

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 584 OF 2019
IN
CRIMINAL APPEAL NO. 665 OF 2019

Ketan Manik Jori

.. Appellant

Versus

The State of Maharashtra and Anr.

.. Respondents

...

Mr. A.D.Gholap for the Appellant.

Mrs. Jyoti Lohokare, APP for Respondent No.1/State.

CORAM: P. N. DESHMUKH, J.

DATED : 7th NOVEMBER, 2019.

P.C:-

This application is by accused for suspension of sentence and for bail, who has been convicted for the offence punishable under Section 4 of Prevention of Children from Sexual Offences Act, 2012 and is sentenced to suffer Rigorous Imprisonment for seven years and to pay fine of Rs.5,000/-, in default to suffer Rigorous Imprisonment for four months. In view of provisions of Section 42 of POCSO Act, 2012, no separate punishment is awarded to accused for the offence punishable under

Section 376(1) of Indian Penal Code.

2. Heard Learned Counsel for applicant and Learned APP.

3. It is submitted that according to the evidence of prosecutrix, she was sexually assaulted by applicant only on one occasion on 17th August, 2019 and as per the medical evidence, there are no injuries found on her person and thus, she was consensual party to such act. It is further contended that above submissions can certainly be considered in favour of applicant as there is no convincing evidence on record establishing age of prosecutrix to be below 18 years of her age. It is, thus, contended that for these reasons, application be allowed as even according to the case of prosecution, prosecutrix had accompanied the applicant on her own for over a period of one week, during which period, they had visited from one place to other and thus, had submitted that no case can be made out against applicant establishing his involvement in the present crime and thus, it is prayed that application be allowed.

4. Learned APP has opposed the application on the

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ground that from evidence, it has come on record that prosecutrix was minor on the date of incident and as such, no case is made out to hold that she was a party to the consensual physical relations. It is prayed that application be, thus, rejected.

5. In the background of submissions advanced as aforesaid, when applicant's case with reference to the age of prosecutrix is considered, it is revealed from the evidence of PW-1, the complainant and father of the prosecutrix that the victim's date of birth is 13th December, 1997, while the incident is alleged to have occurred on 12th August, 2015. Even victim has stated her date of birth as above, which evidence is further found substantiated from her School Leaving Certificate (Exh.17) on record. The Learned Trial Court had relied on said certificate, noting that the Birth Certificate is a public document and as such, is admissible in evidence and on relying upon the same held that prosecutrix is minor on the date of incident. Learned Counsel for applicant, by referring to the Ossification Test Report on record, contended that there is no specific evidence establishing that the girl was minor. However, according to the settled legal provisions, such evidence is in the form of opinion having margin of error of two years on both

side and it cannot said to be binding as against the evidence in the nature of Birth Certificate if placed on record. In that view of the matter, said evidence cannot be relied in favour of applicant.

6. Though from the medical evidence, it is found that there were no injuries to the private part of the prosecutrix, there is specific evidence establishing penetrative vaginal sexual intercourse as hymen is stated to be completely torn. When above medical evidence is considered with the evidence of complainant and prosecutrix, it is, prima facie, established that on 12th August, 2015, after prosecutrix had left her home and since she did not returned in night, missing report was lodged by her father, and during the investigation of said report, prosecutrix was found in the company of accused on 20th August, 2015 and was brought to Police Station.

7. From the evidence of prosecutrix, it is established that on 12th August, 2015, applicant had forcibly kidnapped her and took her to Hotel Soundarya at Warje against her wish and from there, took her to his house at Khechare, Taluka Mulshi, District, Pune and then to various places like Alandi, Sinhagad and on 17th August, 2015, she was subjected to sexual intercourse by the

applicant against her wish on the pretext of marriage. Ultimately, prosecutrix and the applicant were found and was apprehended by Police on 20th August, 2015 at Pune.

7. Considering above evidence, since there is nothing to disbelieve the version of prosecutrix, whose evidence is materially found corroborated with the medical evidence and prima facie, since the prosecutrix is found to be minor, no case is made out for suspension of sentence and for bail. Application, accordingly, is disposed of as dismissed.

(P. N. DESHMUKH, J.)