

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

**CRIMINAL APPLICATION NO.1757 OF 2018
IN
CRIMINAL APPEAL NO.1235 OF 2018**

Daulat @ Ravindra Bhimaji Applicant
Kotwal

Vs.

The State of Maharashtra & Anr. Respondents

Mr. Tejas Hilage for the Applicant.

Mr. Y.M. Nakhwa, APP for the State of Maharashtra

Mr. S.V. Kondhalkar, PC, Lonikand police station, present.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 28th February 2019

P.C.:

1 Heard the respective counsel.

2 This is an application under Section 389 Code of Criminal Procedure. The applicant herein is convicted by the Additional Sessions Judge-, Pune, in Special Sessions Case No. 26 of 2010, for the offences punishable under Sections 376, 394 and 506 of Indian

Penal Code, under Sections 3(1)(x), 3(1)(xi) and 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The accused is sentenced to suffer rigorous imprisonment for ten years, to pay a fine of Rs.10,000/-, in default to suffer rigorous imprisonment for three months for the offence punishable under Section 376 of Indian Penal Code. The accused is sentenced to suffer rigorous imprisonment for two years, to pay a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month for the offence punishable under Section 394 of Indian Penal Code. The accused is sentenced to suffer rigorous imprisonment for two years, to pay a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month for the offence punishable under Section 506 of Indian Penal Code. The accused is further sentenced to suffer rigorous imprisonment for six months, to pay a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month, rigorous imprisonment for six months, to pay a fine of Rs.1,000/-, in default rigorous imprisonment for one month and rigorous imprisonment for two years, to pay a fine of Rs.2,000/-, in default to

suffer rigorous imprisonment for two months for the offences under Sections 3(1)(x), 3(1)(xi) and 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act respectively.

3 It is the case of prosecution that on 8th July 2019, the prosecutrix Ms. “X” was returning home from her Company. On the way, she met her cousin, Kiran Nikalje. He offered to drop her home. On the way, he wanted to answer nature's call. He stopped and alighted from the motorcycle. He has seen two motorcycles following them. One was M-80 and another was Boxer. In all, there were four persons on the said motorcycles. The moment he alighted, he was assaulted by the pillion rider. The others also had joined and assaulted. One of the persons had snatched his chain. In the meanwhile, the rider of boxer motorcycle had denuded Ms. “X” and ravished her.

4 PW-2, Kiran Vitthal Nikalje is an eye-witness to the incident. Thereafter rider of boxer motorcycle had taken the prosecutrix on his motorcycle against her wish. Kiran Nikalje was not detained. He was released by other accused persons. It is the

case of PW-2 that the prosecutrix had requested him not to disclose the incident to anybody. The prosecutrix had enquired with PW-2 as to whether he was assaulted. Thereafter she had requested him not to disclose the incident to anybody. The victim is PW-3, who had deposed before the Court that in fact it was PW-2- Kiran who had told her not to disclose about the incident to anybody in the house.

5 It is pertinent to note that after a week of the incident, Dattatray i.e. brother of Kiran Nikalje was assaulted by the present applicant and at that time, the present applicant had allegedly informed Dattatray that he had ravished the prosecutrix. The basis of the prosecution is the alleged disclosure by the applicant to the paternal uncles of the prosecutrix. The basis for the registration of F.I.R. on 16th August 2009 and the resultant conviction is the disclosure by the applicant to Dattatray that he had ravished Ms. "X". In fact, the conduct seems to be unnatural, since the F.I.R. is lodged after more than six weeks of the incident. It cannot be believed prima facie as to whether the uncle would stand as a silent spectator, when his niece is being sexually assaulted. It further cannot be

believed that the prosecutrix had accompanied the applicant after the alleged incident. The recovery of golden chain from the Goldsmith is also shrouded with mystery. The chain was broken into two pieces. There is no memorandum as contemplated under Sections 25 and 25 of the Indian Evidence Act. Moreover, the Goldsmith had retained the chain in two pieces and had kept it for sale. It is doubtful as to whether the disclosure made by the applicant to Dattatray would be treated as an extra judicial confession. It is surprising that even after the confession was made for four weeks, the paternal uncle Dattatray had not taken any action. The prosecutrix continued to attend her place of work everyday as usual, as she was working in HCPL Company as an Operator. She was 20 years old at the time of incident.

6 Taking into consideration the facts of the case as disclosed by the prosecution, it prima facie appears that the applicant, who was on bail during pendency of the trial deserves to be granted the same relief during the pendency of the appeal.

7 At this stage, learned counsel submits that since the applicant was enlarged on bail and had not attended few dates at the time of trial, he was taken into custody by issuing non-bailable warrant and therefore was in custody on the date of the judgment. In view of above, the application deserves to be allowed. Hence, the following order:

ORDER

- i) The application is allowed.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 27th September 2018 is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.40,000/- with one or more solvent sureties in the like amount.
- iv) The applicant shall not reside at Ashtapur for a period of one year from today and shall not visit Daund, District Pune during the pendency of appeal.
- v) The applicant shall report to the Court of Sessions at Pune once in six months on the date assigned by the learned Sessions Judge.

vi) Upon failure to attend any two consecutive dates, the Sessions Court shall report the same to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

vii) The application is allowed in above terms and stands disposed of.

(*Smt. Sadhana S. Jadhav, J*)