

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 83 OF 2019

The State of Maharashtra. ... Applicant.
V/s.
Armanhussain Abdulmajid Hukkeri. ... Respondent.

Ms.P.P.Shinde, APP for the applicant- State.
Mr.Anoop R. Pandey with Mr.Vishal Gupta for the respondent.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 6th March 2019.

P.C. :

The State has sought leave to prefer appeal under section 378 of the Code of Criminal Procedure, 1973 against the judgment and order dated 25th June 2016 passed by the learned Additional Sessions Judge, Ichalkaranji in Sessions Case No.24/2011, acquitting the respondent from the offences punishable under sections 376, 452, 457 and 506 of Indian Penal Code and under section 67 of the Information Technology Act.

2. Heard the learned APP and the learned counsel for the respondent. Perused the record including notes of evidence.

3. A minute perusal of the record indicates that the prosecutrix who was aged about 25 years on the date of alleged incident of sexual assault was, in fact, a consenting party to the said alleged act punishable

under section 376 of IPC. The defence has brought on record vital aspects of the matter. Firstly, that the respondent is handicapped and was using a prosthetic leg. That when the respondent took the prosecutrix at various places and/or lodges, the prosecutrix was having sufficient opportunity to call for help from the people who were present at the said places which she did not do. Secondly, the prosecutrix has admitted that she was well acquainted with the respondent and was having friendly relations with him. It appears to us that after the first alleged sexual assault by the respondent, the prosecutrix did not disclose the said fact to anybody and continued to accompany the respondent at various places till lodgment of crime. In view thereof, we are of the opinion that the act alleged against the respondent as contemplated under section 376 of IPC was a consensual act between two adult persons.

4. After perusal of the entire record, we are of the opinion that, the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the present case.

No case for grant of leave to prefer appeal is made out.

Application is accordingly rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)