

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 4 OF 2019**

The State of Maharashtra

.....Applicant

Vs.

Iqbal Latif Khalife

....Respondent.

Ms. P.P. Shinde, APP for the Applicant.

None for the Respondent.

CORAM : A. S. OKA, AND**A. S. GADKARI, JJ.****DATE : 4th JANUARY, 2019.****P.C.:-**

By this Application under Section 378 of the Code of Criminal Procedure, 1973 the Applicant-State has sought leave to Appeal against impugned Judgment and Order by which the Respondent accused has been acquitted for the offences punishable under Sections 363 and 354(A)(1) of the Indian Penal Code and under Section 8 of the Protection of Children From Sexual Offences Act, 2012.

2 The victim of the alleged offence was 6 years old at the relevant time. The allegation of the prosecution is that the Respondent-accused came to a courtyard where the victim was

playing. He gagged her mouth and took her behind the compound wall. Allegation is that he removed his Lungi and made an indecent act. The Complaint was filed by the aunt of the victim P.W. 2-Shama on the day of the alleged incident. The prosecution examined mother of the victim P.W. 3-Shakira. The prosecution also examined P.W. 4 Nikat as a witness. P.W. 4 is a real uncle of the victim. Lastly, the prosecution examined the victim of the offence.

3 The learned Special Judge disbelieved the case of the prosecution on the ground that the victim was a tutored witness. The learned Special Judge also recorded in the finding that there is every possibility that the Respondent accused was falsely implicated.

4 We have heard the learned APP in support of the Application. She submitted that there was no reason to disbelieve the version of the victim of the offence especially when her aunt had filed a Complaint on the very day of the incident.

5 We have considered the submissions and perused the notes of evidence and other material on record.

6 We have minutely examined the testimony of the victim. In paragraph No.1 of her deposition she has stated thus:-

“1. I go to school at 10.00 a.m. and return at 05.00 p.m.. There is a Courtyard in front of my house. I was playing in Courtyard, at that time the accused gagged my mouth and took me away. He has taken me to his house. He just lifted his Lungi and showed me. Then other persons had come and had rescued me from his custody and he has not done anything more.”.....

7 In the cross-examination, the victim admitted that her aunt who was the complainant had told her what to depose in the Court.

8 P.W. 2 Shama the Complainant accepted in the cross-examination that she had filed many Complaints against the Respondent-accused with her community. She also accepted in the cross-examination that her main intention of filing of the Complaint against the Respondent accused was that the Respondent should not stay in the locality. She also accepted that she filed the complaint only after there was a meeting of the community in which it was decided to lodge a Complaint. Even P.W. 4 who is the real uncle of the victim stated that his family has filed a Complaint with the community against the Respondent-accused and his behaviour did not improve inspite of filing of the Complaint.

9 Considering the evidence of P.W. 2 and P.W. 4, the finding recorded by the learned Special Judge that there is every possibility

that the prosecution has falsely implicated the Respondent accused at the instance of the relatives of the victim who had earlier filed complaints against him. This finding appears to be a probable and possible finding based on evidence on record. Moreover P.W. 2 the Complainant admitted that her main intention of filing the Complaint was to ensure that the Respondent-accused does not stay in the same locality. It is in this context the admission of the victim of the offence that P.W. 2 had told her what she should depose in the Court becomes very relevant. That is why the Special Court did not accept the testimony of the victim of the offence. Even the said finding is a possible finding based on the evidence on record. Hence no case is made out for grant of leave to prefer an Appeal.

10 The Application for grant of leave is accordingly rejected.

(A.S. GADKARI, J.)

(A.S. OKA, J.)