

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 177 OF 2018

The State of Maharashtra ... **Appellant**
Through: Police Station Officer,
Kaij Police Station. Tq. Kaij Dist. Beed

VERSUS

Ramdas s/o Dnyanoba Kalane
Age 30 years, Occu: Klyanwadi
Tq. Kaij, Dist. Beed

... **Respondent**

Mrs. V. S. Chaudhari, APP for the appellant-State

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

DATE : 20.04.2023

ORDER (Per Y. G. Khobragade, J.):

1. The present application has been filed by the prosecution under section 378(1) (b) of the Criminal Procedure Code seeking leave to file appeal challenging the judgment and order dated 05.05.2018 passed by the learned Additional Sessions Judge, Ambajogai, Dist. Beed in Sessions Case No.78 of 2016, thereby, acquitting the respondent/accused from the offence punishable under sections 452, 376, 504 and 506 of the Indian Penal Code arising out of Crime No. 294/2016, registered with Kaij Police Station, District Beed.

2. Heard Mrs. V. S. Chaudhari, learned APP for the State and with her able assistance, we have gone through the documents on record which were before the learned trial judge for the limited purpose

of considering whether leave can be granted to file appeal against the order of acquittal. As per the provisions of section 228-A of the Cr.PC., identity of victim in rape/sexual offence is required to be concealed in all manner, hence, name/identity of the victim and her relatives is not disclosed.

3. The prosecution story as is emerging from the record is that, the victim-informant lodged report with the police station on 29.09.2016 stating that the accused who is her step son. He is residing with his family separately at a distance of one km. way from her house in the agricultural land. Her husband had gone to visit her parents on 19.19.2016. She was sleeping with her children at night time. The door of her house was knocked around 8.00 p.m., hence, she opened the door under the impression that her husband might have returned, but she found accused at the door. Thereafter, the accused started abusing her loudly, due to which her son and daughters woke up. The accused threatened her children and asked them to sleep. Thereafter, he gave her threats and compelled her to sleep on the iron cot and committed forcible sexual intercourse with her. Though she attempted to shout but the accused gave her threat to kill. After the accused went, she gave phone call to her husband and narrated the incident but her husband did not return due to non-availability of vehicle. On next morning, her husband called her at the police station. Accordingly she went to police station and lodged report, thereupon, Crime No.294/2016 was registered against the accused for the offences punishable under sections 376, 452, 594 and 596 of IPC on 20.09.2016.

4. Investigating officer referred the victim to Kaij Primary Health Centre for medical examination with LPC Hatagale with a request letter. The accused was arrested on 20.09.2016. He was referred for medical examination at Kaij Primary Health Centre. Investigating Officer conducted spot panchanama, snapped photographs through his mobile camera, collected samples of victim and accused and sent them to FSL, Aurangabad for chemical analysis. The investigating officer has thereafter collected medical certificates of the victim and accused. Statement of victim got recorded under section 164 of Cr.P.C. through the Judicial Magistrate First Class, Kaij. On completion of investigation, charge sheet has been filed against the accused. On compliance of mandatory provisions, the learned Judicial Magistrate committed the trial to the Court of Sessions.

5. Learned trial court framed charges against the non-applicant-accused on 24.01.2017 for the offences punishable under sections 376, 452, 504 and 506 of IPC at Exh.7. Accused pleaded not guilty and claimed for trial.

6. In order to bring home the guilt of the accused, the prosecution has examined five witnesses and relied on documentary evidence e.g. FIR, spot panchanama, medical certificates of the victim and accused and statement of victim under section 164 of Cr.P.C.

7. On conclusion of trial, incriminatory evidence was explained to the accused under section 313 of Cr.P.C. Learned trial court passed the judgment & order on 05.05.2018 and acquitted the accused on the ground that the prosecution failed to discharge its

burden to prove that the accused trespassed in the house of victim and committed rape on her.

8. In order to prove the incident in question, the prosecution examined victim PW-1 at Exh. 23, PW-2 witness to the spot pannchanama at Exh. 30, PW-3- victim's daughter at Exh. 33, PW-4 Dr. Vishnu Ghuge at Exh. 35 and PW-5, Investigating officer Raosaheb Godewal at Exh. 48. At the outset, we would like to mention here that, the testimonies of these witnesses are full of contradictions and omissions. In sexual offence, though corroboration of testimony of victim is not necessary, but the corroboration should be there in material particulars.

