

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.169 OF 2018

The State of Maharashtra
Through Police Sub Inspector,
Bhingar Camp Police Station, Nagar,
Dist. Ahmednagar.

.. Applicant

Versus

Lakhan Laxman Kambale
Age: 19 years, R/o. Wakodi,
Tq. and Dist. Ahmednagar

.. Respondent

...

Mr. S. J. Salgare, APP for the applicant – State.

...

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

DATE : 13th June, 2023

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

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 19.04.2018 passed by learned Sessions Judge, Ahmednagar in Sessions Case No.393 of 2016; thereby acquitting the respondent from the offences punishable under Section 376-D of Indian Penal Code and under Section 5(g) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO

Act”).

2. Heard learned APP Mr. S. J. Salgare for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. The learned APP has taken us through the entire evidence. The prosecution story is that the incident has taken place at about 12.00 noon on 30.09.2016 when victim had gone for grazing she-goats. The present respondent and one more accused Babasaheb Lokhande called the girl, who was then aged 16, in the field of Jowar, caught hold of her, gagged her mouth and committed rape on her. She had informed the incident to her mother on phone around 3.00 p.m. as the mother had gone to another village. On the day of incident it was raining and, therefore, mother took her to police station on the next day and offence came to be lodged. The testimony of the child witness is supported by the sister of the victim as well as medical examination. The acquittal is based on surmises and conjectures of the trial Court. If we consider the cross-examination of the victim, then it can be seen that there was no reason to implicate the accused.

4. From the perusal of the testimony of the informant it can be seen that she has withstood the cross-examination and, therefore, *prima facie*

supports to her testimony in the medical evidence. It has been discussed in a different way by the learned Trial Judge, merely because the girl was school going and on that day she had gone to the different place, but then she is giving the reason that as she belongs to Pardhi Community and her family has she-goats she doesn't attend the school regularly but goes to graze the she-goats. This aspect needs to be considered and, therefore, we find that the case needs re-appreciation of evidence. Under such circumstance, the leave deserves to be granted.

5. The application stands allowed.
6. Registry to register the appeal.
7. The said appeal stands **admitted**.
8. Issue notice to the respondent, returnable on 11.07.2023.
9. Call record and proceedings.
10. Action under Section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm