

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.175 OF 2017
IN CRIMINAL APPEAL NO. 75 OF 2017
(Samarth s/o Ramchandra Solanki vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Mrs. S.P. Giratkar, Advocate (appointed) for applicant.
Shri T.A. Mirza, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : APRIL 24, 2017

Heard Mrs. Giratkar, learned Counsel for
applicant, and Shri Mirza, learned Additional Public
Prosecutor for respondent.

This application is filed by applicant for
suspension of substantive sentence and for grant of bail.

Mrs. Giratkar, learned Counsel for applicant,
has submitted that complainant, who is mother of
prosecutrix, lodged belated report to falsely implicate
applicant and there is no medical evidence establishing
that prosecutrix was subjected to sexual intercourse. It is
contended that from the evidence on record, there is
nothing to establish that prosecutrix was minor at the
time of incident. It is thus prayed that application be
allowed.

Shri Mirza, learned Additional Public
Prosecutor for respondent, has opposed the application.

Applicant, who is original accused no.4, is
found convicted for the offences punishable under

Sections 363 and 376(2)(f) of Indian Penal Code and is sentenced to suffer rigorous imprisonment for three years for the offence punishable under Section 363 of Indian Penal Code and to suffer rigorous imprisonment for seven years and to pay fine of Rs.1000/- and in default of payment of fine, to suffer rigorous imprisonment for three months for the offence punishable under Section 376(2)(f) of Indian Penal Code. In addition to said offences, applicant was also convicted for the offence punishable under Section 4 of Child Marriage Restrain Act and sentenced to suffer simple imprisonment for one month and to pay fine of Rs.500/- and in default, to suffer simple imprisonment for seven days.

Applicant is found arrayed as accused no.4. Accused nos.1, 2 and 3 are convicted for the offences punishable under Sections 363 and 366 read with Section 34 of Indian Penal Code and are sentenced to suffer rigorous imprisonment for three years on each count. They are also convicted for the offence under Section 6 of Child Marriage Restrain Act and are sentenced to pay fine of Rs.200 each and in default, to undergo simple imprisonment for five days.

It is the case of prosecution that original accused nos. 1 to 3, all females, visited house of prosecutrix and by inducing her to accompany them on the pretext of giving work of cooking food or cleaning utensils, took her from house in the absence of her mother P.W.1 Laxmibai. After P.W.1 Laxmibai returned home, since she did not find minor girl in home, she

lodged report in Police Station on 17/5/2012.

It appears that after lodging of report, co-accused nos.1 to 3, who had reached prosecutrix to applicant at Ujjain and applicant had already married her there and had developed physical contacts, brought her back to Police Station and from there, was given to the custody of complainant.

In the background of above facts, applicant came to be convicted along with other co-accused as aforesaid.

Perusal of evidence of P.W.1 Laxmibai establishes involvement of co-accused nos.1 to 3, who had kidnapped minor prosecutrix and reached her at the home of applicant at Ujjain where applicant married her and on the same day, committed sexual assault. It has come in the evidence of complainant that as per information received from prosecutrix, co-accused nos.1 to 3 had received Rs.60,000/- from applicant for the said acts.

Evidence of prosecutrix corroborates complainant's evidence about co-accused nos.1 to 3 visiting her and taking her with them on the pretext of giving her work of cleaning utensils and cooking food to Ujjain by train and about applicant marrying her. Prosecutrix has further deposed that on the date of marriage, she was subjected to sexual intercourse and that thereafter co-accused nos.1 to 3 came to the house of applicant and informed him that mother of prosecutrix had lodged report with Police and, therefore, brought her to Police Station, Ballarsha.

Evidence of both these witnesses is found corroborated with evidence of neighbour, who is examined as P.W.4 Laxmibai Tanera, who had seen accused nos.1 to 3 going to the house of prosecutrix at 12 noon and taking away prosecutrix from the house in the absence of her mother P.W.1 Laxmibai on the pretext of giving work of cleaning utensils and cooking food.

P.W.3 Punjaram Walde, Head Master of School, has deposed that as per admission-discharge register of School, date of birth of prosecutrix is 15/6/2001.

Having considered date of birth of prosecutrix as aforesaid and since incident has occurred in the year 2012, by no stretch of imagination it can be stated that prosecutrix was major on the day of incident.

Evidence of P.W.5 Dr. Anjali, Medical Officer further corroborates case of prosecutrix when she has stated that prosecutrix had sustained injuries to her private parts, her hymen was torn and she was subjected to sexual intercourse.

Having considered involvement of applicant as aforesaid and since applicant is also not stated to be on bail pending trial, the criminal application is rejected.

JUDGE

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