

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1508 OF 2018

IN

CRIMINAL APPEAL NO.1161 OF 2018

RAKESH BRIJLAL TIWARI

)...APPLICANT

V/s.

THE STATE (UNION TERRITORY OF)

DADRA AND NAGAR HAVELI) SILVASSA)

AND ANOTHER)...RESPONDENTS

Mr.Girish Agrawal, Advocate for the Applicant.

Mr.H.J.Dedhia, Special Public Prosecutor, for Respondent No.1.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 27th SEPTEMBER 2018

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/accused is convicted of offences punishable under Section 342 and 376 of the Indian

Penal Code by the learned trial court. On first count, he is sentenced to suffer rigorous imprisonment for 1 year and on another count, he is sentenced to suffer rigorous imprisonment for 7 years. Some fine is also imposed on the applicant/accused, so also default sentence.

2 Heard the learned counsel appearing for the applicant/accused. He argued that during pendency of the trial, the applicant/accused was on bail and he has not misused his liberty. It is further argued that though corroboration is not necessary for convicting the accused in the case of sexual offence but that can be done only when evidence of the prosecutrix is reliable and trustworthy. According to the learned counsel appearing for the applicant/accused, in the case in hand, version of the prosecutrix is not at all reliable. The defence has probabalised its version that over issue of hand-loan and its refund, there was quarrel between the parties in which the applicant/accused had assaulted the husband of the prosecutrix and he was hospitalized. The crime in question was thereafter

registered in order to take revenge. Moreover, even though it is alleged that husband of the prosecutrix was assaulted by the applicant/accused, no charge to that effect was leveled against the applicant/accused. It is further argued that forensic evidence is not supporting the case of the prosecution nor any independent witness is examined by the prosecution despite the fact that available evidence was discrepant.

3 The learned APP opposed the application by contending that the crime in question is serious and it is held to be proved after due trial.

4 I have carefully considered the submissions so advanced and perused the copies of deposition of prosecution witnesses as well as the impugned judgment and order of conviction and the resultant sentence.

5 The case in hand is a case of rape on a married woman in the washroom of the factory premises. The victim of the crime

in question is examined as PW3. In her chief-examination she deposed that after her duty was over at about 5.00 p.m., she went to use the washroom and at that time, the applicant/accused entered in the washroom, laid her down on gunny bags, removed her undergarments and committed forcible sexual intercourse with her. The prosecutrix further stated that the applicant/accused ejaculated semen.

6 Cross-examination of the prosecutrix shows that apart from her, other employees were also working in that factory premises situated in one block of the building. Other companies, as per her version, are situated in adjoining blocks. In chief-examination itself she stated that when she was screaming at that time one lady employee had observed her. It is brought on record from cross-examination of the alleged victim of the crime that she was in her menses at the time of the incident in question. She further admitted in her cross-examination that the accused did not perform sexual intercourse with her till he discharged semen.

7 This material elicited from the victim of the crime in her cross-examination prima facie does not reflect penetration. Though in sexual offences there is no requirement of positive forensic evidence, the prosecutrix was specific about ejaculation of semen. Clothes of the prosecutrix as well as the applicant/accused were seized. No semen was detected on clothes of the prosecutrix as well as in her vaginal swap.

8 Though the prosecutrix was in her menses, no stains of blood were detected on clothes of the applicant/accused. As per version of the prosecutrix, she was laid on the gunny bags and after denuding her, the applicant/accused committed forcible sexual intercourse with her. Those gunny bags were also seized by the Investigator and were subject to chemical analysis. No stains of blood were detected on those gunny bags.

9 Evidence of PW4 Nandlal Singh – husband of the prosecutrix goes to show that the incident was informed to the police because he was hospitalized because of injuries suffered by

him. It is version of the defence that the applicant/accused had taken hand-loan from PW4 Nandlal Singh and despite return of that hand-loan, PW4 Nandlal Singh was demanding some more amount which has occasioned the quarrel between them and the resultant assault. Though it is case of the prosecution that the assault on PW4 Nandlal Singh took place because he went to question the applicant/accused about the act of committing rape on his wife, strangely enough the applicant/accused was not charged for assaulting PW4 Nandlal Singh. The lady, who allegedly had seen the victim of the crime in question, was also not examined by the prosecution.

10 During pendency of trial, the applicant/accused was on bail.

11 Considering the nature of evidence available against the applicant/accused and the fact that he was on bail during pendency of the trial, the applicant/accused deserves to be released on bail during pendency of his appeal. Therefore, the

order :

ORDER

- i) The application is allowed.
- ii) Substantive sentence of imprisonment imposed on the applicant/accused is suspended and the applicant/accused is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- iii) The applicant/accused should not contact the prosecutrix or her relatives as well as the prosecution witnesses examined by the prosecution in any manner during pendency of the appeal.
- v) The application is disposed of.

(A. M. BADAR, J.)

**Arti Vilas
Khatate**

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