

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 111 OF 2019

The State of Maharashtra,
Through : P.S.O. Police Station,
Nanded (Rural)

... Applicant

Versus

1. Mahendra s/o Bhagwan Pawle,
Aged about 30 years, Occ. Education,
R/o Wasarni, Tah. & District - Nanded.
2. Pravesh s/o Bhagwan Pawle,
Aged about 29 years, Occ. Labour,
R/o. Wasarni, Tah. & District – Nanded.
3. Janabai w/o Bhagwan Pawle,
Aged about 59 years, Occ. Labour,
R/o. Wasarni, Tah. & District – Nanded.
4. Samrat s/o Bhagwan Pawle,
Aged about 33 years, Occ. Service,
R/o. Wasarni, Tah. & District – Nanded.

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Mr. S. D. Ghayal, APP for the Applicant-State

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

DATED : 18.10.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. Getting dissatisfied by the judgment and order of acquittal
passed by learned Special Judge, Nanded in Special (POCSO) Case

No. 21 of 2017, thereby acquitting respondents herein from charges under Sections 376(2)(n), 323, 504 and 506 r/w 34 of the Indian Penal Code [IPC] and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 [POCSO Act], the State is seeking leave to prefer appeal.

2. Learned APP would point out that offence was serious. Investigation revealed involvement of accused. Accused no.1 Mahendra had ravished minor. The minor had reported the occurrence to her mother. Both have deposed in the court. Medical expert was also examined. It is pointed out that allegations were levelled that on promise of marriage and threat, victim was sexually abused. That, she being minor, charges as levelled are clearly attracted and made out. Therefore, charges ought to have been held as proved but unfortunately learned trial Judge has held that prosecution failed to establish minority of the victim. Medical evidence has also been disbelieved. There is total non-application of mind and non-appreciation of evidence as well as law on rape. Therefore, the acquittal was unjustified and so, as State is keen in challenging the judgment of acquittal, learned APP seeks leave to do so.

3. On hearing above submissions, it is seen that respondents were charged for commission of offence punishable under Sections 376(2)(n), 323, 504 and 506 r/w 34 of IPC and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012. It seems that accused no.1 and victim were neighbours. Victim in her evidence at Exhibit 18 testified that accused once entered her house and finding her alone, he closed the door and he forced himself on her by issuing threat. According to her, because of threat, she did not inform anyone. In para 3 of her examination-in-chief, she has stated that after her family had shifted to Chophala, he had followed her there and forcibly had sexual intercourse with her. She gave her date of birth as 25.09.1999. However, in trial court, prosecution had examined PW7 Subhash, a staff from school where she allegedly took education. This witness in his evidence at Exhibit 53 deposed that as per school record which he was carrying, i.e. transfer certificate, date of admission is shown as 22.06.2013. Therefore, what prosecution has done in trial court is, it has relied on leaving certificate and not birth certificate. PW7 Subhash in cross has admitted that he was not carrying application form tendered at the time of admission. He has also admitted that in Exhibit 54 there is overwriting. He admitted that he has no personal knowledge about date of birth and whatever he has deposed is on the basis of record.

4. Evidence of PW2 mother is conspicuously silent about date of birth of her daughter. She has alleged that accused used to visit her house and the incident had happened in 2017. She has not given exact particulars as to when accused visited, ravished her daughter and when her daughter informed her. Name of victim's sister is emerging in her testimony but learned APP has admitted that said sister has not been examined who was allegedly present when victim was alone.

5. Therefore, here, crucial evidence is missing. Evidence of doctor shows that history was reported to the doctor about regular visits of accused since January 2017 and even after she reported the occurrence to the mother, relations were continued.

6. Therefore, with such quality of evidence on record, no fault can be found in the appreciation and conclusion reached at by learned trial court. In our considered opinion, with such quality of evidence, no fruitful purpose would be served by granting leave as sought by the State. Finding no merits, the application for leave to file appeal is hereby rejected.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]