

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 377 / 2021

Somnath @ Sonya Raghunath @
Raghuji Kale

.. Appellant/ Applicant

Versus.

The State of Maharashtra
and Anr.

.. Respondents

Mr. Paras D. Yadav, Advocate for the Appellant.

Mr. A.D. Khamkhedkar, APP for State.

Mr. Manojkumar Pande, A.P.I., Talegaon M.I.D.C.
Police Station.

CORAM : SANDEEP K. SHINDE J.

DATE : 07th SEPTEMBER, 2021.

P.C. : -

1. Heard. It is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Prosecution case in brief is that victim of 11

year old, was sexually assaulted by the Applicant, eventually, her immediate neighbour. Applicant 33 year old, belongs to upper caste (Maratha); whereas the victim belongs to lower caste. Complainant is grand-mother of the victim. On 7th June, 2020, at around 10 am., Complainant had gone to the shop, while her grand-daughters were in the house. When grand-mother (Complainant) returned home, she had seen her grand-daughter (victim) in semi-nude condition and the Applicant was sexually assaulting her. Applicant allegedly, fled the scene of offence. Whereafter the offence under Section 354-B, 452 of the Indian Penal Code; Sections 8, 12 of POCSO and Section 3(1)(w)(i), 3(2)(V) and 3(2)(V a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, was registered vide Crime No. 73 of 2020 at Talegaon M.I.D.C. Police Station, Dist. Pune.

3. Applicant was arrested on 8th June, 2020. The

investigation is over and the final report has been filed.

4. Although, the Complainant was informed of the bail proceedings, filed by the Applicant, Complainant chose to remain absent. Prosecution has placed on record copies of intimation/ notices served on the Complainant. Besides, the Applicant has also affidavit of service alongwith the copy of acknowledgment to show that proceedings were served on the Complainant.

5. Be that as it may, it may be stated that except the statements of the Complainant, victim and her younger sister, Prosecution has not taken any efforts to record the statement of independent witness. Infact, the spot panchanama clearly suggests that the incident had taken place in the house, surrounded by many houses and therefore to ensure fair investigation, the Prosecution ought to

have recorded the statements of the neighbours. Although, the incident had occurred during the day time in the victim's house, surrounded by other houses, apparently, it is difficult to believe, Prosecution case that none had seen the Applicant either, while he was going to the house of victim or when he ran away after the incident. Apart from that, primary evaluation of witnesses' statement, renders the Prosecution case a doubtful. Younger sister of victim told Police that while she was playing with the victim, Applicant by force took the victim in the house. All the same, victim narrated different facts to Medical Officer, while she was taken to hospital for her examination. She told him, that on 6th February, 2020, in afternoon, she was alone with her grand-mother. Meanwhile, grand-mother went off to shop. Accused noticed and lifted the victim and pushed her into room (victim's house). This narration as to the time of incident or otherwise is different, then the incident

narrated by the Complainant, victim and her younger sister. The story narrated to the Medical Officer suggests that at the material time, the younger sister of the victim was not present. Nor the victim told that she was lifted by the Applicant and the forced her into a room. Be that as it may, prima-facie, the report of the Medical Officer does not corroborates Prosecution case. Therefore, prima-facie, the material on record renders prosecution case indefinite. The offences registered against the Applicant under the POCSO, are punishable with imprisonment for a term, which shall not be less than three years. Yet, a fact cannot be ignored that the Applicant has been incarcerated since June,2020 and trial may not commence in the near future. For the reasons stated, the Appeal is allowed. Hence, the following order.

O R D E R

(i) The Applicant is directed to be released on bail on executing P.R. Bond in the sum of

Rs.25,000/-, with one or more sureties in the like amount;

(ii) The Applicant shall furnish his residential address as well as permanent address and contact details to the Investigating Officer forthwith;

(iii) The Applicant shall stay in another village and shall not establish any contact with the victim or prosecution witnesses till the conclude of the trial;

(iv) The Applicant shall report to the Investigating Officer once in a month i.e. 2nd Monday of a month commencing from September, 2021 and continue to report till the charge is framed;

6. Appeal is allowed and disposed of.

(SANDEEP K. SHINDE, J.)

MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM

Digitally signed
by MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM
Date:
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