

Dineshkumar Kamlashankar Yadav ...Applicant/Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

Mr. S.V. Gavand, APP for the Respondent – State.

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reported to others. Thereafter, the First Information Report (for short 'FIR') was registered. Investigation proceeded and charge-sheet was filed.

4. Learned Advocate for the applicant submitted that the applicant was aged around 20 years at the time of incident. The applicant is in custody for a period of about 6 years & 7 months. He was arrested on 24th September, 2015. The applicant has been falsely implicated in this case. The eye witness to the incident, who is the brother of victim namely Bablu was not examined by the prosecution. The neighbours of the victim girl, who had reached the spot, were informed by the brother of victim girl about the incident namely Geeta Gaud and Geeta Singh were not examined, although their statements were recorded. The version of PW-1 and PW-2 is hearsay. There are contradictions in the evidence of eye witnesses.

5. Learned APP submitted that the victim is child. She had supported the prosecution case. There is no reason to disbelieve her version. The prosecution has proved the offence.

6. Learned Advocate for Respondent No.2 submitted that the victim has attributed role of sexual assault to the applicant. The victim girl and the accused were found together. The witnesses had seen the accused and victim girl together, after the incident. There

is sufficient evidence to show the involvement of the applicant.

7. The applicant is arrested on 24th September, 2015. He has undergone custody for a period of about 6 years & 7 months. The prosecution case is that the brother of victim girl namely Bablu had seen the incident and he had disclosed it to other witnesses. However, the prosecution has not examined the said witnesses during trial. The statements of two other witnesses namely Geeta Gaud and Geeta Singh were recorded during the course of investigation. They are the neighbours of the victim girl. They reached the spot after the incident. They are not examined by the prosecution. PW-1 is the neighbour of the victim girl. She is not the eye witness to the incident. According to her, Bablu Yadav told her about the incident by stating that the accused had doing bad thing with his sister. She noticed the victim and the accused together. She is not the eye witness to the incident of sexual assault. PW-2 is the father of the victim girl. His evidence is in the nature of hearsay. PW-3 is the victim girl. She has narrated the incident. In the cross examination, she has stated that the accused went to urinate and therefore zip of his pant was open. The accused was aged around 20 years at the time of incident. He is in custody for a period of 6 years & 7 months. Considering these aspects, sentence of imprisonment can be suspended.

8. Hence, I pass the following order:

ORDER

- i. Interim Application No. 621 of 2020 is allowed;
- ii. During the pendency of Criminal Appeal No.344 of 2019, the sentence of imprisonment imposed vide Judgment and order dated 27th February, 2018 passed by learned Special Judge, under POCSO Act, Vasai in Special Case No.69 of 2015 is suspended and the applicant is directed to be released on bail on executing PR. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- iii. The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of ten weeks in lieu of surety.
- iv. The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;
- v. In the event, there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.
- vi. The applicant shall not reside the vicinity of the victim girl and shall not try to contact the victim girl or her family members.
- vii. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)