

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.8 OF 2021

The State of Maharashtra,
Through Nagar Taluka Police
Station, Ahmednagar.

.. Applicant

Versus

Akash Sukhdeo Kolekar,
Age: 19 years, Occu.: Education,
R/o. Deulgaon Siddhi,
Tq. Nagar, Dist. Ahmednagar

.. Respondent

...

Mr. S. J. Salgare, APP for the applicant – State.

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CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.

DATE : 4th July, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 21.11.2020 passed by the learned Special Judge, under Protection of Children from Sexual Offences Act, Ahmednagar in Special Case No.66 of 2018; thereby acquitting the respondent from the offence punishable under Sections 307, 354, 504 of Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act,

2012 (hereinafter referred to as the “POCSO Act”).

2. Heard learned APP Mr. S. J. Salgare for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. The prosecution story is that the informant – victim P.W.2 was aged 17 years in 2018. She was residing with her parents, brother and sister. She alleges that around 1.00 p.m. on 09.01.2018 when she was returning from her school and she was near Waghmodewadi vasti, she found accused was in a nearby agricultural land. There was maize crop in the said land. Accused caught hold of her, embraced her, lifted her and started to take her in the field. He tried to strangle her by muffler and gagged her mouth by touching her body, however, the victim raises cries. One Yamunabai Padolkar was proceeding from the said place. She had heard the shouts of the girl. Yamunabai then told the uncle and aunt of the girl that she had heard the voice of the victim at the particular place. Thereupon, the uncle and aunt came to the said field and after accused witnessed them he fled away. At the time of leaving the spot, accused had left his bag on the spot. Uncle of the victim had searched the bag and found books, notebook, muffler and small bottle of coconut oil containing petrol and one matchbox. Victim disclosed the incident to her uncle and aunt. After return of her father, who was on duty at outstation, FIR came to be lodged on

10.01.2018.

4. After the completion of investigation, charge-sheet was filed before the learned Special Judge and thereafter, trial has been conducted. Prosecution has examined in all five witnesses to bring home the guilt of the accused. P.W.1 is the panch to the spot panchanama. P.W.2 is the victim. P.W.3 is her aunt. P.W.4 Dr. Smt. Ansari is the medical officer, who had examined the victim. After hearing both the sides and perusing the evidence on record, the learned Trial Judge acquitted the accused. Hence, the present application.

5. Learned APP has submitted that the learned Trial Judge has not appreciated the evidence properly. The testimonies of P.W.2 and P.W.3 stood supported to each other and the injury on the person of P.W.2 has been got proved through P.W.4, however, the learned Trial Judge has disbelieved the testimony of the victim and her aunt on flimsy grounds. The medical report also supports the prosecution. There was no enmity between the victim and the accused so as to implicate him and, therefore, the re-appreciation of evidence is required.

6. It is to be noted that the legal position as it stands is that the testimony of the victim – prosecutrix can be relied, if it inspires confidence. Therefore, we are required to scrutinize the evidence as to whether such

confidence has been created by the informant or not. If corroboration was possible, then the evidence corroborating the testimony of the informant should be adduced. Here, in this case, the prosecution has clearly come with the case that Yamunabai had witnessed the acts, still said Yamunabai has not been examined. Even P.W.3 – aunt of the victim says that as it was informed by Yamunabai, she had gone to the particular place along with her husband, who thereupon found accused and his articles at the said place. Further, it is hard to believe that even after noticing by witness Yamunabai that informant was crying for help, Yamunabai will not raise human cry and try to gather people. She could have told the distance between the place and where she met P.W.3 and her husband. Distance between the place of incident and the spot where Yamunabai informed P.W.3 and her husband about the cries of victim heard by her has not been told by P.W.3. If everything was over before Yamunabai came, then what was remaining so that accused can still wait at the said spot. The story itself is not trustworthy. The uncle has not been examined in this case for the reasons best known to the prosecution.

7. It appears that the fact that P.W.2 is a child is not seriously disputed, however, the story itself is unbelievable and, therefore, the learned Trial Judge was justified in acquitting the accused. P.W.4 Dr. Ansari has stated that when she examined prosecutrix, she had noted three external injuries

i.e. (i) Nail scratch over left cheek, (ii) Nail scratch over nose and (iii) Abrasion over neck. She had not found any marks of attempted strangulation. Whether it could have caused apprehension itself is a question. The alleged weapon used as rope was not shown to the medical officer and the opinion has not been sought as to whether it could have been used as weapon to commit murder. Under the said circumstance, merely because two views are possible, the Appellate Court has not supposed to take the second view; even if we hold that the testimony of these witnesses has not been properly appreciated. We do not find any illegality or perversity in acquitting the respondent. No case is made out for grant of permission. The application stands dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm