

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

CRIMINAL APPLICATION (APPA) NO.44/2018

The State of Maharashtra through PSO P.S. Buldhana City, Dist.
Buldhana ..vs.. Sayyad Soheb Saiyyad Jalaluddin

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

Court's or Judge's orders.

Mr.V. A. Thakare, A.P.P. for applicant.

CORAM : V.M. DESHPANDE, J.

DATED : FEBRUARY 28, 2018

1. Heard Mr. V. A. Thakare, learned A.P.P. for the applicant.

2. The appellant-State is seeking leave to prefer the appeal against the judgment and order of acquittal dated 03.11.2017 passed by the learned Special Judge and Additional Sessions Judge, Buldhana in Special (POSCO) Case No.34/2016 by which the learned Judge acquitted the respondent of the offence punishable under Section 354-D of the Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act.

3. By now, the law in respect of appeal against acquittal is well crystallized. Merely because another view is possible, that is not sufficient for the appellate Court to substitute its view in place of the view taken by the learned trial Court. It is required for the State to point out that the appreciation of the prosecution witness is perverse or

available legal admissible evidence is not considered by the learned trial Court then alone the appellate Court will exercise its powers by setting aside the judgment and order of acquittal.

4. In the present case, the learned lower appellate Court, in my view, has rightly appreciated the evidence of the victim. The learned Judge has rightly drawn adverse inference against the prosecution for non examination of Sukanya Gaikwad to whom, according to the prosecution, the victim firstly disclosed the incident.

5. In my view, the learned Judge of the Court below has rightly appreciated the case for acquittal of the respondent for not examining the independent witness whose presence cannot be ruled out in view of the evidence of the victim herself that the place was a crowded place.

6. Further, though it is the version of the victim that for last 15 days of the actual incident, the respondent was stalking however she failed to give any identification mark of the respondent and in spite of that brother of victim could trace out the respondent as the perpetrator of the crime.

7. Though it is quite possible that the victim might not have rushed immediately to narrate the incident to her parents before narrating the same to her friend Sukanya however if the Court below is of the view that in spite of the

opportunity, that was available to the victim, she failed to disclose the incident to her parents and when the girl to whom the incident was firstly narrated is not examined, in my view, the approach of the Court below in acquitting the respondent on that ground cannot be stated to be perverse one.

8. No case is made out to disturb the finding of acquittal. Hence, leave is refused. The application is rejected. Consequently, the appeal is also rejected.

JUDGE