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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2034 OF 2020
IN
CRIMINAL APPEAL NO.592 OF 2020

. Rajaram s/o Kishanrao Satwadhar = APPLICANT

VERSUS

1) The State of Maharashtra
and Anr. = RESPONDENT/S

Mr.Sayyed Tauseef Yaseen, Advocate for Applicant;
Mr.SR Yadav, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 17th December, 2020.

PER COURT:-

1. Present application has been filed by the original accused for suspension of sentence. Applicant was accused in Spl.(POCSO) case No.54 of 2017. He has been convicted by the learned Special Judge, Parbhani on 13-10-2020 thus,

a. For the offence under Section 354A of IPC and sentenced to suffer R.I. for one year and fine with default clause;

b. For the offence under Section 506 of IPC and sentenced to suffer RI for one year and fine with default clause;

c. For the offence under section 6 of POCSO Act and sentenced to suffer R.I. for ten years and pay a fine of Rs.5,000/- with default clause;

d. For the offence under Section 8 of the POCSO Act and sentenced to suffer R.I. for two years, with fine and default clause.

e. For the offence under Section 10 of POCSO Act and sentenced to suffer R.I. for two years and fine with default clause.

f. All the sentences are ordered to run concurrently.

2. Heard learned Advocate for applicant and learned APP. Perused the copies of depositions made available.

3. It has been vehemently submitted on behalf of applicant/accused that the learned Trial Judge has not appreciated the evidence properly. It has been stated by the informant-mother that she had taken the girl/victim to various doctors and they had treated her. None of those doctors have been examined. Only the last doctor has been examined. How all those earlier experts would not have noticed or concluded that the victim was subjected to rape. It is the prosecution story that victim had the problem of itching after the alleged sexual intercourse and the Medical Officer then opines that it might be due to the fact that accused is suffering from sexually transmitted disease. There is no definite opinion. Further, if it is to be believed then, it has come on record that the victim was scratching all the times to her private part. Possibility of no penetrative intercourse and rupture of hymen due to her own scratching can not be ruled out. There is delay in lodging the First Information report. There are certain other points also, which would be submitted

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at the time of final hearing. Appellant has high hopes of success in appeal. The sentence, that has been awarded, is a small sentence, it would take long time to this Court to take up the matter for final hearing and, therefore, the sentence awarded to the applicant deserves to be suspended till the decision of the appeal.

4. Per contra, the learned APP strongly objected to grant any relief to the applicant. It is submitted that the learned Trial Judge has properly appreciated the evidence. Every delay can not be fatal to the prosecution. Applicant-Appellant has committed a heinous crime. Appellant was not enlarged on bail throughout the trial. The conviction is proper and legal. Learned APP relied on the reasoning of the learned Trial Judge for convicting the accused.

5. At this stage, minute appreciation of evidence is not required. Though strictly speaking the sentence, that has been awarded, is small sentence in view of decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211,; yet, in that case itself, it is stated that, if it is not possible to release the accused by suspending the sentence, then appeal should be expedited. That means, the accused, who has been awarded small sentence, can not seek suspension of sentence, as of right. Here, at this stage, after complete trial, the accused has been convicted. Therefore, the evidence that is brought against the accused is required to be considered.

6. It appears that the present applicant had not much disputed about the minority of the girl. She has also stated in her testimony that at the time of her deposition, her age was 10. Present applicant's daughter was studying in the same class and she was friend of the victim and, therefore, it appears that he has not raised much dispute about her age. Now, as regards the act of rape is concerned, how the fact, that was revealed to the mother, has been told by her though she has stated that she had taken the victim to 2-3 doctors and then they had just told about the precaution and had not given any specific opinion about the sexual intercourse; yet the fact remains that the Medical Officer, who has been examined as DW 4 - Dr. Manisha Narayan Dagadu, would reveal that the victim was subjected to rape. It is also to be noted that the same Medical officer had examined the accused medically and then she says, which would be naturally, on the basis of enquiry with the accused that the accused had mucopurulent discharge from last ten years and this develops because of sexually transmitted disease. Now, it appears that the applicant intends to take advantage of the said disease and submit that itching might have caused tear of hymen. But, it is to be noted from the statement of the accused, under Section 313 of Cr.P.C. that specific question was put, i.e. question No. 91, that it has come in the evidence of PW 4 that he had mucopurulent discharge from last ten years and question No.92

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says that, the said disease develops because of sexually transmitted disease. To both these questions, the accused has answered as 'false'. That means, he has not accepted that he was suffering from any such disease. Then question does not arise for the applicant to take help of the said disease and submit that the itching, that has been transmitted to the victim, would have been the cause for tear of hymen.

7. From the evidence that is on record, it appears, prima facie, that there was no such reason to implicate the present accused and, therefore, when there is strong evidence against the applicant-accused and also the fact that he was not released on bail throughout the trial, he deserves no sympathy. The application deserves to be rejected. At the most, the appeal can be expedited and accordingly, it is expedited.

(SMT. VIBHA KANKANWADI, J.)

BDV