

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1362 OF 2019
IN
CRIMINAL APPEAL NO.773 OF 2019

Harivansh Lavtu Gupta	]	Applicant
Vs.		
The State of Maharashtra and another	]	Respondents

....

Ms. Anjali Patil a/w Mr. Arun Rajput, for the Applicant.

Mr. M.R. Tidke, Additional Public Prosecutor, for Respondent No.1-State.

....

CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 7TH FEBRUARY, 2020.
PRONOUNCED ON : 14TH FEBRUARY, 2020.

P.C:

Heard.

2. Learned Counsel for the applicant prays for suspension of execution of sentence, pending the appeal *qua* the applicant who has been convicted by the learned Special Judge (POCSO), Greater Bombay of the offence punishable under section 4 of the Protection of Children from the Sexual Offences Act, 2012 (for short 'POCSO') and is sentenced to suffer

rigorous imprisonment for 15 years with fine of Rs.10,000/-, in default, rigorous imprisonment for five months.

3. The evidence of P.W.1 who is the mother of the victim testified that at the time of the incident, the victim was 15 years old and was studying in 10th standard. On 16th June, 2015, when she returned home from work, the victim complained of stomach pain and, therefore, she was taken to the Doctor. After sonography, it revealed that the victim was pregnant. When P.W.1 inquired with the victim, she disclosed that she was acquainted with the applicant while residing at Hindmata, Ahemad Sellar Compound where the applicant used to visit the house.

4. Even after changing the house, the applicant was visiting the house and they were indulged in sexual intercourse. It is testified that the applicant used to commit the act forcefully with the victim. The applicant used to extend threats to defame the victim and, therefore, she did not disclose it to anyone. Substantive part of the evidence of this witness is proved to be an omission during the cross.

5. Interestingly, this witness was aware about the friendship of the applicant with the victim. The prosecution could not prove age of the victim. However, it is pertinent to note that P.W.7-Dr. Sachin Patil who had examined the victim testified that when he conducted a test for age

estimation on the basis of dental and radio logical examination, he was of the considered view that the biological age of the victim was about 16 to 17 years (plus minus six months). The medical certificate is proved at **Exhibit 16.**

6. It is quite probable that the victim is on the verge of attaining majority and there was a consensual sexual act between her and the applicant. Admittedly, no documentary evidence as regards the age of the victim at the time of her examination by the Doctor has been tendered by the victim's mother. However, Doctor admits that the third molar starts from the age of 17 to 25. He also admits that third molar starts after completing age of 17 years. As per the medical certificate, third molar of the victim was just erupted. As such, there is every possibility of the victim being nearing or about to attain the age of 18 years at the time of the incident.

7. If the evidence of the victim is perused, it is apparent that she was in love with the applicant and therefore, she used to call him in the house as a friend. She, however, testified that the applicant forcibly did the wrong act, held her hands and legs and committed sexual intercourse with her. She has testified what she had disclosed it to her mother, P.W.2. It is interesting to note that the victim gave birth to a daughter and thereafter a

complaint came to be lodged against the applicant. Conduct of the victim's mother also speaks for itself. It is surprising as to how the mother did not lodge a report till the victim delivered a girl child. The victim also admits that she did not lodge any report against the applicant though she was studied up to 12th standard.

8. Thus, the overall material on record would reveal that the appellant may succeed in the appeal and, therefore, looking to his age and the peculiar circumstances, no fruitful purpose would be served in incarcerating him in the Jail. The appeal is of the year 2019 and chances of hearing the same finally in near future are unlikely. Consequently, following order is expedient.

: ORDER :

[1] Pending the hearing and final disposal of the appeal, execution of the substantive sentence is suspended on applicant furnishing a P.R. bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the Special Court, POCSO, Greater Bombay.

[2] The applicant shall not leave jurisdiction of the Special Court, Greater Bombay without seeking prior permission.

[3] The applicant shall attend this Court as and when directed.

[4] The application stands disposed of.

9. All concerned to act on the basis of the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]