

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1036 OF 2019****WITH****CRIMINAL APPLICATION NO. 1037 OF 2019****IN****CRIMINAL APPEAL NO. 901 OF 2019**

Suraj Manik Gaikwad

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Vijendra Jabra a/w Shivkumar a/w K.R. Shah for the applicant.

Mr. V.V. Gangurde, APP for Respondent /State.

CORAM: P N. DESHMUKH, J.**DATED : 16th OCTOBER, 2019.****P.C:-**

1. These applications are for suspension of sentences and for bail by appellant who is convicted for the offence punishable under section 307 of Indian Penal Code and is sentenced to suffer RI for 5 years and to pay fine of Rs. 5000/-, in default to suffer SI

Yugandhara patil

for one month and for the offence punishable under section 323 of Indian Penal Code is sentenced to suffer SI for one year. Both sentences are directed to run concurrently.

2. Heard learned Counsel for applicant and learned APP for State.

3. It is submitted that there is no evidence establishing appellant's involvement in the present case and that appellant is acquitted for the offence punishable under section 376 of Indian Penal Code and though is convicted for the offence punishable under sec. 307 of Indian Penal Code, from the medical evidence since it has come on record that simple injuries were sustained by the complainant, no conviction for offence under sec. 307 can sustain and thus contended that pending appeal, applicant be released on bail.

4. Learned APP opposed the application contending that there is direct evidence establishing applicant's involvement in the present crime.

Yugandhara patil

5. In the background of above submissions, it appears to be case of prosecution that complainant is wife of appellant and on 30th June 2014, appellant demanded money to her, when she refused and raised shouts, appellant initially committed sexual intercourse with her against her wish and in the course of same transactions, by closing door, poured kerosene on her person and attempted to set her on fire. On the basis of report lodged by complainant, offence came to be registered.

6. Evidence of complainant would reveal that on the day of incident when she was alone in the house, appellant demanded her money and on her refusal to pay, he forcibly exploited her sexually and on assaulting her, poured kerosene on her person and when he was about to ignite match stick as she raised shouts and knocked the door one person residing in the neighbourhood opened the same when appellant attempted to ran away, however was caught hold by neighbours who then called complainant parents and report came to be lodged.

7. Though it is specific case of the victim that appellant

was caught hold by neighbours on the spot, admittedly, no neighbours, except P.W. 3 is examined. On perusal of her evidence, it has come on record that at the material time she had seen one boy running away near from the house of complainant and had seen complainant coming out of her house when her clothes were smeared with kerosene. It has further come in her evidence, that she has seen one boy running away and has specifically deposed that she has not seen complaint's husband (appellant) at any time. In view of above evidence, case of prosecution as deposed by complainant of apprehending appellant on the spot is not reliable at all, as above evidence do not establish appellant's involvement. Moreover, according to the medical evidence, victim is said to have sustain simple injuries and was discharged within one day which fact also prima facie goes to establish that no conviction for offence punishable under sec. 307 can sustain. In the circumstances, applications are allowed as per following order.

ORDER

1. Applicant shall be released on bail on his executing P. R. Bond in the sum of Rs. 15,000/- with one surety in the like amount.

Yugandhara patil

2. While on bail the Applicant shall mark his presence with Vakola Police Station between 10.00 a.m. to 1.00 p.m. on the first day of each month initially for the period of 6 months and thereafter quarterly on the first day of each such month.
3. Applications are disposed off as allowed in above terms.

(P N. DESHMUKH, J.)