

Vidya Amin.

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

**CRIMINAL REVISION APPLICATION NO. 488 OF 2016
WITH
CRIMINAL APPLICATION NO. 500 OF 2016
IN
CRIMINAL REVISION APPLICATION NO. 488 OF 2016**

Ramcharan Ramavadh Yadav ... Applicant

VS.

The State of Maharashtra ... Respondent

Mr. Vijay Shankar Tiwari, Advocate for the applicant.

Mr. A.R. Patil, APP for the respondent/State.

CORAM : Mrs.MRIDULA BHATKAR, J.
RESERVED ON : 26th February, 2019
PRONOUNCED ON : 28th February, 2019

JUDGMENT :

This Revision Application is directed against the judgment dated 12th August, 2016 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Appeal No. 549 of 2014 and also the order dated 8th May, 2014 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in C.C. No. 673/PW/2012 thereby convicting the accused for the offences punishable under sections 377, 387 r/w. 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and fine of Rs.5,000/-, i/d. To suffer S.I. for 15 days.

This Revision Application is heard finally at the stage of admission, as the accused is convict and is in prison since last 4 ½ years.

2. The victim is 32 years mentally ill man. His mother is a complainant. The incident has occurred on 24th June, 2012 in the evening. It is the case of the prosecution that the applicant/accused knew the victim and his family. On 24th June, 2012, the victim left the house along with his friend to go to Siddhivinayak temple. The victim received phone call from the applicant/accused that he is alone at his office and told the victim to come to him. So, the victim went to the office at 3rd floor, E-Building, Joshiwadi, Kalbadevi. The accused removed the trousers of the victim and committed unnatural sexual intercourse with the victim. Thereafter he took the victim to Chowpatty to meet his brother and he told the victim that accused would be going soon to his native place and in his absence, he should allow his brother to do some things with the victim. The victim refused to do so. The accused then dropped the victim at his home. He informed this fact to his mother PW-4. The mother shared it with his father PW-5. The injuries were found on the private part of the victim. Therefore, the parents took him to the police station and offence

was registered. Then, the victim was taken to the hospital and on examination, the doctor found injuries on his penis and anus. The victim was treated. The offence was registered under section 377 and 387 of the Indian Penal Code with the L.T. Marg Police Station at C.R. No. 149 of 2012 and the applicant/accused was arrested. After investigation, the accused was tried before the learned Additional Chief Metropolitan Magistrate. The prosecution has examined 9 witnesses including the victim. The learned Additional Chief Metropolitan Magistrate convicted the accused by accepting the evidence of the witnesses and rejecting the defence of the accused. The said order was challenged by the accused before Additional Sessions Judge, Greater Mumbai. However, the judgment and order of conviction and sentence was confirmed by the Sessions Court. Hence, this Revision Application.

3. The learned counsel for the applicant/accused has submitted that the accused is innocent and he has not committed any offence. There are discrepancy in the evidence of the victim especially the time and date. He submitted that the medical evidence and ocular evidence are not consistent. He relied on Exhibit 32, which is the medical certificate issued on examination

of the accused. He pointed out that in the said certificate, no injuries were found on the person of the accused after immediate examination of the accused. The learned Judges of the trial Court and the Sessions Court ought to have taken into account this fact and have acquitted the accused from the offence. It is a concocted case against the applicant/accused. Hence both the judgments of the trial Court and Appellate Court are to be set aside and the accused be acquitted. The learned counsel alternatively argued that if the Court is going to confirm the judgment and order, then the accused prays for leniency in sentence. He pointed out on the basis of record that the accused was taken in custody on 25th June, 2012. The learned Additional Chief Metropolitan Magistrate convicted him on 8th July, 2014. The learned Additional Sessions Judge confirmed the sentence given by the learned Additional Chief Metropolitan Magistrate on 12th August, 2016 and on the same day, the accused was taken in custody. Thus, the applicant/accused has gone imprisonment of 4 ½ years out of 7 years, so his sentence be reduced for a period undergone.

4. The learned counsel Mr. Patil while defending the order of conviction and sentence has relied on the evidence of mother and

father and also of the victim. He submitted that the evidence of all the witnesses are consistent. He argued that it is corroborated with the evidence of medical officer Dr. Baban Shripati Shinde PW-6. He submitted that there is a concurrent judgments of two Courts and is to be confirmed.

5. Perused both the orders and the evidence of the witnesses. The learned Judge of the trial Court and the Sessions Judge have properly appreciated the evidence of PW-4 mother and PW-5 father of the victim, so also the evidence of victim is also correctly assessed. On perusal of the evidence of the victim, it is found that he has narrated the entire incident of unnatural sexual intercourse. The evidence of Dr. Baban Shinde PW-6 is very material giving all the details of the injuries caused to the victims. The doctor has specifically mentioned that he took consent of his father for examination of the victim because though the victim was 32 years old, he was mentally ill. He has given details of the injuries on his penis and also on the anus and he opined that the victim was subjected to forceful anal intercourse. The medical certificate to that effect was produced.

6. The learned Judge of the trial Court and Sessions Judge

both have taken into account that the victim was 32 years old man with mild mental retardation. Thus, a victim could give the evidence about the incident, however, due to his mental state having less IQ, he could not resist or understand what was happening to him. The learned trial Judge in her judgment has relied on the report of Mental Health Expert team of J.J. Hospital. The said report was placed on record which revealed that a victim was suffering from mild mental retardation with IQ = 55 and the mental age of the victim was 8 years. The learned trial Court Judge after assessing the manner in which the victim deposed in the Court, has assessed that he was able to answer questions in the Court as a person of 8 years. It is further concluded thereby that he was able to tell the series of events occurred in relation to sexual assault. On the background of this appreciation of the mental age of the victim, the evidence of victim PW-9 is to be looked into. He has stated that -

“I had replied him that I would not do it. I was also scared by thinking that my parents would not like it and they would throw me out of the house.”

This line of thinking and the fear expressed by the victim in his deposition is consistent with the assessment of the victim's mental

age. The learned trial Court Judge has rightly marshalled the evidence of the parents, the circumstances about the injuries caused to the victim.

7. It is to be noted that this offence could surface only because the victim could tell his parents about the incident when he was dropped home by the accused at night on that day. The victim though was mentally ill, had confidence in his parents and for that credit is to be given to his parents, who successfully could develop that confidence and open dialogue with their mentally ill son. Thus, the parents could understand the trauma of their son, who was having less IQ and then immediately took steps of reporting the incident to the police on the same day and taking their son for medical examination.

8. The learned Additional Sessions Judge has confirmed the said judgment of the learned Additional Chief Metropolitan Magistrate. The reasoning given by both the Judges is legal and correct and it does not require interference of this Court.

9. On the point of leniency, I am unable to accept the submissions of learned counsel for the applicant/accused. It is an

offence of having unnatural sexual intercourse with person having a mild mental retardation with less IQ who in fact required to be given the more protection by the Society.

10. On the point of leniency, the nature of offence, gravity, victim's age condition, social conditions and also the conduct of the accused etc. are taken into consideration. In the present case, the accused after committing the act, has introduced the victim to his brother and told victim that you will satisfy the lust of my brother also. The accused knew the victim well prior to the incident and therefore by taking advantage of the mental condition of the victim raped him. I do not find any mitigating circumstance in this case to reduce the sentence. Hence, no leniency is shown.

11. The judgment and sentence is confirmed. Criminal Revision Application is dismissed.

12. In view of dismissal of Criminal Revision Application, Criminal Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)