

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.109 OF 2019**

The State of Maharashtra,
Through: Police Station, Yermala,
Through Sunita Rawan Thaware,
Age-35 years, Occu:Labour,
R/o-Bawi, Tq-Washi,
Dist-Osmanabad.

...APPLICANT

VERSUS

Kashinath Devrao Thaware,
Age-65 years, Occu:Agriculture,
R/o-Bawi, Tq-Washi,
Dist-Osmanabad

...RESPONDENT

...
Mr.S.J. Salgare, A.P.P for Applicant – State.
...

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

DATE : 25th SEPTEMBER, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the prosecution seeking leave to appeal under Section 378(1)(b) of the Code of

Criminal Procedure challenging the acquittal of the respondent by the learned Special Judge, Bhoom, District-Osmanabad in Special (Pocso) Case No.4 of 2014 of the offence punishable under Section 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act

2. Heard learned APP Mr. Salgare, appearing for the applicant – State.

3. The prosecution story is that the informant has lodged report on 16th February 2014 stating that she was residing with her husband, five daughters and a son. Her eldest daughter was studying in 10th standard while fourth daughter was studying in 2nd standard. The youngest daughter was aged 4 years and six months. The accused was aged 65 years old and was residing in front of the house of the informant. It is alleged that during 12.30 p.m. to 1.30 p.m. of 12th February 2014, the accused had called the youngest daughter of the informant and her friend to watch Television and it is then stated that accused had committed forcible sexual intercourse with the daughter of the informant and threatened her not to disclose anything to anyone. However, when informant came to know about the incident, she lodged the report.

4. After investigation was over, the charge-sheet was filed. Prosecution examined in all seven witnesses to bring home the guilt of the accused. It is to be noted that the victim herself was not examined for the reasons best known to the prosecution. According to the prosecution, the victim had told the entire incident to her mother. When the victim can tell the incident to her mother, she could have told it in the Court also. According to PW-1 informant, her sister-in-law (wife of her brother-in-law) told about the incident to the informant as she had seen the victim crying and coming out of the house of the accused. However, if we consider the testimony of PW-3 the sister-in-law of the informant, then she says that the fact was informed to her by the friend of victim. The friend of the victim has also not been examined. Thus the testimony of PW-3 also would become hearsay. Unless cogent reason is given for non examining the victim as well as her friend, the testimony of the mother of the victim i.e. informant, her sister-in-law and even the father of the victim cannot be considered. It has been rightly discarded by the learned trial Judge. The learned trial Judge has also considered the serious errors on the part of the investigating officer and the casual approach of the investigation has been highlighted.

5. Important point to be noted is that the alleged incident is stated to have been taken place on 12th February 2014, whereas the First Information Report has been lodged on 16th February 2014. The delay in lodging the First Information Report is not explained properly. Merely by saying that mental condition of the informant was not proper, it cannot be said that there was a good ground for lodging the report belatedly. There is no merit in the present Application and it deserves to be rejected.

6. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE