

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1268 OF 2023
IN APEAL/272/2023 WITH APEAL/272/2023

PAWAN VISHWANATH UKHANDE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Rahul M. Jade
APP for Respondent No.1/State : Mr. S. P. Deshmukh
Advocate for Respondent No.2 : Mr. Angad Lala Kanade and
Mr. Moinpasha Shaikh Farid

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CORAM : S. G. MEHARE, J.

DATE : 17-07-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for respondent No.1/State and the learned counsel for guardian of deceased victim.
2. The applicant is seeking suspension of sentence under Section 389 of the Code of Criminal Procedure.
3. The learned Additional Sessions Judge, Ambajogai, District Beed, convicted the accused for the offences punishable under Sections 376(2)(f)(I) and 452 of the Indian Penal Code in Sessions Case No.159 of 2021 dated 24.02.2023 and the sentence to suffer 25 years rigorous imprisonment for the offence punishable under Section 376(2)(f)(I) of the Indian Penal Code and 5 years rigorous imprisonment for the offence punishable under Section 452 of the Indian Penal Code.

4. The learned counsel for the applicant would submit that the fine amount has been deposited. There was no final opinion as regards the sexual assault. Only the provisional opinion about the incident has been erroneously accepted. The forensic science laboratory (FSL) report does not support the prosecution. He would also argue that the victim had admitted that the gate of her house was always locked and therefore the story that the accused entered the house and did forcible sex, is false. The victim firstly narrated the incident to her mother. Though, she was prime witness, she was not examined. Therefore, an adverse inference ought to have been drawn by the learned Additional Sessions Judge. He would also argue that the witnesses are not consistent about the presence of the applicant on the spot of the incident. The applicant has been falsely implicated in the crime as there was a property dispute between the two families. The prosecution did not prove the case beyond the reasonable doubt. The learned Additional Sessions Judge did not give the reason on FSL report and corroboration to the incident. He did not discuss how the evidence of P.W.No.5 Dr. Vaibhav Dube was sufficient to form an opinion that the incident happened. The applicant is a young boy of 25 years old. There are no antecedents to his discredit. Besides above, the learned Additional Sessions Judge has imposed incorrect sentence of 25 years as it was not the punishment prescribed under Section 376(2)(f)(I) of the Indian Penal Code. The

applicant has a good case on merit. Therefore, the sentence may be suspended.

5. Per contra, the learned A.P.P. for the State and the learned counsel for the legal heir of the deceased victim have vehemently argued that immediately after the incident, when the deceased was screaming, the neighbouring people came there. The said witnesses corroborated the fact that the deceased was lying on the bed without cloths, she was paraplegic and disabled to do her routine. Barely the admission of keeping the gate locked would not make the prosecution's case false. The learned Additional Sessions Judge, on evaluating the evidence has discussed the proved facts in paragraph No.45 of the impugned judgment and order. In the absence of any FSL report, the victim could be disbelieved. The offence is serious. The applicant has committed rape with a paraplegic woman .

6. The learned counsel for the victim would point out that the applicant was on bail, however, he did not attend the case, for the reasons that he was knowing that health of the deceased was deteriorating day by day. Therefore, he was brought before the Court under warrant and taken into custody. The deceased died within few days of recording her evidence. The conduct of the applicant was specific. Considering the gravity and seriousness of the offence, the applicant do not deserve the suspension of sentence.

7. Perused the impugned judgment and order. The conviction is for a long term of 25 years. The applicant is cousin of the deceased. *Prima facie* material was available before the Court. The persons who saw the deceased in a peculiar circumstances and the presence of the applicant, cannot be disbelieved at this juncture. The gravity of the offence is most important factor while considering the application for suspension of sentence. Here, the applicant was able bodied person, who committed rape with a woman suffering from paraplegia. What is the effect of FSL report on the case, can be considered at the time of hearing on merit. Considering the evidence, the Court is not satisfied that this is a fit case to exercise discretion under Section 389 of the Code of Criminal Procedure. Hence, the application stands dismissed. However, the applicant is at liberty to move an application for early disposal of the appeal on merit.

**(S. G. MEHARE)
JUDGE**

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