

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

CRIMINAL APPA NO. 985 OF 2022

State of Maharashtra

..VS..

Dinesh Sadashiv Mehandale and 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.M. Ukey, Advocate for the applicant/Appellant.

CORAM:VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 15/11/2022.

Heard.

2. This is an application for grant of leave to file appeal against acquittal in terms of Section 378(1)(B) of the Code of Criminal Procedure. The respondent no.1 was charged for the offence punishable under Sections 376, 417 of the Indian Penal Code and under Section 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The prosecution has examined in all four witnesses to establish the guilt of the accused. The Trial Court upon considering the material, concluded that the prosecution has failed to establish the levelled charged and therefore, the order of acquittal has been passed. It is submitted that, despite sufficient evidence, the Trial Court erred in acquitting the accused which causes miscarriage of justice.

3. We have gone through the copies of evidence and impugned judgment. It is a case of a victim aged 30 years of age alleging that the accused has committed sexual

intercourse with her. We have minutely gone through the evidence of the victim. She has deposed that she had old acquaintance with the accused out of which love relationship was developed. She stated that they had sexual relationships. The learned A.P.P. has pointed out a single line of the evidence wherein the victim stated that prior to establishing sexual relations, the accused said that he would marry with her. Besides the said isolated statement, there is nothing to indicate that under the pretext of false promise, the accused has obtained the consent of the victim. The entire evidence nowhere suggests that the victim has surrendered herself only because she has been promised by the accused for marriage. The evidence clearly suggests that the relationship was out of love and affection.

4. We have gone through the reasons assigned by the Trial Court while reaching to particular conclusion. The Trial Court has noted that though the accused married with somebody else, still physical relations were continued. It is also noted that the victim was well aware that the accused was married and rather this has weighed much to the Trial Court in negating the charge. The view expressed by the Trial Court is most probable and reasonable. It is the settled position of law that in cases of appeal against acquittal, unless there is perversity the higher Court shall not interfere nor substitute its own view.

5. The provision for grant of leave has some purpose obviously to eliminate the untenable flow in the Courts of

law. The rider put by the statute cast a duty on the appellate Court to *prima facie* satisfy about the triable case.

6. On perusal of entire material we find that there is no substance in the prosecution case. The evidence lacks to bring the case even to test in appeal. The order of the Trial Court is well justifiable, therefore, we are not inclined to grant leave. In view of that we do not even deem it necessary to hear the accused and thus, the application seeking leave stands rejected. Consequently appeal stands dismissed.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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