

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

CRIMINAL APPLICATION (APPA) NO.955 OF 2017
(Smt. Durga Shrikant Deshmukh vs. The State of Maharashtra and another)

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

Shri R.R. Gour, Advocate for applicant.
Ms. H.N. Jaipurkar, Additional Public Prosecutor for
respondent no.1.
Shri N.B. Kalwaghe, Advocate for respondent no.2.

CORAM : P.N. DESHMUKH AND
MRS. SWAPNA JOSHI, JJ.

DATED : AUGUST 20, 2018

Heard learned Counsel for the parties.

This application is for leave to file appeal
against judgment dated 31/8/2017 passed by learned
Sessions Judge, Bhandara in Sessions Trial No.33/2014
whereby respondent no.2 came to be acquitted of the
offences punishable under Sections 376(2)(n), 292, 417
and 506 of Indian Penal Code.

Shri Gour, learned Counsel for applicant, by
referring to the evidence on record has pointed out that
though there is ample evidence establishing involvement
of respondent no.2 in committing rape upon victim
against her wish forcibly, learned trial Court has not
appreciated the evidence in its true perspective. It is
contended that oral version of prosecutrix is found
substantiated from the seizure of respondent no.2's
mobile handset under panchanama, which further
substantiates the case of prosecution of respondent no.2

obtaining photograph of daughter of prosecutrix. It is submitted that since material evidence is not duly considered by learned trial Court, the present application be allowed.

Shri Kalwaghe, learned Counsel for respondent no.2, has pointed out that evidence of prosecutrix is full of material omissions, which are stated to be duly proved by the Investigating Officer. It is contended that even if mobile handset of respondent no.2 is seized, the seizure is effected late, i.e. after two months of respondent no.2's allegedly obtaining photograph of daughter of prosecutrix and Chemical Analyser's report does not advance the case of prosecution any further. It is further contended that even otherwise, it is not the case of prosecution that photograph of daughter of prosecutrix obtained by respondent no.2 is misused. It is, therefore, submitted that application may be dismissed.

In the background of submissions advanced by both sides as aforesaid, on perusal of evidence of prosecutrix, it is revealed that her evidence is full of material omissions. As per her evidence, while she was working as Cook with accused, one day in the absence of wife and mother of accused, he committed rape upon her in his house forcibly. Her evidence is silent with regard to date on which such incident is alleged to have occurred. She has further deposed that sometime in the year 2012 on Ramnavami while she and P.W.6 Rekha Hukre were cooking in the School, accused on the pretext of water called her inside his Office and

committed rape. One such incident is further alleged to have occurred in June 2013 in the absence of wife and mother of accused, who had gone to Pune. As per her evidence, last incident of alleged rape upon her by accused is of 3/8/2013 when his wife had gone out of house for English speaking classes. On considering this much evidence of prosecutrix, her evidence appears to be vague as there are no specific incidents deposed by her except for saying that on the above stated dates, sexual assault was committed on her by accused forcibly.

What is important is that though according to the case of prosecutrix, she was subjected to sexual assault at the hands of accused for the first time sometimes prior to 2012, she did not make any complaint in respect of the same till 16/9/2013, i.e. more than a period of one year. Her Report is dated 16/9/2013. There is no explanation as to even after last incident of alleged rape on 3/8/2013, why report was lodged belatedly on 16/9/2013 except for prosecutrix saying that she was extended threats by accused. We are required to consider that for a period of more than one and half years, there might be many such opportunities to prosecutrix to lodge report. However, merely on the pretext of threats as aforesaid, no report is lodged till 16/9/2013. Even otherwise, evidence of prosecutrix as afore-stated is not worthy to be relied upon as it is full of omissions and prosecutrix has admitted that though she has stated in her report as well as additional statement recorded by Police during the course of investigation, she is unable to assign any

reason as to why same are not mentioned in either of these two documents. All the omissions are put to Investigating Officer, who has duly proved the same. In that view of the matter, since evidence of prosecutrix is full of omissions, it does not take the case of prosecution any further.

Though prosecution has also examined P.W.4 Sushila Jambhulkar, sister of prosecutrix, who claims to have knowledge of sexual assault by accused upon her sister, admittedly she had not lodged any report with the Police. She stated that she was aware of such relations between accused and prosecutrix about one year prior to prosecutrix lodging report, which, as stated above, was lodged on 16/9/2013.

Evidence of P.W.6 Rekha Hukre is also full of material omissions about prosecutrix informing her about act of rape committed upon her by the accused.

Considering the case of prosecution, above omissions go to the root of the case.

In the background of further evidence of prosecutrix of accused on one such occasion while her daughter had visited his house had obtained her photograph, such evidence does not stand for any reason to be relied upon as accused is shown to have been arrested on 16/9/2013 while seizure of his mobile was effected on 11/11/2013. Even if seizure of mobile phone of accused along with its sim card for the sake of argument is held to be reliable, it does not establish any charge against accused as it is not the case of prosecution that accused had at any point of time shown

or attempted to show pornography to the daughter of prosecutrix nor it is the case of prosecution that accused had misused photograph of prosecutrix's daughter in any manner. As already stated hereinabove, it is not the case of prosecution that accused has misused any of these clippings.

Having considered the above stated evidence, we are of the view that the view taken by learned trial Judge is the possible view to be taken. There is as such no substance in the criminal application. Leave is, therefore, refused. The criminal application is dismissed.

JUDGE

JUDGE

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