



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.139 OF 2020

The State of Maharashtra,
Through Police Inspector,
Police Station, Nanalpeth,
Parbhani, Dist. Parbhani.

... Applicant.

Versus

Shaikh Ejaj Shaikh Khaja
Age : 41 years, Occu : Labour,
R/o. Ayasha Colony, Sevak Nagar,
Parbhani.

... Respondent
(Orig. Accused)

...
Mrs. V. S. Choudhari, APP for Applicant – State

...

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

DATED : 19th OCTOBER, 2023

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

1. As State is intending to prefer appeal against judgment and order of acquittal dated 01.10.2020 passed by learned Special Judge under POCSO Act, Parbhani in Special (POCSO) Case No. 02 of 2019, by which respondent was acquitted from charges under sections 341, 342, 354-A, 354-D, 376-AB and 506 of Indian Penal Code (IPC) and offences under sections 4, 5(m), 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, instant leave has been filed.

2. Taking us through the papers and judgment sought to be questioned, learned APP would submit that, accused had committed above offence on a victim, who was below 12 years of age, therefore, provisions of POCSO act were attracted. Accused had lured, taken victim in a room and had committed above offence. The child reported the occurrence, and therefore, her father PW1 lodged report. The victim was subjected to medical examination. Child had identified accused, and therefore, he was arrested. Investigation revealed his complicity. However, learned trial court failed to appreciate the available evidence and erred in holding case as not proved. Therefore, it is her submission that, it is a fit case for re-appreciation and re-analysis during appeal and hence leave is prayed for.

3. We have gone through the papers placed before us and it is noticed that present respondent is charge-sheeted and tried for above offences. Precise accusation is that, on 04.11.2018, when victim went to buy chocolate, she was picked up by accused and sexually abused and assaulted. Accused resides in the same area. In support of its case prosecution has examined as many as 10 witnesses.

4. Evidence of PW1 informant and PW3 victim is significant. According to informant victim was six years of age. On 04.11.2018, when she went to fetch chocolate, she went missing, but was not found and subsequently found in weeping condition. On inquiry with the victim girl, she narrated incident to her aunt (PW2), and therefore, he set law into motion vide Exh.15.

In cross, father has admitted that, he is seeing accused for the first time. Improvements are brought in his evidence regarding child being picked up by showing fear of dog. He admitted that, accused was caught only because he was in red shirt. According to him, the girl pointed to the house before she could be caught, but that time accused was not in the house.

5. PW3 victim stated that when she went to buy chocolate, one person told her that dog may bite, caught hold of her hands and took her in house, removed her clothes and sexually abused her, and thereafter, she was let loose.

In cross, victim has answered that, the house where she was taken is in their locality and she pointed to the house to her father and aunt. She further answered that, there are houses adjacent to the said house. In further chief victim failed to identify the accused who faced the trial.

Evidence of PW1 informant, PW2 paternal aunt of PW3 victim and PW3 victim and the cross faced by them show that, except description about the person who allegedly taken PW3 victim was wearing red shirt, there is no other description or details. PW2 paternal aunt of PW3 victim claims that, when she went to the house pointed out by PW3 victim, no one was present there and she candidly admitted that inquiry was not made as to whose house it belongs to. Even two boys who allegedly brought accused to her house are not examined. Victim does not speak about accused being brought and she identified him. Even date given by PW1 informant and PW2 regarding occurrence is not consistent. Therefore, there is no full proof or trustworthy evidence.

6. Doctor's evidence seems to be awaiting forensic report, but he opined that, sexual violence cannot be ruled out and there were signs of use of force with recent forceful vaginal penetration, but child seems to be examined on 06.11.2018, regarding occurrence which had taken place on 04.11.2018. Doctor admitted that age of injuries is not noted.

7. Resultantly, there is no T.I. parade conducted, secondly most importantly victim could not identify accused in the court. On

the mere description of red shirt, accused seems to be arrested. Therefore, in our opinion, learned trial court has committed no error in refusing to accept the case of prosecution. There being no merits, we refuse to grant leave. Hence, application for leave to appeal by State stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)