



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.122 OF 2020

State of Maharashtra,
Through Police Station MIDC Waluj,
Tq. & Dist. Aurangabad.

... Applicant.

Versus

Kishor Chandrabhan Kshirsagar,
Age : 23 years, Occu. Labourer,
R/o. Chhota Murlidharnagar,
Osmanpura, Aurangabad.

... Respondent.

...
Mr. S. D. Ghayal, APP for Applicant/Appellant

...

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

DATED : 12th OCTOBER, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Getting dissatisfied by the judgment and order of acquittal passed by learned Special Judge (under POCSO Act), Aurangabad in Special (POCSO) Case No.80 of 2017 dated 06.01.2019, State has preferred instant application, praying to grant leave to prefer appeal against the said judgment.

2. Appraising us about the charge to be framed under section 363, 366, 376(2)(i) of Indian Penal Code (IPC) and under sections 3 and 4 of the Protection of Children from Sexual Offences

Act, 2012 (POCSO Act), it is submitted by learned APP that, victim was a minor and a child under definition of POCSO Act. She was removed from the lawful custody without consent of her parents and even sexually assaulted. That, it is pointed out that in support of age, there was full proof evidence in the form of birth certificate. Thus, minority of the victim was cogently established. Victim was found to be pregnant. Therefore, with such quality of evidence, offence was clearly made out, but according to learned APP, learned trial Judge has miserably failed in not appreciating the evidence in correct perspective and has erred in holding that there was love relationship and that there was no cogent proof about the age of the victim. Resultantly, it is submitted that, it is a fit case for appeal for re-appreciation and hence, leave is prayed for.

3. We have taken survey of the prosecution evidence adduced in trial court. Prosecution seems to have examined 7 witnesses including victim, medico legal expert, apart from examining mother.

4. Evidence of PW2 mother shows that, her daughter went missing on 16.09.2016, and therefore, she lodged report (Exh.21). According to her, her daughter was below 16 years. She had identified accused to be her neighbour.

Victim is examined as PW3, but she reported her age as 18 on the date of recording her evidence i.e. on 03.07.2019. However, occurrence has apparently taken place on 16.09.2016.

5. PW4 Khan Shirin Fatema, is the Head Mistress where PW3 took education and as per this witness, birth certificate was tendered (Exh.33) reflecting date of birth as 25.03.2001. According to this witness, on the basis of said certificate noting was taken on the admission register and extract of the same has been placed on record.

6. Taking into account above discussed material, apparently on the day of incident PW3 was minor. She was shown to be impregnated. Learned trial Judge seems to have observed that case has not been proved beyond reasonable doubt and thereby acquitted the accused. Therefore, with such quality of evidence, it is a fit case for re-appreciation in appeal. Hence, we proceed to pass following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to the prosecution to file Appeal.
- (iii) Registry to register the Appeal.

- (iv) Appeal stands admitted.
- (v) Call record and proceedings.
- (vi) 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, J.)

(SMT. VIBHA KANKANWADI, J.)