

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

CRIMINAL APPLICATION (APPA) NO.416 OF 2016

IN

CRIMINAL APPEAL NO.199 OF 2016

Rajkumar S/o Narayan Thakre

..VS..

State of Maharashtra, through PSO, Police Station Tirora, District Gondia

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

Court's or Judge's Order

Shri C.H. Jaltare, Counsel for the applicant.

Shri S.A. Ashirgade, Addl.P.P. for the non-applicant/State.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 11, 2017.

Heard learned counsel for the applicant and
learned Additional Public Prosecutor for the non-
applicant/State.

This application is for suspension of
substantive sentence imposed upon the applicant.

Learned counsel for the applicant has
contended that though according to the evidence of
prosecutrix she was subjected to sexually intercourse,
there is no evidence of semen stains of applicant found
either on her clothes or on his clothes. It is further
contended there is no medical report on record but
what is relied by the prosecution is a query sent by the

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investigating officer to medical officer and by referring to same it is further submitted that according to the contents thereof, one injury stated to have sustained by prosecutrix on her vagina is caused to her due to fall while playing at the time of incident. It is, therefore, submitted that applicant is falsely involved in this case who at the material time in fact had visited house of prosecutrix to collect amount owned by son of complainant who has purchased material from his pan stall. It is, therefore, prayed that in the light of facts as aforesaid, the application be allowed releasing applicant on bail, pending appeal.

Learned Additional Public Prosecutor has opposed the application on the ground that there is nothing to doubt the case of prosecution much less evidence of prosecutrix who was eleven years at the date of incident. It is submitted that her evidence is fully corroborated with the medical evidence and no case is made out of false implication of applicant. The application is thus prayed to rejected.

The applicant is found convicted for the offence punishable under Section 376(2)(f) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and, in default, to suffer rigorous imprisonment for six months. The applicant is also

convicted under Section 506 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year.

The offence is found registered on the strength of the report lodged by PW1 Zilabai Kadav, grandmother of prosecutrix who has stated that the incident took place at 7:00 pm when prosecutrix was playing in front of her house in the courtyard when accused arrived and by lifting her took her towards Balwadi and Samaj Mandir. When she returned back weeping, she told complainant that accused after pressing her mouth had sexually assaulted her.

It is further stated that prosecutrix was found having bleeding injuries sustained on her private part. The complainant thus lodged report Exh.10.

The evidence of complainant finds corroborated from the evidence of prosecutrix when she has stated involving of applicant to have sexually assaulted her on the day of the incident. She also stated to have informed said fact immediately to her grandmother who accompanied her to police station to lodge report.

Evidence of both these witnesses finds corroborated with the medical evidence which finds further corroboration from the medical evidence as from the report of the query made to the medical officer

immediately after the incident it is certified that on examination of prosecutrix, she was found to have undergone forcefully sexual intercourse as lower part of her vagina was noted to be of torn.

In view of above available evidence, when probable case of applicant of his false implication is considered, it is material to note that complainant in clear terms has denied that at the time of incident accused had visited their house to demand credit amount. In fact, in her earlier cross examination, it has come on record that she is even not aware if her sons were getting any material on credit from the shop of accused.

In that view of the matter, there appears no substance in the case of applicant. The application is thus liable to be dismissed, as per order below:

ORDER

The criminal application is rejected and disposed of accordingly.

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)

Uploaded on :- 12/1/2017

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