

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

Criminal Application (Appa) No.1020 of 2017
(State .vs. Bhagvat Panjabrao Lahe)

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

Court's or Judge's Orders

CORAM : P. N. DESHMUKH &
 M. G. GIRATKAR, JJ.

DATE : 28.6.2018.

Heard Ms M.H.Deshmukh, learned Additional Public Prosecutor for applicant/State and Mr.V.B.Bhise, learned Counsel for non-applicant/accused on the point of grant of leave to file appeal.

Learned Additional Public Prosecutor had referred to evidence of prosecutrix and submitted that, as per her evidence, she was minor at the time of incident when non-applicant is alleged to have committed sexual intercourse with her on the pretext of marriage. She has also pointed out from the evidence of prosecutrix supported with the evidence of doctor that it is established that prosecutrix was subjected to assault at the hands of non-applicant. She prays that, in view of available evidence on record, leave to file appeal be granted.

Learned Counsel for the non-applicant, on the other hand, submitted that evidence of prosecutrix establishes fact of her being wife of non-applicant and as such, had indulged into physical relations with non-

applicant by her consent. By referring to evidence of Medical Officer, learned Counsel for non-applicant further submitted that, according to Ossification test, prosecutrix was 17 to 18 years of her age and thus, considering the margin of error of two years on both sides, prosecutrix at the time of incident can also be said of 20 years of her age. It is, therefore, contended that no case is made out for grant of leave.

In the background of submissions advanced as aforesaid, evidence of prosecutrix would reveal that she had lodged report on 7.5.2012 contending that about 8 to 9 months prior to lodging of her report, she had indulged into physical relations with the non-applicant as he agreed to marry with her and on the pretext of such marriage, since submitted to his lust, conceived pregnancy and delivered a child on 8.10.2012.

Considering her evidence, though it appears that, in March 2012, she completed 16 years of her age, from the evidence of Radiologist PW-4 Dr.Arun Krushnarao Shendre, it has come on record that, on his obtaining X-rays of her elbow, wrist and pelvis and on considering the same, radiological age of prosecutrix was between 17 to 18 years. In view of admitted fact of Ossification test having margin of error of two years on both sides prosecutrix cannot be said to be minor, as there is every possibility of her being 20 years of her age.

Even otherwise, from the evidence of prosecutrix, it has also come on record that before lodging her report, there was some ceremony which was performed in their house when non-applicant had tied Mangalsutra to

her in presence of her relatives and parents. She admits that 2 to 3 days prior to lodging of report there was quarrel between her parents and non-applicant and her father, therefore, brought her back from the house of non-applicant. She also admits that on the say of her father and sister of her husband, she lodged report against non-applicant on 7.5.2012.

In view of admissions as aforesaid, it can be said that false report came to be lodged against non-applicant by PW-1 prosecutrix at the instance of her relatives, who, from her own admission, infact appears to be married with non-applicant.

In view of evidence of prosecutrix and the medical evidence, we find that no case to grant leave to file appeal is made out. Application is, therefore, dismissed.

JUDGE

JUDGE

**jaiswal*