

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.86 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
NARENDRA RAMDAS CHAUDHARI

...
Mr. A.V. Deshmukh, A.P.P. for Applicant.

...
CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.

DATE : 10th APRIL, 2023

ORDER :

1. Present Application has been filed seeking leave under Section 378(1)(b) of the Code of Criminal Procedure by the prosecution to file criminal appeal challenging the Judgment and order dated 27th December 2017 passed by the learned Additional Sessions Judge, Nandurbar in Sessions Case No.10 of 2014. By the said Judgment and order the learned Additional Sessions Judge has acquitted the present respondent / original accused of the offence punishable under Sections 363, 366, 342 and 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act.

2. Heard learned APP Mr. Deshmukh and with his able assistance, we have gone through the record which was before the learned trial Judge.

3. The prosecution story is that the accused has committed rape on the victim, aged 17 years, in the intervening night of 8th December 2013 and 9th December 2013 in the room of his house. Prosecutrix was acquainted with the accused prior to the incident and it is her contention that accused used to call her from his Mobile. She has stated that in the said night she was forced to come out of her house but she had refused, but then when she came out for attending nature's call, the accused had forcibly dragged her towards his house and then committed rape. Thereafter she has even attempted to commit suicide but a lady prevented her from jumping into the well and then in frightened condition and unstable mind, prosecutrix had gone to the temple of Gajanan Maharaj and stayed there upto 4.00 p.m. of 19th December 2013 and thereafter she returned to her house. She narrated the incident to her family members and then family members had tried to resolve the problem and had put proposal

of marriage between the girl and the boy, however, the accused refused and then she has lodge the report.

4. Apparently the prosecutrix has supported the prosecution story and withstood to the ordeal of the cross-examination. Her testimony is consistent with her First Information Report and the statement under Section 164 of the Code of Criminal Procedure. The prosecution has also examined the lady who had stopped the prosecutrix from jumping into the well, PW-4 Kalubai. Thereafter the prosecution has also examined PW-6 Pravin Chaudhari, who had taken part in the meeting to settle marriage between the prosecutrix and the accused and he has specifically stated that in the said meeting the accused had refused to marry the prosecutrix. Thereafter there is evidence in the form of testimony of the father, medical officer who examined the prosecutrix and then there is evidence of the panch witnesses.

5. It appears that the learned trial Judge has more stressed on the fact that the investigating officer has not collected the CDR and the fact that evidence regarding telephonic conversation has not been brought. The investigating officer in his cross-examination, based on the Mobile number that was

given and CDR of that Mobile number which is stated to be of the accused, has stated that there was no call from the said number to the prosecutrix. It is therefore, required to be seen as to whether the CDR of only one Mobile number could have been so collected and produced, and whether the said statement in the cross-examination of the investigating officer can be taken as a gospel truth. What appears from the cross-examination of the prosecutrix is that there is no serious dispute as regards her age on the day of incident, which is stated to be as 17 years. Accused has also not come with the defence of love affair, then the question arises, as to why the prosecutrix would have implicated the accused.

6. Under such circumstance, there is definitely necessity to re-appreciate the evidence by granting leave to appeal under Section 378(1)(b) of the Code of Criminal procedure. Hence the following order:-

ORDER

(I) Application stands allowed.

(II) Leave is granted to the prosecution to file Appeal.

(III) Registry to verify and register the Appeal.

(IV) Appeal stands **Admitted**.

(V) Call Record and Proceedings with Paper-Book.

(VI) In Appeal, issue notice to the respondent, to be made returnable on 23rd June 2023.

(VII) Action under Section 390 of the Code of Criminal Procedure be taken against respondent to the satisfaction of the learned trial Court.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE