

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1058 OF 2022
IN
CRIMINAL APPEAL NO.343 OF 2022**

Balu Sukhdeo Tongare

.... Applicant

versus

State of Maharashtra & Ors.

.... Respondents

.....

- Mr. Aniket Vagal, Advocate for Applicant.
- Mr. R. M. Pethe, APP for the State/Respondent No.1.
- Ms. Manisha Jagtap (Appointed Advocate) a/w Mr. Shubham Ghade, Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 26th AUGUST, 2022**

P.C. :

1. The Applicant is convicted and sentenced for commission of offence punishable u/s 376-D of the Indian Penal Code and u/s 4 of the Protection of Children from Sexual Offences Act, 2012. There were four accused in all. The Applicant was the accused No.1. He was sentenced to suffer rigorous imprisonment for 20 years and to pay a fine of

Rs.5,000/- and in default to suffer rigorous imprisonment for three years. He was acquitted from the charges of commission of offence punishable u/s 506 r/w 34 of the Indian Penal Code. In view of sentence imposed u/s 376-D, no separate sentence was imposed for offence punishable u/s 4 of POCSO.

2. Heard Mr. Aniket Vagal, learned counsel for the Appellant, Ms. Manisha Jagtap, learned counsel for Respondent No.2 and Mr. R. M. Pethe, learned APP for the State.

3. The prosecution case is reflected in the evidence of P.W.1, victim herself. She has deposed that at the time of deposing before the Court she was 16 years and 5 months old. She has deposed that on 20/03/2016 her parents had gone to another village and her brother was in the agricultural field. At about 12.00 p.m. she was proceeding towards her agricultural field to give tiffin to her brother. At that time, the accused Ramdas Lilake met her. He asked her to accompany him. She refused and proceeded ahead. After that, the present Applicant

met her. He lifted her and took her in the bushes. He fell her on the ground and committed sexual assault. At that time other three accused came there and they also committed sexual intercourse against her wish. Then she went home. Her parents returned at about 04.00 p.m. Then she disclosed the incident to her parents. After that they went to the house of the accused Ramdas Lilake. He got annoyed. Then they approached the police and lodged the report. She produced her clothes. She identified the clothes of the accused produced in the Court. In the cross-examination she deposed that the Applicant was related to her as distant maternal uncle. She further deposed that nobody witnessed when the Applicant lifted her. She did shout for help.

4. The evidence of the Medical Officer mentions that the victim was examined on 22/03/2016. On the examination, it was observed that, though there were no external injuries, however the labia majora was having swelling and Oedema and the hymen was torn.

5. The impugned judgment shows that the semen stains on the top worn by the victim matched with the DNA profile of the Applicant.
6. Learned counsel for the Applicant submitted that it was a consensual relationship. The victim was more than 18 years of age. The prosecution has not proved that she was below 18 years of age. There were no external injuries. The Applicant is in custody for about 8 years and therefore he should be released on bail.
7. Learned APP as well as learned counsel for the Respondent No.2 opposed this application. They relied on the evidence of the victim and the DNA report mentioned in the judgment which strongly indicates the evidence against the Applicant.
8. I have considered these submissions. From the entire deposition of the victim/PW.1 there is nothing to suggest that it

was a consensual relationship. She has categorically stated that she was taken to bushes. She tried to shout for help, but nobody was around. Thus at this stage it is not possible to observe that it was a consensual relationship. The case assumes seriousness because after the Applicant, the other three accused also committed rape on her at the same spot one after other. DNA report shows that semen stains match with the DNA profile of the Applicant. The stains were on the clothes of the victim. All these are very strong circumstances. The offence is very serious. The imposed sentence is for 20 years. Therefore no case for grant of bail pending Appeal is made out. The application is rejected.

(SARANG V. KOTWAL, J.)