

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 246 OF 2019

IN

CRIMINAL APPEAL NO. 157 OF 2019

Ganesh Parshuram Deshmukh & Anr. ...Applicants

Versus

The State of Maharashtra ...Respondent

Manoj Mohite i/b Vilas N. Mali – Advocate for the applicant 1 &
2.

Ms. P. N. Dabholkar – APP for the Respondent – State.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 22nd JULY, 2019.

P.C. :

An illiterate woman felt ill, went to the hospital, and got treated. To go back to her village, she was waiting on the road for public transport. The appellants no. 1 and 2, who are from her village, were passing by. They stopped their car, as the victim alleges, and offered her a ride to the village. When she got into the car, on her way, both brutally raped the victim.

2. After trying the matter, the learned Additional Sessions Judge, Mangaon, in Sessions Case No. 33 of 2015, convicted both the accused of the offence under Section 376(d) of IPC.

The Trial Court sentenced them to 20 years' rigorous imprisonment, besides a fine of Rs. 50,000/-. They were, however, acquitted under Section 506 read with 34 of IPC. As the judgment was rendered on 9.01.2019, the appellants have been serving the sentence ever since. Now they have come up with this application to have their sentence suspended, and themselves enlarged on bail.

3. Shri Manoj Mohite, the learned advocate for the applicants, has submitted that even the sole testimony of the prosecutrix does not inspire confidence; it has many gaps and contradictions. In this context, he has drawn my attention to the victim's chief as well as the cross-examination. In the end, he has contended that the appellants are innocent, but the Trial Court has convicted them based on no evidence.

4. On the other hand, the learned APP has asserted that even if we ignore the testimony of other witnesses, the victim's evidence is clear and convincing. In that context, she has drawn my attention to the Trial Court's observations in the impugned judgment.

5. Heard Shri Manoj Mohite, the applicants' counsel, and Ms. P. N. Dabholkar, the learned APP.

6. Indeed, after the incident, the victim went to her parents but told them nothing. After that, she went home and told her daughter. After that, she came back to her parental home, where the Sarpanch was present. According to Shri Mohite, the victim could not explain the Sarpanch's presence

even before she could break the news to her parents.

7. Shri Mohite has drawn my attention to the cross-examination. He maintains that it is not the complainant that reported the alleged crime to the police; it is the Sarpanch that did. She has set out the allegations in her evidence; but in the same breath, she has also informed to the Trial Court that they settled the matter. If that is the case, then the burden was heavy on the prosecution, Shri Mohite stresses, to establish as to how and in what manner the settlement took place. In the end, Shri Mohite would have the Court conclude that these gaps and contractions are fatal to the prosecution's case.

8. I reckon the victim is illiterate. Getting violated is no moment of glory to be gloated over, at the very first given opportunity. So the victim was reticent and circumspect. First, she confided in her daughter, drew comfort, and then went back to her parents. In a case of rape, the record does not bare all details. There lies something beyond the fine print. The Trial Court has a coin of vantage to observe both the accused and witnesses, including the victim. In paragraph 22 of the judgment, the Trial Court has noted about the methods the appellants have allegedly adopted to win over the victim.

9. That said, I clarify that all my observations are prima facie and are confined to this application for suspension of sentence and bail.

At any rate, the sentence is for 20 years, and crime is heinous. Under these circumstances, I hold that the application

is meritless and deserves to be dismissed. So I dismiss Criminal Application No. 246 of 2019. Subject to the pressure of Board, the Court will try to hear the appeal early.

[DAMA SESHADRI NAIDU, J.]