



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.78 OF 2018

The State of Maharashtra, }
Through PSO Shirdi Police Station, }
Tq. Kopargaon, Dist. Ahmednagar } **... Applicant**

Versus

Aakash Babasaheb Gadakh, }
Age : 20 years, R/o. Paregaon Bk., }
Tq. Sangamner, Dist. Ahmednagar. } **... Respondent**
(Orig. Accused)

...
APP for Applicant - State : Mr. A. M. Phule
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 5th OCTOBER, 2023

PER COURT :

The prosecution has filed the application seeking leave under section 378(1)(b) of the Code of Criminal Procedure (Cr.P.C.) to file criminal appeal to challenge the judgment and order dated 04.01.2018 by the learned 2nd Additional Sessions Judge, Kopargaon, District Ahmednagar in Sessions Case No.80 of 2015, thereby acquitting respondent - original accused for the offence punishable under sections 376, 354-A, 354-B, 354-C, 323 and 504 of Indian Penal Code (IPC).

2. Heard learned APP Mr. A. M. Phule and perused the material which was before the learned trial Judge while deciding the matter.

3. The learned APP has submitted that the learned trial Judge has not appreciated the evidence properly. The testimony of the victim supports the prosecution story and also inspires confidence, yet, it has been disbelieved. Though the medical evidence in the form of PW7 Dr. Kane, who examined the victim on 09.02.2015, suggests that no external injuries connecting to sexual assault were found, yet, she had stated that the possibility of sexual assault cannot be ruled out. Further, the evidence of PW6 PSI Sanjaykumar Sone and PW3 Bharat Salpure were sufficient to come to the conclusion that the accused had taken the victim/prosecutrix to the hotel at Shirdi. The prosecutrix was taken by the accused to Loni also and there in the room that was taken by the accused, he has committed rape on her. Further, the victim's evidence is supported by her father PW4 and PW5 uncle of the victim. Therefore, there was ample evidence to convict the accused, but the accused has been acquitted, and therefore, it is necessary to re-appreciate the evidence.

4. Before we proceed, it is to be noted that, the prosecutrix was aged 19 at the time of incident and the accused is her distant relative. She has stated that along with the other cousins she and the accused had gone for three days trip at Lonawala, Alibag, Murud, Janjira and Shivneri, and thereafter, after about 15 days

the accused started asking her for friendship, which she refused. But, still he was talking about sexual relationship with her. She had told the accused that he should not talk with her in indecent language otherwise she would inform the fact to her parents. Thereupon, the accused had given her threats that he has taken snaps of the prosecutrix while she was taking bath at Murud and he would make them viral. Thereafter, under the said threats, the accused had called her to Anjanapur Phata on 24.01.2015, and thereafter in a four-wheeler he had taken her to a lodge at Shirdi and had sexual intercourse with her against her wish. When she asked to deliver her photographs he had taken, then the accused refused to deliver the same and left her to the same place from where he had picked her up. He had given her threats for not disclosing the fact to anybody, but again the same course was adopted and she was called on 28.01.2015 at the same place, she was taken to a hotel at Loni and then she says that she was raped and he again left her at the same place. Thereafter, on 30.01.2015 the prosecutrix told the entire story to her maternal uncle. Even the accused had come to her maternal uncle on 08.02.2015 and had beaten her maternal brother. Thereafter, she went to police station and lodged the report.

5. After the investigation was over, the case was committed to the Court of Sessions and in order to bring home the

guilt of the accused, the prosecution has examined in all seven witnesses.

6. Perusal of the testimony of the prosecutrix would give an impression that, though she had gone willingly to the trip along with the cousin brothers and sisters including the accused, when after they returned, accused expressed love for her, she was not willing. However, the cross would show that they both were in contact with each other. Even PW4 the father of the prosecutrix affirms that he got suspicion about some relationship of the daughter, when phone call was received on the mobile phone of the prosecutrix, but it was picked up by her brother. The cross examination of PW3 Bharat Salpure, the Manager of the hotel at Shirdi would disclose that the accused had come to his hotel around 1:40 p.m. along with a girl, they took a room and then vacated the same at 3:00 p.m. He has categorically stated that, there was no reason to disbelieve or show some suspicion to the accused while giving the room to the girl and the accused. The behavior of the prosecutrix was not suspected by those persons.

7. Further, the prosecutrix has admitted in her cross examination that, the accused used to send messages on her mobile phone. He had forwarded about 50 messages to her and she

has forwarded about 100 messages to the accused. The accused used to talk to her on mobile phone everyday. The question then arises that as to why she had not disclosed the behaviour of the accused to her parents, if she had objection.

8. It appears from the cross examination that, on one day, when she came late, she was asked by the father about the reason and she could not give satisfactory answer, and therefore, she started crying and then the father had sent her to maternal uncle's place. That, the entire cross of the prosecutrix would show that, it was the case of love affair. The prosecutrix appears to have voluntarily accompanied to the accused. She was a major girl and therefore, her testimony does not inspire confidence.

9. Learned trial Judge has rightly appreciated the evidence and we do not find any illegality or perversity in the impugned judgment. No case is made out for re-appreciating the evidence.

10. The application, therefore, stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)