

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.114 OF 2019

The State of Maharashtra
Through Police Station,
Ardhapur, Dist. Nanded.

... Applicant

... **Versus** ...

- 1 Govind Sheshrao Kadam,
 Age 60 yrs., Occ. Agri.,
 R/o Degaon, Tq. Ardhapur, Dist. Nanded.
- 2 Sakharam Sheshrao Kadam,
 Age 46 yrs., Occ. Agri.,
 R/o Degaon, Tq. Ardhapur, Dist. Nanded.
- 3 Satish Panditrao Kadam,
 Age 25 yrs., Occ. Agri.,
 R/o Degaon, Tq. Ardhapur, Dist. Nanded.
- 4 Maroti Vishwambhar Kadam,
 Age 24 yrs., Occ. Service,
 R/o Degaon, Tq. Ardhapur, Dist. Nanded.

... Respondents

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Mr. A.M. Phule, APP for applicant

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

DATE : 03rd JULY, 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 appeal challenging the Judgment of acquittal dated 06.02.2019 passed by learned Sessions Judge, Nanded in Sessions Case No.26/2014, thereby acquitting respondents – original accused persons from the offence punishable under Section 376(D), 377, 201, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. A.M. Phule for the prosecution and with his able assistance we have gone through the record which was available before the learned Trial Judge.

3 The prosecution story, in short, is that – the prosecutrix woke up around 11.30 p.m. on 26.09.2013 and went towards toilet, outside her house and when she was urinating, all the accused persons suddenly appeared. One had pressed her mouth, another gave threat to kill and by holding her hands and legs she was brought in a room in Zilla Parishad School. The door of the room was open. Accused persons torn her clothes and by giving threat

to kill, they committed forcible sexual intercourse one after another. There was also unnatural intercourse with her during that event. Her husband had gone to another village on that day, who returned on the next day. As she was experiencing severe pain in the stomach, on 28.09.2013 she was taken to hospital and thereafter she has lodged the report on 21.11.2013 with Ardhapur Police Station, Dist. Nanded.

4 After the completion of the investigation, charge sheet was filed and after the committal of the case, the trial has been conducted before learned Sessions Judge, Nanded. Prosecution has examined in all 13 witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, the learned Sessions Judge held that the prosecution has failed to prove the offence beyond reasonable doubt. All the accused persons came to be acquitted. Hence, the present application.

5 Perusal of the record would show that almost all the panch witnesses have turned hostile. Except the prosecutrix the other evidence, which can be said to be somewhat supporting, is of the Medical Officers and the Investigating Officer. Further, PW 8 Datta Kadam is the Cook-cum-Sweeper in Zilla Parishad School, PW 9 Laxmibai Sambhot also doing the work of sweeping, PW 10 Pandurang Kalyankar, to whom PW 8 Datta had

asked to clean empty liquor bottles, cigarette butts and condoms from the spot, PW 12 Durga Khadekar, the then Headmistress of the school, all have turned hostile. They were on the point that the school premises was used as place of offence, especially the Headmistress's room. Under the said circumstance, the learned Trial Judge appears to have been justified in not relying on the sole testimony of prosecutrix. Here, the testimony of the prosecutrix is also creating doubts about the alleged incident. She has not explained the delay in lodging the report. She states that on the next day her husband returned home and she made complaint about stomachache. He has taken her to Primary Health Centre, Malegaon. She was still making complaint regarding the stomach pain and, therefore, her husband had taken her to the another hospital. She states that after hearing the incident her husband got shocked and then he was admitted to hospital. When they reached home, the father-in-law had heart attack and he died thereafter and this is the way she wanted to give explanation about the First Information Report, which came to be lodged after about two months. It is hard to believe that her husband would keep quiet after hearing the incident. Whatever explanation that has been given does not appear to be trustworthy and genuine. It has been rightly observed by the learned Sessions Judge that a grief stricken family cannot wait for 55 days to lodge a report in respect of an incident, which had no connection with the death of the person in whose

grief they were. When such serious offence was alleged to have committed against her, she could not have kept quiet. As there was no supporting, corroborative evidence, the learned Trial Judge was justified in acquitting all the accused. We do not find any perversity or illegality. Application, therefore, stands rejected.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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