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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.11 OF 2019

The State of Maharashtra ...Applicant
vs.
Sunil Saidu Whatkar ...Respondent

Mr.V.V.Gangurde, APP for the applicant

CORAM : A.S.OKA, &
SANDEEP K. SHINDE, JJ.
DATE : JANUARY 9, 2019

P.C.:

1 Heard the learned APP in support of the application. The applicant-State is seeking leave of the Court to prefer an appeal against the Judgment and Order dated 23rd June 2014 passed by the learned Additional Sessions, Thane. By the said Judgment and Order, the respondent-accused was acquitted for the offences punishable under sections 363, 366 and 376 of the Indian Penal Code.

2 The case of the prosecution is that the age of the prosecutrix at the relevant time was 15 years. On 12th March 2012, the prosecutrix was attending the computer classes. However, when the PW1 the father of the prosecutrix came to the computer classes around 5.45 p.m., it was revealed that the prosecutrix has left the class. The case of the prosecution is that on 4th April 2012, the prosecutrix called up P.W.No.1 from PCO and informed him about the location of the premises where she

was. P.W.No.1 visited the premises and found that her daughter was there. He brought back the prosecutrix to her house. It was disclosed by the prosecutrix that around 6.00 p.m when she came out of the computer class, the respondent-accused came in his auto rickshaw. She was forced to seat in the auto rickshaw. After that after she consumed water supplied by the respondent, she lost consciousness. The allegation is that the respondent had sexual intercourse with the applicant.

3 The learned APP submitted that the prosecutrix (P.W.No.2) has fully supported the prosecution and she has denied all the material suggestions given in the cross examination. He submitted that there was no reason for discarding her testimony and therefore, an order of conviction ought to have been passed.

4 We have considered the submissions. We have perused the notes of evidence. The PW1, the father of the prosecutrix, admitted that he has not provided birth certificate of his daughter to the police. He claimed that that he has furnished school leaving certificate of his daughter to the police. However, no such certificate has been produced on record by the prosecution. Though the P.W.No.2 prosecutrix claimed that her date of birth is 18th December 1996, no documentary evidence was produced by the prosecution to prove the date of birth of the prosecutrix. The medical certificate

was produced by the prosecution recording that the age of the prosecutrix was 15 years. However, the Medical Officer who gave opinion was not examined as a witness.

5 As per the prosecution case, P.W.No.1 on 4th April 2012 brought back the prosecutrix to his home. On 5th April 2012 the prosecutrix was medically examined when no injuries over her private part were noticed. It is pertinent to note that the complaint was lodged by the PW1 on 10th April 2012. Moreover, the P.W.No.2 in the cross examination accepted that she stayed with the accused for 20 to 22 days.

6 Thus, this is a case where no evidence was adduced to establish the age of the prosecutrix. Moreover, there is delay of six days in lodging the complaint. The complaint was lodged after five days after the prosecutrix was medically examined. In the medical examination, it was found that there were no injuries on her private part. There is no explanation for delay. Therefore, the view taken by the Sessions Court that the guilt of the respondent is not established is certainly a possible view which could have been taken on the basis of material on record. Hence, no case is made out for grant of leave. Application is rejected.

(SANDEEP K. SHINDE,J.)

(A.S.OKA,J.)