

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.836 OF 2017

IN

CRIMINAL APPEAL NO.514 OF 2015

Shri.Pravin Prakash Patil ... **Applicant**

V/s.

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

....

Mr.D.A.Nalawade with Mr.Abhishek Bhaduri i/b. Ms.Seema M.Pawar, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 24th JANUARY 2018.

P.C. :

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

2 The applicant/accused has been convicted of the offence punishable under Sections 376, 392 and 506 of the Indian Penal Code by the impugned Judgment and Order dated 15/04/2017 by the learned Additional Sessions Judge, Mangaon, District Raigad. For the offence punishable under Section 376 of the Indian Penal Code, he has been sentence to suffer rigorous

imprisonment for 10 years apart from imposition of some fine and the sentence in default. Other sentences imposed on the applicant/accused are lesser than the sentence imposed on him for the offences punishable under Section 376 of the Indian Penal Code and as all these sentences are directed to run concurrently, it is not necessary to reproduce sentences on other counts.

3 Heard the learned Advocate for the applicant/accused. He vehemently argued that one piece of evidence against the applicant/accused is that of recovery of ornaments of the alleged victim of the crime in question. The learned Advocate criticized the evidence of prosecutrix on this aspect by pointing out that the P.W.No.1, who is alleged victim of the crime in question has deposed that the applicant/accused had taken her *ganthan*, *patty*, and *zumke*. She has deposed that *ganthan* was weighing 15 gms., whereas *zumke* was weighing 4 gms. The learned Advocate then drew my attention to the evidence of P.W.No.9 Anil Bhojne – goldsmith from whom recovery is allegedly effected by the prosecution. The learned Advocate pointed out P.W.No.9 Anil Bhojne had deposed that his brother-in-law and the friend of his brother-in-law had given two *zumke*, *mangalsutra*, ear-rings and ear-strips to him stating that those ornaments were belonging to applicant Pravin Prakash Patil. Ingot of gold weighing 19.750 gms. was shown to have been recovered from P.W.No.9 Anil Bhojne. The learned Advocate for the applicant/accused has

pointed out that the victim had not stated that ear-rings belonging to her were taken by the accused at the time of the incident. This, according to the learned Advocate for the applicant, makes a prosecution case suspect.

4 The learned Advocate for the applicant/accused then pointed out evidence of P.W.No.3 Sameer Bankar, who acted as spot panch and argued that P.W.No.6 Dr.Mahesh Mehta had claimed that he had extracted blood of the applicant/accused for DNA profiling on 03/10/2011. The learned Advocate further pointed out that the evidence of P.W.No.6 Dr.Mahesh Mehta shows that in doing this exercise, he had prepared the identification form (Exhibit 40). This identification form at Exhibit 40, in submission of the learned Advocate for the applicant/accused, is blank and material particulars are not filled therein. The learned Advocate further pointed out that P.W.No.3 Sameer Bankar is also shown as a panch while drawing blood for DNA sample in the identification form at Exhibit 40. However, evidence of P.W.No.3 Sameer Bankar is conspicuously silent about this exercise done by the prosecution. Therefore, according to the learned Advocate for the applicant/accused, the applicant/accused is framed in this offence by making a farce of extracting his blood for DNA test.

5 The learned Advocate for the applicant/accused further argued that the applicant/accused was arrested after

eleven months of the incident. After his arrest, on 29/09/2011, the test identification parade is shown to have been conducted on 14/12/2011. Prior to that test identification parade, on 03/10/2011 itself, P.W.No.1 i.e. alleged victim of the crime in question along with the applicant/accused were taken to P.W.No.6 Dr.Mahesh Mehta for extracting blood for DNA profiling. Thus, in every probability, prior to the test identification parade and particularly on 03/10/2011, the identifying witness P.W.No.1/the prosecutrix had every opportunity to see the applicant/accused and, therefore, no reliance can be placed on test identification parade conducted by the Tahsildar. Evidence of the Special Executive Magistrate/Tahsildar, who had conducted test identification parade is assailed by the learned Advocate for the applicant/accused by contending that this Special Executive Magistrate had not asked any question to victim whether she had an opportunity to see the applicant/accused any time before conducting the test identification parade. The victim was brought on the spot by police. Evidence of Special Executive Magistrate shows that he had not even stated that he had studied the case prior to conducting the test identification parade.

6 With this, the learned Advocate for the applicant/accused argued that because of public pressure, after 11 months, the applicant/accused framed in the crime in question and subsequently, formalities are shown to have been done in

order to falsely implicate the applicant/accused in the crime in question.

7 The learned Additional Public Prosecutor opposed the application.

8 At the outset, it needs to be put on record that evidence of test identification parade is a corroborative piece of evidence and it is generally procured in order to ascertain whether investigation is going on in the right direction or not. The evidence of test identification parade is primarily meant for aiding the investigation. Substantive evidence is an evidence of dock identification. In the case in hand, the applicant is identified by the prosecutrix before the Court.

9 In the case in hand, evidence of P.W.No.1 – the alleged victim of the crime in question is to the effect that when she was washing clothes at the river, the applicant/accused came and then forcibly raped her. She was threatened by the applicant/accused. In the words of the victim, she deposed the incident in the following manner :

“However, he told me that nobody was there. Then I ran towards hut with shouting. I was shouting “Baya Baya”. I was calling my sister by shouting Baya Baya. While I was

running towards hut, accused caught me from my backside. At that time I was near the hut. The accused threatened me to kill if I did not do as per his wish. Then accused took me towards the agricultural land which is behind towards upper side. At that time there was no crop in the said agricultural land. The accused fell me down on the land. Accused pulled my petticoat and sari and he removed nicker. The accused removed the clothes on his person and he committed intercourse with me forcibly. Then by my petticoat, (परकर) he cleared his private part. Then he worn his clothes.”

10 It is seen that the prosecutrix had lodged report of the incident on 12/11/2010 itself i.e. on the day of the incident. Her evidence is perfectly in tune with her FIR, which was lodged with promptitude. The fact that the rapist had cleaned his private part with petticoat of the prosecutrix is disclosed even in the FIR lodged with promptitude. Perusal of the cross-examination of the prosecutrix does not show that the prosecutrix had any axe to grind against the present applicant/accused, who was totally stranger to her.

11 Perusal of evidence of P.W.No.6 Dr.Mahesh Mehta had shown that on 03/10/2011, the prosecutrix as well as the applicant/accused were brought to his hospital for extraction of

blood for conducting the DNA test. *Prima facie*, it is seen that the prosecutrix was having every opportunity to see the accused at that place. However, at the same time, it needs to be noted that the blood collected for DNA profiling was sent for forensic examination to the Forensic Laboratory at Kalina. The report of the DNA test is at Exhibit 42. Perusal of the DNA report shows that semen found on the petticoat of the prosecutrix matched with the male haplotypes present in the DNA profile of the present applicant/accused. The prosecution has also examined the petticoat as well as the nicker of the prosecutrix seized in pursuant of the seizure panchanama (Exhibit 33). This seizure was effected on the very same day of the incident itself. The seizure panchanama shows that after seizure of clothes of the prosecutrix they were seized by applying wax seal. In the chemical analysis of the petticoat and nicker of the prosecutrix semen stains were found thereon which subsequently proved to be matching to the DNA extracted from the blood of the present applicant/accused. *Prima facie*, at this stage, it is difficult to infer that clothes of the prosecutrix were tampered subsequently. This forensic evidence collected by the prosecution is corroborating the version of the prosecutrix regarding rape committed by the applicant/accused on her in the field.

12 It is well settled that in the case of sexual offences against woman, the Court is expected to keep in mind the broader probabilities of the prosecution case by ignoring minor

discrepancies therein. In the wake of this law regarding appreciation of evidence of sexual offences, non speaking about the extracting of blood and filling of the identification form by P.W.No.3 Bankar as well as arrest and drawing samples of two more persons suspected in commission of this crime is of no consequence to grant benefit to the applicant and that too at this stage.

13 In the case in hand, the prosecutrix identified the applicant/accused as perpetrator of the crime before the Court while she was in the dock. It is well settled that victim of the sexual assault is not an accomplice to the crime, but she is an injured witness, who stands on a higher pedestal. Her evidence is required to receive same weight as is attached to the evidence of the injured witness. Perusal of her evidence does not show that she had any motive to falsely implicate the applicant/accused in the crime in question. Therefore, though there appears some minor discrepancies in the prosecution case, this is not a case to grant benefit of such discrepancies when after due trial, the offence of rape is proved against him

14 The application is, therefore, rejected.

15 Hearing of the appeal is expedited.

(A.M.BADAR J.)