

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 492 OF 2020

(KIRAN PRAKASHCHANDRA AGRAWAL..VS.. STATE OF MAH. THR. PSO PS GADCHIROLI & ANR.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri S.P.Dharmadhikari, Sr.Advocate a/b. Shri Rohan Malviya, Advocate
 for Appellant.
 Ms Mayuri Deshmukh, A.P.P. for Respondent No.1/State.

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.

DATED : DECEMBER 16, 2020.

Heard Shri S.P.Dharmadhikari, Senior Advocate
 assisted by Shri Rohan Malviya, Advocate for the appellant
 and Ms Mayuri Deshmukh, learned A.P.P. for the respondent
 No.1/State.

2. Crime No.50 of 2020 is registered against the
 appellant with respondent No.1-Police Station for the
 offences punishable under Sections 376(2)(j) of the Indian
 Penal Code, Section 4 of the Protection of Children from
 Sexual Offences Act, 2012 read with Sections 3(2)(va), 3(1)
 (w)(i),(ii), 3(2)(v) of the Scheduled Castes and the
 Scheduled Tribes (Prevention of Atrocities) Act, 1989. The
 crime is registered on the report of Anand Namdeorao
 Shrimalgai, Police Sub-Inspector attached to respondent No.1
 Police Station. According to the report dated 24th August
 2020, information was received at the respondent No.1-Police
 Station from the Medical Officer, Primary Health Centre,
 Botekasa about Medico Legal Case and when police got
 knowledge about the commission of the crime inquiries were
 made with mother and father of the victim, however, they
 were reluctant to disclose anything. According to the report,

the victim (aged about 16 years) was subjected to sexual assault by some unknown person for 5-6 months. After registration of the First Information Report, investigation is conducted and statements of various persons including the victim came to be recorded.

3. We have gone through the statements of the victim. The victim has, in very clear terms, stated that she was employed with the appellant for miscellaneous domestic work and she was sexually assaulted by the appellant/accused repeatedly. The victim became pregnant and was taken to the Primary Health Centre and this is how the incident of crime came to notice. The Child Welfare Committee on 25th August 2020 has recorded statement of victim in detail. In the said statement the victim has specifically stated that the appellant forcibly committed sexual intercourse with the victim repeatedly. It is also stated before the Committee that the appellant had sent his servant to the house of the victim for carrying out procedure of abortion through Doctor. Judicial Magistrate First Class, Kurkheda on 02/09/2020 has recorded statement of victim under Section 164 of the Code of Criminal Procedure wherein the victim has narrated the incident of sexual assault in detail.

4. The appellant/accused had moved an application under Section 439 of the Code of Criminal Procedure, which is dismissed by the impugned order. The learned Sessions Judge has recorded that the material on record shows strong *prima-facie* case against the appellant/accused. The learned Sessions Judge has further recorded that as the victim has stated that after commission of crime she was threatened of dire consequences by the appellant/accused, it would not be in fitness of things to direct release of the appellant/accused

on bail as it may create hurdles in the progress of the trial, and the victim and witnesses may be threatened.

5. The learned Senior Advocate submitted that undisputedly the blood samples of the appellant/ accused and the child born to the victim are sent for DNA test and report is awaited. It is urged that hearing of this appeal be deferred till report of DNA test is received, as according to the learned Senior Advocate, the fate of the appellant/accused substantially depends on the report of DNA test.

6. Learned A.P.P. opposed the prayer of the appellant/ accused.

7. Though, *prima-facie*, submission made by the learned Senior Advocate that hearing of the appeal be deferred till report of DNA test is received, appears to be appealing, considering the material on record, especially statements of the victim and considering the provisions of Section 29 of the Protection of Children from Sexual Offences Act, 2012, we are of the view that the learned Sessions Judge has not committed any error which necessitates interference by this Court in appeal.

8. Another submission is made by the learned Senior Advocate that this being the statutory appeal, it would be necessary for this Court to call for R & P before disposing it. We find that the photocopy of the charge-sheet is placed on record of this appeal and it contains all the material which presently is on record before the trial Court. Hence, we find no impediment in proceeding with the hearing of the appeal.

Hence, the appeal is **dismissed**.

It is clarified that the appellant would be at liberty to move fresh application before the trial Court after the report of DNA Test is received.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J.)

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