

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.113 OF 2019

The State of Maharashtra
Through Police Station Officer,
Dhadgaon.

.. Applicant

Versus

Jaysing Bhamtya Pawara,
Age: 40 years, Occu.: Agri.,
R/o. Bilgaon (Patil Pada),
Tq. Dhadgaon, Dist. Nandurbar

.. Respondent

...
Mr. R. D. Sanap, APP for the applicant – State.

...

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

DATE : 27th April, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed by the prosecution under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file appeal to challenge the judgment and order of acquittal of respondent by learned Additional Sessions Judge, Shahada, Dist. Nandurbar on 11.02.2019 in Sessions Case No.36 of 2017, thereby acquitting the respondent from the offence punishable under Section 376 of Indian Penal Code.

2. Heard learned APP Mr. R. D. Sanap for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was available before the learned Trial Judge.

3. The prosecution had examined in all four witnesses to bring home the guilt of the accused and after considering the evidence, as aforesaid, the learned Trial Judge has acquitted the accused. Before considering whether leave can be granted, one fact has to be very much harped upon is that in spite of Section 228(a) of Indian Penal Code came into force with effect from 25.12.1983 and especially, in case of Section 376 of Indian Penal Code, it came into force by way of Section 4 of the Act of 13 of 2013 w.e.f. 03.02.2013, still the learned Trial Judge has taken the name of the prosecutrix throughout the judgment. We deprecate this practice. Time and again thereafter also the Hon'ble Supreme Court has specifically stated that the identity of a rape victim should not be disclosed and, especially in the judgment also.

4. It is the prosecution story that the prosecutrix is a major married lady having two minor sons. She was sleeping with her sons in the night of 13.03.2017 and her husband had gone out of station. The door of her house was tied with a rope. Accused entered her house by breaking the said rope. She could see the accused in the

light of torch. Accused gave her threat to kill, if she resists and, thereafter, committed forcible sexual intercourse with her at the point of knife. She has also stated that the accused was in a drunken state. When her husband returned on the next day morning, she disclosed the said incident to her husband, however, the report came to be lodged on 16.03.2017.

5. Perusal of the evidence of the prosecutrix would show that she has supported her FIR. There is evidence of P.W.4 Dr. Mohan Gayakwad, who had medically examined the prosecutrix. The medical examination shows that the medical officer could not find injury to the private part of the prosecutrix. The question, therefore, is as to whether the sole testimony of the prosecutrix can be relied upon or not. The prosecution has also examined P.W.2 - the nine years old son of the prosecutrix and he has stated that the accused had committed forcible sexual intercourse with his mother. Important point here to be noted is that the Presiding Officer was the same, who had recorded the evidence and has given the judgment. When the prosecutrix would have told at the time of deposition that accused had committed rape, there is no further explanation got from her as to what was the extent of penetration, but then the same wordings are objected by the concerned Presiding Officer in his judgment. The interpretation that has been done at paragraph

Nos.34 and 35 are absolutely not appealing. The interpretation that has been tried to be put cannot be said to be legal, but still independently of that whether the prosecution had proved the offence beyond reasonable doubt, would then to be considered at the time of final hearing. As aforesaid, the prosecutrix has told the entire incident. She has also stated as to why she had not lodged the report immediately. In other words, the reason for the delay in lodging the FIR has been given by her. Whether it was satisfactory or not and would show that there was any *mala fides* on the part of prosecutrix, is a question. Merely because there is delay of three days in lodging the report will not be the ground to discard the prosecution theory. The prosecutrix appears to be a rustic, illiterate, triable and financially weak lady. Under the said circumstance, whether those aspects can be considered in the light of delay, ought to have been considered by the learned Trial Judge. Therefore, we find this to be a fit case, where leave should be granted. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) Registry to register the appeal.
- III) The said appeal stands **admitted**.

IV) Action under Section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the Trial Court.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm