

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1083 OF 2016
IN
CRIMINAL APPEAL NO.582 OF 2016**

Dhanaji Dnyanoba Shinde)...Applicant

V/s.
State OF Maharashtra)...Respondent

Mr. Anand Patil, Advocate for the Applicant.

Mr. P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th JANUARY 2017.

P.C. :

This is an application for suspension of sentence and releasing the applicant-accused on bail during the pendency of the appeal. The applicant-accused is held guilty for the offence punishable under Section 376 of IPC and he is sentenced to suffer RI for 8 years and to pay a fine of Rs.10,000/- in default to suffer SI for one month.

2 Heard learned advocate appearing for the applicant-accused. He argued that prosecution has not established that

victim girl is mentally challenged person. Medical officer is not examined in order to demonstrate that offence is falling under definition of the term 'Rape' given in Section 375 of IPC. Police patil and other public servants are not examined. It is further argued that evidence of P.W.1 Chhabutai does not show commission of offence punishable under Section 376 of IPC.

3 The learned APP opposed the application.

4 I have considered rival submissions and also perused the impugned judgment and order apart from deposition of witnesses. According to the prosecution case, applicant-accused had committed rape on victim girl aged about 25 years, who was unable to move because of her ailment and she is mentally retarded woman. Cross-examination of P.W.1-Chhabutai on behalf of the applicant-accused shows that from her cross-examination, it is brought on record that victim is deaf and dumb, she is unable to understand and answer nature's call. P.W.1 Chhabutai accepted suggestion of the applicant-accused that victim girl is mentally retarded and does not know how to behave and how to wear clothes. On similar line, P.W.2-Padmini is cross-examined and

similar answers are elicited from her cross-examination. In his examination under Section 313 of Cr.P.C., the applicant-accused accepted the fact that victim is mentally retarded woman. In this background, it does not lie in the mouth of the applicant-accused that this fact is not proved by the prosecution.

5 P.W.1-Chhabutai is grand mother of victim woman. Her evidence shows that on the date of incident, she as well as her daughter P.W.2-Padmini were working in their field. Applicant-accused came there and by informing that he is going to their house for drinking water, left the spot. As applicant-accused did not return after lapse of considerable time, P.W.1-Chhabutai went to her house. She has categorically deposed that she saw applicant-accused committing sexual intercourse on the victim woman and upon hearing her shouts, he ran away by lifting his pant.

6 P.W.2-Padmini who is daughter of P.W.1-Chhabutai has stated that she was following her mother to their house and saw applicant-accused running away after hearing shouts of her mother. Evidence of P.W.2-Padmini is to the effect that then her

mother informed her that she saw applicant-accused committing sexual intercourse with the victim woman. This evidence is certainly admissible in the wake of provisions of Section 157 of the Indian Evidence Act as it is proving former statement of the witness made soon after the incident.

7 Perusal of cross-examination of P.W.1-Chhabutai and P.W.2-Padmini doesnot reflect any probable reason with them to falsely implicate accused in the crime in question. Half heartedly theory of advancing hand loan is sought to be propagated but that too without any further details.

8 What is relevant is quality of evidence and not quantity. Evidence of the prosecution in the matter of sexual offence is required to be considered keeping in mind broader probabilities of the prosecution case. In tradition bound Indian society, it is hard to conclude that honour of the family will be put at the stake only in order to make such false allegation of rape on the resident of village. Therefore, at this stage, it cannot be said that there is no prima-facie material against the applicant-accused.

9 Considering the nature of offence and the circumstances in which it is committed, no case for suspension of sentence and releasing the applicant-accused on bail is made out. Application is, therefore, rejected.

(A. M. BADAR, J.)