

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.73 OF 2018**

The State of Maharashtra ... Applicant
Vs
Mahesh @ Mahendra Keshav Pawar ... Respondent
...
Mr. Ajay Patil, APP for the Applicant-State.

**CORAM : A.S.OKA &
SANDEEP K. SHINDE JJ.
DATE : 8 JANUARY, 2019**

P.C. :

Heard the learned APP for the State. The State of Maharashtra is seeking leave to prefer an appeal against the judgment and order dated 6th June, 2018 passed by the learned Additional Sessions Judge, Nashik. By the said judgment and order, the Respondent-Accused who was charged with the offence punishable under Sections 376, 363, 365, 366, 366A of the Indian Penal Code, 1860 as well as Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 has been acquitted.

2 *The learned APP has taken us through the notes of evidence annexed to the Application. He pointed out categorical finding recorded by the Sessions Court that the age of the victim girl on the date of incident was less than 18 years. He submitted that there was no reason for the Sessions Court to disbelieve the testimony of the prosecutrix. He pointed out that the statement of the prosecutrix was recorded under Section 164 of the Code of Criminal Procedure, 1973. He would, therefore, submit that there was no reason to dispute veracity of the version of the prosecutrix.*

3 *We have considered the submissions. We have perused notes of evidence and the finding recorded by the Sessions Court. We find from the impugned judgment that evidence of P.W.2-Prosecutrix has been meticulously examined and analysed by the learned Additional Sessions Judge. He has examined prosecution case in the light of theory of the prosecutrix that she accompanied the accused only because of threat rendered. The learned Additional Sessions Judge observed that there is material on record to show that she had decided to elope with*

the Respondent earlier and that is why at 1.30 a.m. where it is alleged that the Respondent entered her house through the window of the house, she was awake. Moreover, while running away with the Respondent, she carried with her three dresses and one saree and Rs.20,000/- in cash. The learned Additional Sessions Judge observed that if prosecution case that the prosecutrix was forced to run away with the Respondent was proved, it is highly improbable that the prosecutrix would take with herself cash of Rs.20,000/-. Cross-examination of the prosecutrix shows that she was student of the first year B.Sc.. She accepted that on 6th November, 2015 in the evening she and the Respondent decided to run away. She also accepted that from 7th November, 2015 to 14th November, 2015 there was regular talk between herself and the Respondent-Accused.

4 *For the reasons recorded in the impugned judgment, the learned Additional Sessions Judge has discarded the oral testimony of the prosecutrix. The view taken by the learned Additional Sessions Judge that the version of the prosecutrix does not inspire confidence is*

certainly a possible view which could have been taken on the basis of evidence on record. Even assuming that the submissions made by the learned Public Prosecutor are correct at the highest it can be said that another view can be taken on the basis of the said evidence.

5 *Hence, no case is made out for grant of leave. Application is rejected.*

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)