

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.101 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
OMPRAKASH NARSING DUBASHI

...

Mr. R.D. Sanap, APP for applicant

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**CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 31st MARCH, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the prosecution seeking leave under Section 378(1)(B) of the Code of Criminal Procedure, 1973 to file criminal appeal challenging the Judgment and order dated 04.01.2018 by learned Additional Sessions Judge, Aurangabad in Special Case (POCSO) No.11/2015, thereby acquitting the present respondent/original accused from the offences punishable under Sections 354(2) read with Section 354-A(1)(i), 354-B, 307, 323, 504 of the Indian Penal Code, 1860 and under Section 12 read with Section 11 of the Protection of Children from Sexual

Offences Act, 2012.

2 Heard learned APP Mr. R.D. Sanap for the applicant, at the stage of admission and with his help we have considered the evidence which was before the learned Trial Judge.

3 The prosecution has examined in all five witnesses to bring home the guilt of the accused. PW 1 is the victim, PW 2 is her mother, PW 3 is the panch to the spot panchnama, PW 4 is the Headmaster, where the victim took education, he has been examined to prove the date of birth and PW 5 is the Investigating Officer. PW 1 prosecutrix/child has deposed that she was sleeping in the same room where her father, mother brother and sister were sleeping on 01.07.2014. Present respondent – original accused is the father of victim and the victim deposed that her father came and moved his hand from her person and then pressed her breast, therefore, she shouted and her mother woke up. She narrated the incident to mother and then the mother raised quarrel with father on that ground. The father then used some insulting words to the mother and poured kerosene on the person of mother. He also assaulted mother with kicks and blows. When father was searching for the match box, the prosecutrix, her mother, brother and sister ran from the said place. Thereafter, the brother went to cousin maternal uncle's place

and brought the maternal uncle. He had then taken all of them to Mill Corner Police Chowky, who then took them to Chhavani Police Station. She lodged report Exh.15. The cross-examination of the prosecutrix would show that the accused was having suspicion that the mother was having illicit relations with her cousin. But then she admits that after the incident they had shifted to his house. She was unaware about the complaint lodged by the father against mother and said cousin brother of the mother. Here, it is to be noted that PW 2 mother has stated that her daughter was 13 years old at the time of incident and she has almost reiterated the same facts which the prosecutrix had told. Surprising fact from the testimony of these two witnesses is that even earlier also it is stated that the accused had misbehaved with the girl, but at that time no complaint was lodged. Why it was not lodged is not clarified conclusively by them. Rather the mother says that when that fact was made known to her by the girl she has disbelieved her. Here, it is to be noted that the brother has not been examined in this case, so also, the cousin maternal uncle. Except the girl and the mother there is no other evidence. Here, it appears that there was matrimonial dispute between the accused and the mother of the prosecutrix. Under such circumstance, possibility of implicating the father cannot be ruled out. The accused had in fact lodged the non cognizable complaint against the mother and her cousin brother and the Investigating Officer has not explained the

said circumstances properly. If the mother with the kerosene on her person had gone to the Police Station, then, Police should have seized those clothes, but it appears that such fact has not taken place. PW 3, the panch to the spot panchnama has turned hostile. Another fact to be noted is that there is material improvement made by the informant and the witness. The mother had not stated in her statement under Section 161 of the Code of Criminal Procedure that the daughter had told her that her father had pressed her breast. Important point to be further noted that it has not been brought on record as to how many rooms were there in the house and whether it was the regular feature that the mother, father, two daughters and son were sleeping in the same room. The prosecutrix rather says that they had slept by keeping the light on. This is unusual. The story itself is unbelievable and, therefore, the conclusion drawn by the Trial Judge after assessing the evidence that the offence is not proved beyond reasonable doubt is justified. It is proper and legal. It does not require any interference. The application, therefore, stands rejected, at the threshold.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)