

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1049 OF 2019
IN
CRIMINAL APPEAL NO. 1173 OF 2019

Ashok Gangasagar Shukla .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr. Suhas Gaikwad for the Applicant.

Mrs. Jyoti Lohokare, APP for the Respondent/State.

CORAM: P N. DESHMUKH, J.

DATED : 11th NOVEMBER, 2019.

P.C:-

This application is for suspension of sentence and for bail by accused who came to be convicted for the offence punishable under Section 376 of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.10,000/-, in default to suffer simple imprisonment for six months. No separate sentence is awarded for the offence under

Section 4 of POCSO Act.

2. Learned Counsel for the appellant submitted that evidence of prosecutrix on the point of appellant performing forcibly marriage with her and on developing physical relations, is by way of omission. It is also pointed out that there is no medical evidence corroborating the version of prosecution and that the Trial Court convicted the applicant relying upon her statement recorded under Section 161 of Criminal Procedure Code. It is, thus, contended that application be allowed as applicant was on bail pending trial.

3. Learned APP opposed the application contending that there is direct evidence establishing applicants involvement and prayed that application be dismissed.

4. In the background of submissions advanced as aforesaid, it appears to be the case of prosecution that prosecutrix was minor on the date of incident which occurred on 26th April, 2016, being 16 years and 7 months old, on which day applicant eloped alongwith her on the pretext of marrying her. Missing report

came to be filed two days thereafter, by PW-1, father of prosecutrix on 28th April, 2016, upon which, initially one Raju Khan was arrested. However, during the course of investigation, since it reveal that it is the applicant who entice victim away for marriage and since both of them were found together on 10th May, 2016 at Kalyan Nagar in Uttar Pradesh, where they were apprehended and brought back by Police in Solapur, the suspect was released under Section 169 of Criminal procedure Code.

5. It appears that prosecution had examined complainant, prosecutrix herself and her brother apart from panch and Investigating Officer. From the evidence of prosecutrix, it has come on record that since she was acquainted with the appellant and had supplied mobile number of her aunt, he was contacting her. However, as further stated that after taking her to Uttar Pradesh, appellant forcibly married with her and had indulged in sexual intercourse. She has further deposed of report lodged by her father and of their apprehension by Police and her medical examination, thereafter carried out at Civil Hospital, Solapur. Evidence of prosecutrix on the point of forcible marriage and sexual intercourse is by way of omission which evidence, in fact, is found corroborative

in favour of appellant as medical report Exh.28 which is an admitted document reveals that on medical examination, there were no internal or external injuries sustained by prosecutrix on her person or to her private part. The hymen was intact. Considering the omissions as abovesaid, together with the medical opinion, thus, prima facie, it is found that prosecutrix is not subjected to sexual assault though she appears to be minor.

6. From para 27 of the impugned judgment, there appears much substance when it is contended that appellant came to be convicted on the basis of contents of her statement recorded under Section 161 of Criminal Procedure Code as in said para contents of her statement recorded by Police are duly considered and it is noted that in such statement, victim has stated that she was having love affair with the accused and had went to Kurduwadi to meet him on two occasions when accused had sexual intercourse with her at the backside of Bakery, where he was working. As stated aforesaid, the victim has not deposed this fact before the Court. In that view of the matter, it is, thus, found that relying upon such contents of statement of prosecutrix and finding that she was minor, appellant came to be convicted. In the circumstances, application is allowed

as per following order :

ORDER

(a) Applicant shall be released on bail on his executing P.R.Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand only) with one surety in the like amount.

(b) While on bail, appellant shall mark his presence with Madha Police Station, District Solapur, quarterly on the first day of each such month, pending trial.

(P N. DESHMUKH, J.)