9. On perusal of testimony of victim PW-1 and PW-3 victim's daughter, it appears that on the day of alleged incident of rape, the victim was aged 34 years and mother of two major daughters and her son was 12 years old. First wife of her husband had expired and from the first wife, her husband has two daughters and the accused, as stepchildren. It is undisputed that the accused- step son of PW-1 was staying one km. away in the field from her house. PW-1 victim has deposed that on the day of incident, her husband had been to her parent's house at Borgaon. She, her son and daughter (PW-3) were sleeping in house. Her husband did not return from Borgaon. However, in the night time, she heard sound of knocking of door, therefore, she opened the door under the impression that her husband might have returned but after opening the door, the accused entered into her house, he assaulted her and committed rape on her by laying her down on the cot. She shouted, due to which her children woke-up and started

shouting but the accused threatened her children to sleep quietly and threatened to beat them, hence, her children slept. After committing rape, the accused went away. Thereafter, she made phone call to her husband and narrated the incident. On next day morning, her husband gave her phone call and called her at Kaij Police Station. However, prior to visiting police station, she had taken bath and lodged report Exh.24. In cross examination, PW-1 victim admitted that accused was demanding share in the properties of her husband and on that ground, there were quarrels between them. She resisted the accused while he was committing rape. Her own son was asking accused not to beat her. During the incident, she had sustained injury to her left wrist and fingers were broken. On next day, at about 7.00 a.m., she woke up and had been to police station by auto rickshaw.

10. PW-2 proved photographs Article A and A-1 and spot panchanama Exh.30. As per the testimony of PW-3 is the major daughter of the victim, She has narrated the same story as narrated by mother. At that time, she and her brother had shouted but the accused threatened to kill her and her brother. In cross examination, PW-3 admitted that prior to one month of the incident, the accused stopped giving bullocks to her father.

11. PW-4 Dr. Vishnu Ghue, the medical officer had examined the victim on 20.09.2016, and issued medical report Exh.36. He had also examined the accused and issued medical certificate Exh.39. PW-4 medical officer admitted in his cross-examination that as per medical report of the victim Exh. 36 and medical certificate of accused Exh.39, no injuries were found on the person of the victim and the accused. The

prosecution failed to produce CA report to support the theory of rape. The victim is a married lady therefore, it would be difficult to have evidence of fresh sexual intercourse. PW-1 has stated about having bath prior to lodging of report, therefore, possibility of having some evidence has been ruled out. Therefore, the medical evidence is not supporting the prosecution story.

12. As per the testimony of PW-1 and PW -3, after the accused had entered their house, he had assaulted the victim and committed rape on her. If it is so, then due to assault, the victim could have raised hue and cry immediately i.e. before even alleged rape and then her children could have woken up. However, evidence of the prosecutrix-victim shows that when her children started shouting, at that time, the accused threatened her and her children to sleep quietly, due to which her children slept, that means before the alleged rape. This appears to be a concocted story. The normal behavior of a human being would be that, when mother is under such trauma, the children cannot sleep quietly. It is surprising that the said daughter and son had not resisted accused in any manner. Son of the prosecutrix was a grownup boy. How he could not have retaliated is a question. Another aspect is as how accused came to know that father has gone put of station? The testimony of PW -1 and PW-3 does not indicate that at any earlier point of time the relations between them and accused were so strained. Demanding share in the property by accused cannot be per se an act of bitter relationship. Even if the relations were so strained, yet, whether accused could have thought of committing rape on his step-mother? Therefore, the testimony of PW-1 and PW-3 is untrustworthy. The prosecution has failed to bring material on record to constitute that, the

accused committed forcible sexual intercourse with the victim by putting her under the threat of causing hurt. On the contrary, it appears that the accused demanded share in the property from the victim's husband, which might have displeased the victim PW-1, due to which she lodged the report out of grudge. Prosecution has not examined another so-called eye witness, son of the prosecutrix and another daughter of prosecutrix, who is elder to PW -3. Prosecution has also not examined husband of prosecutrix and father of accused. His subsequent conduct was important. Prosecution story is totally unbelievable.

13. Learned trial court passed the impugned judgment and order on 05.05.3028, and acquitted the accused by taking into consideration the evidence led by the prosecution, which does not suffer from any illegality and it cannot be said to be perverse. To our conscious view, no case is made out to grant leave. In fact, prosecution/ State ought to have refrained itself from filing such application. Every case resulting in acquittal is not worth appealing. Accordingly, the application stands rejected.

(Y. G. KHOBRADE, J.)

(SMT. VIBHA KANKANWADI, J.)