

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5521 OF 2017

The State of Maharashtra,
Through Police Station,
Mukundwadi, Aurangabad.

.. APPLICANT
(Ori. Complainant)

VERSUS

Suyog S/o Dinkarrao Vyas,
Age : 32 Years, Occ. Doctor,
R/o Plot No. C/37 Yashogiri,
Saraswati Colony, Aurangabad.

... RESPONDENT
(Orig. Accused)

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A.P.P for Applicant-State : Mr. S. J. Salgare
Advocate for Respondent-Sole : Mr. S.G. Ladda

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CRIMINAL APPLICATION NO. 5631 OF 2017

Priya D/o Gajanan Kulkarni,
Age : 35 Years, Occ. Medical Practitioner
R/o. Dakshin Kasaba, Solapur

.. APPLICANT

VERSUS

1. The State of Maharashtra

2. Dr. Suyog Dinkar Vyas
Age : 32 Years, Occ. Doctor,
R/o. N-6, C/37, Yashogiri,
Saraswati Colony, Aurangabad

.. RESPONDENTS

....

Advocate for the Applicant : Mr. A. K. Bhosale
A.P.P for Respondent-State : Mr. S. J. Salgare

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CORAM :T.V. NALAWADE AND
MANGESH S. PATIL,JJ.

DATE : 4th APRIL, 2019.

ORAL ORDER :-

The first application is filed by the State for grant of leave to file appeal against Judgment and order of Session Case No. 163 of 2009 which was pending in the Court of learned Additional Sessions Judge-4, Aurangabad dated 07.06.2017. The respondent is acquitted of all the offences punishable under Sections 328, 354, 506 and 376 of the Indian Penal Code.

2. The second proceeding is filed by the first informant for condonation of delay caused in filing Appeal against the said decision.

3. Heard learned A.P.P and learned counsel for the first informant. The record of evidence including police papers which are exhibited was made available to this Court.

4. The prosecutrix was aged about 25 years at the relevant time. She and respondents were graduates of Ayurved Medicine. The respondent was visiting to the Ayurved College for teaching purpose in the college where prosecutrix was studying. There both of them got acquainted to each other and the friendship between accused and prosecutrix was developed. She has made allegations that on 05.08.2005, the respondent called her to Aurangabad and after taking her to his residential place, he first made her to drink liquid having some intoxicant substance in it and after drinking the said liquid she was

virtually unconscious, he took sexual intercourse with her. She gave report to the Police on 22.10.2005, after about two and half months of the incident. She was medically examined and this Court has carefully seen the record of medical examination. The record of medical examination is not at all consistent with the allegations as it shows that hymen was intact and private part was admitting only tip of little finger. Labia minora was normal and no injuries were found on it. No injury was found on the person of prosecutrix.

5. The aforesaid circumstances are considered by the trial Court and decision of acquittal is given. The view taken by the Trial Court is a possible view. Delay ought to have been explained by the prosecutrix in her evidence but that is not done. In ordinary course, she would have approached the police immediately after the incident, if the incident had really taken place. They were acquainted with each other. This Court holds that the view taken by the Trial Court is a possible view and interference is not possible. Application for leave to appeal filed by the State stands dismissed. For the same reasons, this Court holds that proceeding filed by the first informant needs to be dismissed. Further, there is no sufficient cause so that proceeding is also dismissed.

[MAGESH S. PATIL]
JUDGE

[T.V. NALAWADE]
JUDGE