

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 2045 OF 2018
IN
CRIMINAL APPEAL NO. 1514 OF 2018

Deepak Pandurang Kadam.

..Applicant.

V/s.

The State of Maharashtra.

..Respondent.

Mr. Umesh Mankapure, advocate for applicant.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JANUARY 17, 2019.

P. C. :

1 Not on board. Upon mentioning the matter, the application is heard alongwith Criminal Appeal No. 1514 of 2018.

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

3 This is an application under section 389 of the Code of Criminal Procedure, 1973. The applicant herein is convicted for the offence punishable under section 376 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and fine of Rs. 30000/- I.d. to suffer R.I. for one year. The applicant is also convicted for the offence punishable under section 3 read with section 4 of the Protection of

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Children from Sexual Offences and sentenced to suffer R.I. for 7 years and fine of Rs. 30,000/- I.d. to suffer R.I. for one year, by the Additional Sessions Judge and Judge, Special Court, Mangaon, Dist. Raigad in Special POCSO Case No. 2 of 2014 vide Judgment and Order dated 3/12/2018.

4 Perused the notes of evidence, more particularly, the evidence of the victim. According to her, the wife of the present appellant happens to be her good friend. She had delivered a baby boy and therefore, the victim had gone to Usar, Tal. Mangaon to the house of the appellant to see the new born baby. She had reached village Usar on 5th May, 2013 and had stayed in the house of the appellant at Dharanachiwadi. According to her, on 5/5/2013 at night she was sleeping next to the mother of the appellant and the appellant was sleeping on a cot in the same room. She had kept her phone for charging. When she woke up to take her cell phone at about 3.30 a.m., the appellant had lifted her, placed her on the cot and had sexually abused her and ravished her. She had not disclosed the fact to anyone. She stayed in his house and on the next day i.e. on 7/5/2013 she had accompanied the appellant on his motor cycle to Vashi and she had reached at Vashi i.e. to her own house.

5 She had not disclosed the incident to her family members,

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but disclosed to her friend called Sagar Sawant. Thereafter, they had been to Vashi Police Station and lodged report on the basis of which prosecution was set in motion. Sagar Sawant has not been examined by the prosecution. Her statement was recorded by Mangaon Police on 8/5/2013. She has admitted in the cross-examination that the room, in which they were sleeping was a small room. She has reiterated in the cross-examination that she was sleeping on the floor with the mother of the appellant. The mother did not wake up .

6 Perused the medical evidence. The statement of the victim before the doctor shows that the incident had occurred at 4 a.m. on 5/5/2013. Hymen intact. It is clear that there is no evidence of sexual assault. The doctor has also not deposed to that effect. There was nothing to indicate that there was recent intercourse.

7 Perused the scene of offence panchanama. It is single vertical room consisting of a cot and the measurement of the room is 6 x 16. There is small temple in the said room. The kitchen is admeasuring 6 x 12. There is no partition or door between the kitchen and bed room.

8 The learned Counsel for the applicant submits that the substantive evidence of the victim would not inspire confidence of the Court as even according to the victim, the mother of the appellant was

sleeping in the same room. There was no reason why the victim could not wake up the mother of the appellant or raise hue and cry which would wake up his mother. There is no medical evidence to corroborate the incident.

9 It is submitted that the applicant was on on bail during the pendency of the trial and has not committed breach of any conditions. The applicant is not the resident of Vashi. It is in these circumstances tht the applicant deserves extension of the same relief during the pendency of the appeal.

10 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant be suspended. The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.

(iii) The applicant shall report to the Court of Additional Sessions Judge at Mangaon once in 6 months on the date assigned by the said court. Upon failure to attend any two consecutive dates, the Special

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Court shall report to the High Court and the prosecution would be at liberty to file an application for cancellation of the bail.

11 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]