

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1314 OF 2016

IN

CRIMINAL APPEAL NO.694 OF 2016

AVDHUT MANIKRAO CHANDOKAR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.M.K.Kocharekar a/w. Mr.Omkar Nagvekar i/b. Ms.Prabha
Badadare, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 10th JANUARY 2017.

P.C. :

1 This is an application by applicant / accused for suspension of sentence and releasing him on bail during pendency of the appeal. The applicant / accused was convicted for the offences punishable under Sections 376 and 493 of the IPC and he is sentenced to suffer rigorous imprisonment for 7 years, apart from fine of Rs.2,000/-, in default, to undergo further rigorous

imprisonment for 3 years for the offence punishable under Section 376 of the IPC. For the offence punishable under Section 493 of the IPC, the applicant / accused is sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.2,000/-, in default, to undergo further rigorous imprisonment for 3 months.

2 Heard learned counsel appearing for the applicant / accused. By taking me through the evidence of prosecutrix, the learned counsel argued that in the year 2013, intimacy was developed between the applicant and the prosecutrix. The learned counsel further argued that even according to the prosecution case, on 2nd September 2013, there was marriage between the applicant and the prosecutrix and thereafter there was sexual relations between them on 10th September 2013. The learned counsel further argued that the FIR of this incident is lodged after four months and there is no plausible explanation for this delay in the FIR. In submission of the learned counsel for the applicant / accused, the applicant / accused is falsely implicated in the crime in question.

3 The learned APP opposed the application by contending that the prosecutrix was to gain nothing by deposing a lie against the applicant / accused. The learned APP submitted that evidence of the prosecutrix was rightly relied by the learned trial court in convicting the applicant / accused.

4 I have carefully considered the rival submissions and also perused the copies of deposition made available, so also the impugned judgment and order. Undisputedly, the prosecutrix, at the time of the alleged incident was about 19 years of age. She was studying in 12th Standard at a Junior College at Pune. Her version reveals that she had developed intimacy with the applicant / accused, who is also a young boy. Evidence of prosecutrix further shows that on 2nd September 2013, she accompanied the applicant / accused initially to Alandi and thereafter to Bhagyashree Mangal Karalaya, where they performed marriage. As per version of the prosecutrix, thereafter, on 10th September 2013, the applicant / accused took her to a place known as Durga Tekdi where they indulged in sexual intercourse, which according

to the prosecutrix was a forcible sexual intercourse. Version of the prosecutrix further shows that thereafter time and again the applicant took her to a place known as Durga Tekdi and committed sexual intercourse with her. As per her version, subsequently, the applicant / accused had deserted her and thereafter she lodged FIR against him.

5 In the wake of this evidence of prosecutrix, the moot question would be whether the sexual intercourse allegedly committed by the applicant / accused with the prosecutrix is out of her free consent or it was a forcible sexual intercourse. Undoubtedly, the prosecutrix was of a consenting age at the time of the alleged incident. She claims to have been subjected to repeated sexual intercourse by the applicant / accused and that too without her consent, as seen from paragraph 3 of her deposition. Her evidence does not explain as to why she has not complained about those repeated acts of the applicant / accused to anybody including her family members. It is well settled that consent is an act of reason accompanied with deliberation, the

mind weighing as in balance what is good and what is evil for both sides. Consent means an active will in the mind of a person to permit doing of an act complained of and knowledge of what is to be done. In the case in hand, *prima facie* it is apparent that both parties were indulged in sexual intercourse and the prosecutrix was an adult woman having attained consenting age. All these aspects will have to be kept in mind while deciding the appeal.

6 However, at present, considering the fact that the applicant / accused was on bail during pendency of the trial, and that he has not misused his liberty, I am of the considered opinion that in the wake of factual backdrop discussed in the foregoing paragraphs, he deserves liberty, and therefore, the order :

- i) The application is allowed.
- ii) Substantive sentence of imprisonment imposed upon the applicant / accused is suspended and he is directed to be released on bail on executing P.R. Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount.

(A. M. BADAR, J.)