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

CRIMINAL APPLICATION NO.1080/2019 IN
CRIMINAL APPEAL NO.827/2019

Santosh Baburao Sadmek .vs. State of Maharashtra through PSO P.S. Aheri, Dist. Gadchiroli

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Ms Kirti Deshpande, Advocate for applicant.
Mr. P. S. Tembhare, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : FEBRUARY 4, 2020

Heard Ms Deshpande, learned counsel for applicant and Mr. Tembhare, learned A.P.P. for non applicant-State. Also perused the relevant part of the record and proceedings.

The applicant is convicted by the learned Sessions Judge, Gadchiroli on 27.11.2019 in Sessions Case No.84/2017. By impugned judgment, applicant is convicted for an offence punishable under Section 376 (2) (f) (n) of the Indian Penal Code and is directed to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-. Applicant is also convicted for an offence punishable under Section 506 of the IPC and is directed to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-.

Exh.-15 is oral report lodged by the victim. From the report, it is clear that she has attained majority and was about 21 years of age. According to the FIR, on 31.05.2016,

the applicant committed sexual intercourse with the victim at the time of one marriage ceremony. It is also stated in the FIR that subsequent to the said act also, on many occasions, the applicant committed sexual intercourse with her. As per FIR, in December-2016 she missed her menstrual periods. Therefore, upon inquiry from her mother, she disclosed about sexual intercourse by the applicant. The report states that thereafter victim went to house of applicant and asked that he should marry with her. That time, as per the FIR, applicant asked for abortion. Thereafter report was filed.

The victim girl delivered a child. The DNA report shows that applicant is putative father of the child. There should not be any doubt in anyone's mind that there was sexual intercourse between the victim and the applicant.

It is the submission of the learned counsel for the applicant that victim was a consenting party. In the cross-examination, victim did state that she was having an affair with the applicant even prior to the incident. In view of this, in my view, second thought is necessary. Hence, I pass the following order.

ORDER

(i) The application is allowed.

(ii) Substantive jail sentence imposed upon the applicant in Sessions Case No.84/2017 on 27.11.2019 by learned Sessions Judge, Gadchiroli shall remain suspended during the pendency of the present appeal.

(iii) Applicant-Santosh Baburao Sadmek be released on bail on he executing P.R. Bond in the sum of Rs.10,000/-

with one solvent surety in the like amount before the trial Court.

(iv) The applicant shall attend Police Station, Aheri, Dist. Gadchiroli once in every six months during the pendency of the present appeal.

(v) The applicant shall remain personally present before this Court at the time of final hearing of this appeal.

The application is disposed of.

JUDGE

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