

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 309 OF 2014

Nagnath Tejrao [Devkate] **APPELLANT**
Ravikar, Age : 26 Years,
Occ. Agriculture, Resident
of Ravi, Tq. Mudkhed, Dist.
Nanded

V E R S U S

[1] The State of Maharashtra, **RESPONDENTS**

[2] Hanbai Nagorao Parse, Age
Major, Occupation Nil,
R/o Shaskiya Mahila Rajya
Grih, Nanded

Mr. S.B. Solanke, Advocate for the Appellant
Mrs.D.S. Jape, APP for respondent No.1-State
Mr. V.P. Latange, Advocate for respondent
No.2

**CORAM : T.V. NALAWADE AND
SMT.VIBHA KANKANWADI,JJ.**

DATE : 21st SEPTEMBER, 2018

ORAL JUDGMENT [PER : T.V. NALAWADE, J.] :

The appeal is filed to challenge the Judgment and Order of Sessions Case No.02/2009, which was pending in the Court of learned Addl. Sessions Judge,

Kandhar, District Nanded. The trial Court has convicted the present appellant for the offence punishable under Section 376 [1] of Indian Penal Code and has sentenced to suffer imprisonment for life and to pay fine of Rs.2,00,000/- and in default to suffer rigorous imprisonment for one year. Heard learned counsel for the appellant. Learned counsel Mr. V.P. Lantange for the first informant and learned A.P.P. are also heard.

2. The evidence and the record shows that the prosecution did not dispute that the age of prosecutrix was 18 to 19 years at the relevant time. The offence of rape was proved before trial Court as the prosecutrix confirmed her version and the trial Court believed her. Accused No.2 was acquitted. Now accused No.1 who is appellant is behind bars since four years and undergoing sentence. Submission is made by learned counsel for the appellant that after conviction when the appellant was on bail, the parties settled the dispute and the appellant married with the prosecutrix. Such submission was made in this Court also, and after that, the bail was cancelled and the appellant was taken in custody. There is no correspondence of the prosecutrix which was sent by post. Today this Court verified and confirmed that the prosecutrix has sent the letter. She has brought with her Adhar-Card and its copy is taken on record. On

that document, the name of prosecutrix is mentioned with the name of her father. In the correspondence made, she has mentioned the name of her husband now.

3. Learned counsel for the appellant submitted to take lenient view in view of change of the circumstances. Learned counsel submitted that the appellant now needs to take care of the prosecutrix. The submissions was made that one son is born to prosecutrix from the appellant/accused.

4. Learned counsel for the appellant drew the attention of this court to the provision of Section 376 [1] of I.P.C. which was prior to the amendment of 2013. Section 376 [1] of I.P.C. shows that for adequate and special reasons, the Court can reduce the sentence for imprisonment for the term less than seven years.

5. In view of the aforesaid circumstances and as prayer is made for taking lenient view, this Court holds that the sentence needs to be modified. This Court holds that the imprisonment for the period already undergone is just and sufficient. Order is already made by this Court to deposit fine amount of Rs.2,00,000/-. It is necessary to invest the said amount in the name of son of the parties in fix

deposit and only when he becomes major, the amount be given to him. For his expenses the mother is entitled to take the interest at quarterly basis. In the result, the following order :-

O R D E R

[1] Appeal is partly allowed.

[2] The Judgment and order of conviction of appellant is maintained, but the sentence is reduced to make it for the period which he has already undergone and to pay the fine of Rs.2,00,000/-.

[3] The appellant is to be released from Jail forthwith.

[4] Bail bond of Rs.15,000/- [Rupees Fifteen Thousand] with one surety in the like amount are to be taken from him as directed under Section 437 [A] of I.P.C., which will remain in force for a period of six months.

[5] The amount already deposited as fine is to be kept and continued in the name of son of the parties as already observed.

[6] Criminal Application No.4305/2016 is disposed of.

[7] The fees of learned Advocate appointed by this Court for respondent No.2 is quantified as Rs.5,000/- [Rupees Five Thousand], which is to be paid by the High Court Legal Services Authority.

[SMT.VIBHA KANKANWADI,J.]

[T.V. NALAWADE, J.]