

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE
NO. 21 OF 2019

1. The State of Maharashtra
Through Police Inspector
Topkhana Police Station,
Ahmednagar, Dist. Ahmednagar

... Applicant
(Ori. Prosecution)

VERSUS

1. Sonya @ Prashant Bhagwan Shinde,
Age : 21 years, Occ. : Private Service,
2. Savita Bhagwan Shinde,
Age : 39 years, Occ. : Household,
3. Swati Babasaheb Darunkar,
Age : 32 years, Occ. : Household,
4. Bandu Mithulal Darunkar,
Age : 39 years, Occ. : Nil,

All R/o. : Wagh Mala, Bolhegaon Road,
Savadi, Ahmednagar

... Respondents
(Ori. Accused)

...

Mr. R.D. Sanap – APP for Applicant, State
Mr. N.B. Narwade – Advocate for Respondent Nos.1 to 4

....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 2nd November, 2023

ORDER :

1. The applicant – State is seeking leave to file appeal against

the impugned judgment and order dated 23rd October, 2018 passed by the learned Additional Sessions Judge, Ahmednagar (hereinafter referred to as "*the learned Trial Court*") in Sessions Case No.345 of 2016 whereby the present respondents are acquitted from the offence punishable under Sections 354B, 323, 504, 506 read with 34 of Indian Penal Code and Section 7 punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012. During the pendency of this application, respondent No.4 i.e. original accused No.4 – Bandu Mithulal Darunkar died on 16th January, 2021, as such the application stands dismissed against him.

2. Learned A.P.P. submits that, the learned Trial Court ignored the positive evidence brought on record by the prosecution such as testimony of complainant and her statement recorded under Section 164 of Criminal Procedure Code, evidence of Medical Officer and seizure panchanama. According to him, there was intention and motive with the respondents – accused for commission of such offence as civil dispute was already there between themselves and complainant party.

3. On the other hand, learned Counsel for the respondents –

accused strongly opposed the submissions made on behalf of applicant – State. He pointed out that, there is no evidence of independent witness on record and the respondents were implicated falsely on account of dispute over landed property. He pointed out that, the evidence of Doctor as well as complainant was not at all convincing. Further, he pointed out that, there is no entry in the police diary regarding deposition of muddemal article i.e. seized clothes of the informant in Malkhana of the police station.

4. Heard rival submissions and also perused the documents on record. On going through the impugned judgment it appears that, the learned Trial Court did not find the evidence of informant as well as Medical Officer reliable as regards the injury sustained by her during the course of incidence. Further, there was dispute over the open space between the rival parties and, therefore, possibility of implicating the respondents – accused was there.

5. However, on going through the depositions of witnesses the informant – prosecutrix has specifically deposed as to how she was molested by present respondent No.1 and deceased respondent No.4 – Bandu, who torn her clothes and outraged her modesty.

Further, her statement recorded under Section 164 of Criminal Procedure Code to that effect is also on record at Exh.27. The evidence of panch witness i.e. P.W. - 2 by name Promod Sukhdeo Raut in whose presence torn clothes of informant were seized by the police also collaborates the version of the informant. Moreover, the Medical Officer who examined the informant i.e. P.W. - 5 by name Dr. Sumayya Khan has also stated that, before examination of informant she had recorded history of assault through victim and found injuries on chest, abdomen, back, neck and both legs of prosecutrix in form of blunt trauma. Further, due to stomach pain, ultra sonography of abdomen of the prosecutrix was also done. Though the learned Trial Court did not consider such evidence on the possibility that, the said Medical Officer might have noted such injuries at the instance of victim only, but irrespective of such observation there is positive evidence on record. Moreover, outraging modesty of woman is treated as serious offence and, therefore, irrespective of finding of learned Trial Court, the prosecution has made out arguable case. In view of the same, the application stands allowed.

6. Appeal of the applicant – State be registered after removal of

office objections, if any.

7. Application for Leave to Appeal by State accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE