
Judge, Solapur in Exhibit 2 which was bail application
preferred by the appellant. In the said application, the
appellant sought bail in Crime No.44/2017 under Section

376(2)(i) of Indian Penal Code and Section 3(1), (w)(i), 3(2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and Sections 4,5,8,10 of the Protection of Children from Sexual Offences Act, 2012 registered with Mohol Police Station. By the said order, the bail application of the appellant came to be rejected.

3 It is the prosecution case that the appellant tried to commit rape on the victim girl who was 6 years of age. This is supported by the statements of the victim girl as well as her mother who is complainant in the present case.

4 The learned counsel for the appellant submitted that the appellant has been falsely implicated in this case because land of the complainant was to be allotted to the employer of the accused. Accused was working in the shop of goldsmith. If this contention is considered, there would be no reason for the complainant to falsely implicate the appellant. At the most, she would have falsely implicated employer of accused thus we find no merit in the submission of the learned counsel for the appellant.

5 Thereafter, learned counsel for the appellant submitted that medical report does not show any injuries on the private part of the victim girl so also the C.A.Report in relation to victim girl and the appellant is nil. It is not necessary that there should be injuries on the body of the victim girl. It is the case of the victim girl that the appellant tried to commit rape on her. To make out an offence of rape, complete penetration of penis into the private parts of the victim/prosecutrix is not necessary. In other words, to constitute the offence of rape, it is not at all necessary that there should be complete penetration with the male organ with the emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ in the labia majora or the vulva with or without any emission of semen and even an attempt of penetration into the private parts of the victim would be quite enough for the purpose of sections 375 and 376, I.P.Code. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains [**State of U.P. v. Babulnath (1994) 6 SCC 29**]. Moreover, It is not the case of the victim that the

sexual intercourse was completed. As the sexual act was not complete, the C.A.Report is bound to be nil.

6 Statements of the victim girl and of her mother (Complainant) clearly show that the appellant tried to commit rape on victim girl, who was 6 years of age. In this view of the matter, we are not inclined to grant bail to the appellant. The appeal is dismissed.

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