

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.109 OF 2020**

The State of Maharashtra,
Through – In-charge of Police Station,
Tadkalas, Tq-Purna, Dist-Parbhani.

**...APPLICANT
(Orig. Complainant)**

VERSUS

- 1) Muktiram S/o Pundlik Barule,
Age-38 years, Occu:Agri.,
R/o-Tadkalas, Tq-Purna,
Dist-Parbhani,
- 2) Govind Gangadhar Kalasitkar,
Age-32 years, Occu:Agriculture Labour,
R/o-Tadkalas, Tq-Purna, Dist-Parbhani.

**...RESPONDENTS
(Orig. Accused)**

...
Mr. S.D. Ghayal, A.P.P for Applicant - State.
...

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

DATE : 19th JUNE, 2023

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

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

challenging the acquittal of both the respondents by the learned Additional Sessions Judge-3, Parbhani in Sessions Trial No. 34 of 2018 from the offence punishable under Sections 324 and 366 read with Section 34 of the Indian Penal Code, acquittal of respondent No.1 from the offence punishable under Section 376 of the Indian Penal Code and acquittal of respondent No.2 from the offence punishable under Sections 354, 323 and 506 Part II of the Indian Penal Code, on 30th June 2020.

2. We have heard Mr. Ghayal, learned APP appearing for the State. With the able assistance of the learned APP, we have gone through the record which was before the learned trial Judge.

3. Important point to be noted is that the prosecutrix, who is a married adult lady, alleges that she was abducted, raped, assaulted, threatened and her modesty was outraged. To be precise, both the accused were tried for the offence punishable 366, 324 read with Section 34 of the Indian Penal Code. The separate charge against accused No.1 was for the offence under Section 376 of the Indian Penal Code and separate charge against accused No.2 was for the offence under Section 354, 323 and 506 Part II of the Indian Penal Code.

4. The incident is stated to have taken place around 7.30 p.m. on 29th November 2017. The First Information Report (for short "the FIR") came to be lodged when the prosecutrix was admitted in Civil Hospital and her statement was recorded on 30th November 2017. It appears from the entire evidence that the prosecutrix as well as her husband were knowing both the accused. As per the story in the FIR, the prosecutrix and her husband had gone to their master's house but as the master was not available, they started to go to their house which is in the field. However, on the road itself the accused persons came on motorcycle from behind. Accused No.1, who was holding the stick and was the pillion rider to accused No.2 on the motorcycle, forcibly caused prosecutrix to sit down on the motorcycle driven by accused No.2 and thereafter she was taken in the field. Accused No.1 asked accused No.2 to bring the water and in the meantime accused No.1 had forcible sexual intercourse. She has stated in the FIR that when accused No.2 came after taking water bottle, he expressed desire to sleep with the prosecutrix but at that time husband of the prosecutrix came and then prosecutrix rescued herself from the clutches of accused No.1. Accused No.2 had assaulted her husband. Then her husband made inquiry with her as to what has happened. She narrated

the entire incident and thereafter she herself and husband went to police station and then she was referred to Civil Hospital, Parbhani.

5. The learned trial Court has taken the evidence into consideration and has given reason that the substantial evidence that was given by the prosecutrix as well as her husband from the witness box totally differs as compared to her FIR. The story as to how she was allegedly abducted, is different. In her examination-in-chief the prosecutrix has stated that when she as well as her husband were proceeding to field by walk around 7.30 p.m., on 29th November 2017, her husband told her to wait for sometime as he would go and bring sugar and tea powder. Her husband had asked her to stop at the bridge before Tadkalas village. Before her husband could come, both the accused came there and then they forced her to sit on the motorcycle. As against this, the husband had told in his examination-in-chief that he had alone gone to the house of his master to fetch sugar, tea powder and battery. Thereafter he met his wife near Maruti temple platform. She has told him that she has come to bring medicine as she was suffering from dysentery. We have also

considered that this is very vast difference in the story as compared to each other.

6. If we consider the story that was given in the FIR, then it creates doubt as to when the husband was watching that his wife is being forcibly abducted how he will not resist. Therefore, it appears that in the substantial evidence, there is a different story. In her statement under Section 164 of the Code of Criminal Procedure, which has been considered by the learned trial Judge, the further story has been developed and prosecutrix says that she was in the company of the accused for about an hour. She has also told different story regarding the acts done by accused No.1 with her. Another fact to be noted is the medical evidence that has been led by the prosecution. PW-4 Dr. Shaikh Abdul Moiz has stated that when he examined the prosecutrix, he found four injuries on her person which would have been caused within less than twelve hours, with blunt object. Prosecutrix had given the history of assault at that time. In the cross-examination, PW-4 Dr. Shaikh admitted that in the documents which he had brought on the day of evidence, there is absolutely no mention about the history given or suggestive of sexual assault on the patient.

7. Further, there is evidence of PW-3 Dr. Manisha Kendre, who had examined the prosecutrix in female surgical ward. The history that was given there was of the sexual assault. This doctor was unable to tell when the prosecutrix was admitted i.e. either on 29th or 30th November 2017. Medical report Exhibit-44 does not mention that the samples were sealed. PW-3 Doctor Manisha has stated that she had examined prosecutrix on 30th November 2017, whereas PW-4 Dr. Shaikh has also stated that he has examined prosecutrix on 30th November 2017. In his cross-examination PW-4 Dr. Shaikh states that prosecutrix was admitted in their hospital around 2.00 a.m. on 30th November 2017 and he was the first person who had examined prosecutrix in Civil Hospital, Parbhani. Therefore, the history given to PW-4 Dr. Shaikh would carry much importance and at the time of her admission the prosecutrix has not stated about the history of the sexual assault.

8. Further, if the spot panchnama is perused, it is stated that accused No.1 himself has showed the place of incident and police had seized one *Rumne* and *Tikur* (short stick) from there. It has been rightly observed by the learned trial Judge that the police

could have got the spot panchnama prepared with the help of the husband of the prosecutrix. Therefore, that spot panchnama is also illegal.

9. We do not find that there is any perversity in arriving at the conclusion by the learned trial Judge that the prosecution has not proved the guilt of the accused beyond reasonable doubt. No case is made out for granting leave and the Application deserves to be rejected.

10. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE