

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.68 OF 2019

The State of Maharashtra
(At the instance of Yermala
Police Station)

.. Applicant

Versus

1. Gajendra Kerappa Panchvise
Age: 43 years, Occu.: Agriculturist,
2. Ganesh Ankush Ghule
Age: 25 years, Occu.: Mobile Shopee,
Both R/o. Kadaknathwadi, Tq. Washi,
Dist. Osmanabad.

.. Respondents

...
Mr. S. D. Ghayal, APP for the applicant – State.
...

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

DATE : 26th June, 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 01.12.2018 passed by the learned Additional Sessions Judge, Bhoom in Sessions Case No.28 of 2015; thereby acquitting the respondents from the offence punishable under Sections 376(1), 377 of

Indian Penal Code and under Section 67 of the Information Technology Act.

2. Heard learned APP Mr. S. D. Ghayal 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 has come with the case that the prosecutrix had lodged report on 24.02.2015 when she was admitted in Civil Hospital, Osmanabad. She disclosed that she was residing with her husband, in-laws and two daughters. Her husband is a truck driver. Four years prior to the FIR, her husband is serving with accused No.1. Accused No.1 used to visit her house on one day. He had taken photograph while she was taking bath in semi nude condition and then he started saying that she should meet him at the place of his choice. He was giving threat to her that he would make her photograph viral and disrepute her. She did not disclose the fact to anybody. After Diwali in October, 2013, he started giving more threats and, therefore, she went with him to a lodge. Accused No.1 had tried to commit forcible sexual intercourse, but she did not allow and, therefore, he took her to another village and left her at ST Bus Stand by giving threat that he will not spare her husband and children. Thereafter accused No.1 gave her threat by making phone call and meeting personally on 31.01.2015 that he would make her photograph viral, if she fails to meet him. Her husband was out of station on that day and, therefore, she left

the house under the pretext that she was going to dispensary. She went to Osmanabad along with accused No.1 for removing abscess on her back, but the dispensary was closed, then accused No.1 took her to a lodge at Tuljapur. After dinner, he had given lemon juice to drink and removed her clothes and had sexual intercourse with her when she was feeling giddy. Accused No.1 alleged to have committed sexual intercourse with her 4-5 times. At about 1.00 p.m. on the next day, he showed her a video clip and threatened that he would make it viral. It is then stated that 3-4 days prior to the date of FIR, accused No.1 has uploaded the said video clip on the internet and the brother of the prosecutrix had seen the same. Prosecutrix suffered a mental shock and due to fear of disreputation, she consumed insecticide on 24.02.2015. After she started vomiting, she was firstly taken to Yermala and then to Civil Hospital, Osmanabad by her husband.

4. After the offence was registered, investigation was carried out and after committal of the case, trial was conducted. Prosecution has examined in all twenty witnesses to bring home the guilt of the accused. After hearing both sides and perusing the evidence, the learned Sessions Judge acquitted both the accused. Accused No.2 was charged for the offence punishable under Section 67 of the Information Technology Act i.e. for making the video viral. Hence, the present application.

5. Perusal of the evidence of PW.1 - the prosecutrix would show that she is a major married lady. She was knowing accused No.1 four years prior to the FIR. At no point of time, it appears that she had felt that she should disclose the incident to her husband. By merely saying that she was afraid of the threat allegedly given by accused No.1, she cannot get excused. The relationship of the husband and wife is also of the confidence and unless the trust and confidence is created, it will have no space for any fear. The examination-in-chief of the prosecutrix would show that the video clips were run in-camera with the consent of the Advocates and in presence of the victim and the noting of what was seen in the camera have been stated. The noting would show that the lady was taking active part in the act thereby showing that she was a consenting party. Further, in her cross-examination she has admitted that at the lodge, she as well as accused No.1 had disclosed themselves as husband and wife. The time gap between visits to the two lodge, one at Osmanabad and another at Tuljapur, were after the gap of nine months to one year. Further, in the cross-examination, she admitted that she used to give phone calls to accused No.1 from the mobile number suggested to her. In unequivocal terms, she has admitted that since the truth was exposed, she consumed poison, but then after realising that she has given admission, it appears that she corrected herself by saying that she consumed poison due to fear of disrepute. We agree with the finding given by the learned Trial Judge that the prosecutrix

appears to be the consenting party and, therefore, it cannot be said that the prosecution has proved the offence under Section 376(1) as well as 377 of Indian Penal Code against accused No.1. As regards the offence under Section 67 of the Information Technology Act is concerned, both the accused have been charged. Though twenty witnesses have been examined, basic evidence has not been led. Rather, that evidence was not at all collected by the investigating officer. The IP address of the mobile number of the electronic instrument, from which the said video clips were made viral, has not been traced out. Merely because those objectionable video clips could be found in anybodies mobile that does not mean that the said person has made it viral. Unless there would have been transmission of video from the mobile of accused No.1 to accused No.2, it could not have been further made viral. Therefore, we do not find any perversity in the order passed by the learned Trial Judge. Hence, the application stands dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm