

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.1497 OF 2015
IN
CRIMINAL APPEAL NO.652 OF 2016**

Ravindra Vithoba Kadam ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Raghuraj S. Deshpande i/b.Mr.V.S.Thakur, Advocate for the Appellant.

Ms.A.A.Takalkar, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 9th JANUARY 2017.

P.C . :

1 This is an application for suspension of sentence and release of the applicant/accused on bail during pendency of appeal.

2 Heard both sides.

3 It is argued by the learned counsel for the applicant/accused that except a small abrasion on vagina of the alleged victim, there was no other injury on her person. The medical evidence does not support prosecution case. The Medical

Officer has not disclosed rupture of hymen. The learned counsel further argued that the incident allegedly took place in open area and still the prosecution has not examined any other eye-witness to the incident for marking description of the place. Recovery of the rope is also doubtful. Police jeep has log book and that evidence ought to have been adduced by the prosecution. The learned counsel further argued that during trial applicant/accused was on bail and he has not misused the liberty and, therefore, he is entitled for bail during pendency of the appeal.

4 The learned Additional Public Prosecutor opposed the application by contending that there is consistent evidence against the applicant/accused and the victim girl was minor.

5 I have carefully considered the rival submissions and also perused copies of deposition placed on record. According to the prosecution case, the victim of the offence is a minor girl, who was aged about 13 years at the time of the alleged incident. On 05/08/2012, according to the prosecution case, the victim girl had gone for grazing the she-goats besides the road proceeding to Curtail from village Sukivali. On the pretext of helping him while putting a bundle of cut grass on his head, the applicant/accused called the victim girl and then committed rape on her.

6 Evidence of victim girl *prima facie* shows that she was

minor at the time of the alleged incident. Her date of birth is 23/03/1998. Her evidence shows that the applicant/accused caused her fall on the ground and tied a rope against her neck and committed rape on her. P.W.No.7 Dr.Aruna Jagatap had medically examined the victim girl. Her evidence reveals that there was a ligature mark around the neck of the victim girl. This Medical Officer has deposed in cross-examination that there was injury to vagina of the minor victim girl and that injury was admeasuring 3.1 m.m. P.W.No.2 Shevanti is sister of father of the victim girl. She deposed that the victim girl returned to home while weeping and upon being asked, she disclosed her that the applicant/accused had committed rape on her.

7 It is now well settled that a finding of guilt in a case of rape can be based on uncorroborated testimony of the prosecutrix. The very nature of such offence makes it difficult to get direct corroborating evidence. Similarly, it is well settled that evidence of victim of rape cannot be discarded merely on the basis of minor discrepancies and contradictions. Evidence of the prosecutrix in such a case is required to be examined in broader probability.

8 Viewed from this context, it is apparent from the evidence adduced by the prosecution that evidence of the minor female victim is gaining sufficient corroboration from the evidence adduced on record. She deposed that the applicant/accused tied

her neck by means of a rope. During her medical examination, ligature mark was found on her neck. In her medical examination, some injury was found on her vagina. Even finding of injury on person of victim of the rape is not *sine qua non* in recording finding of the guilt. Evidence of the aunt of the minor female victim is relevant under Section 157 of the Evidence Act, as it is proving the former statement of the victim girl made soon after the incident. In this view of the matter, it cannot be said that there is no evidence against the applicant/accused to convict him of the offence punishable under Section 376 of the Indian penal Code.

9 True it is that the applicant was on bail during the pendency of trial, but considering the fact that it is a case of a rape on a minor girl and there is *prima facie* evidence against the applicant/accused, no case of suspension of sentence is made out.

10 The application is, therefore, rejected.

(A. M. BADAR J.)