



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.206 OF 2019

The State of Maharashtra,
Through : The Police Station Officer,
Police Station Dhadgaon,
Tq.Dhadgaon, Dist.Nandurbar

..Applicant

Versus

Sandip Ugranya Tadv
Age: 26 years, Occu.: Labour,
R/o. Utarpada, Tq.Dhadgaon,
Dist.Nandurbar.

..Respondent
(Ori. Accused)

. . .
APP for Applicant : Mrs.V.S.Choudhari

. . .

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

DATE : 29 SEPTEMBER, 2023

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

1. Getting dis-satisfied by the judgment of acquittal passed by the learned Ah-hoc Additional Sessions Judge, Shahada, dated 24-06-2019, in Sessions Case No.71 of 2014, as State is intending to prefer appeal against the judgment of acquittal, instant application for leave to file appeal is pressed into service.

2. Learned APP took us through the FIR and evidence of 11 prosecution witnesses and submit that there is clear evidence about minor victim being kidnapped and then taken to Nashik and forcibly raped. That victim herself, her friend, who was present with her at the time of kidnapping, have consistently deposed about accused forcibly taking victim while she was going to School. That he took her to Nashik. That victim testified about sexual intercourse with her against her wish. Medical Legal Experts have also examined. It is pointed out that the Head Master of the School is examined to show that victim was a minor. That prosecution witnesses have withstood extensive cross-examination and their versions have remained unshaken and therefore, it was expected of learned trial Court to hold case of prosecution as proved. However, learned trial Court disbelieved prosecution witnesses and has reached to erroneous findings. According to learned APP, very evidence of victim was inspiring confidence, but learned trial Court has failed to consider and appreciate the same. Even other evidence has not been properly considered by the learned trial Court and as judgment under challenge is perverse, State wants to question the same by preferring appeal and hence, leave to appeal is prayed for.

3. In the light of above submission, we have gone through the papers before us. It transpires from record that prosecution has examined in all 11 witnesses in support of its case. Their status and role is as under :

PW1 is the victim. Her evidence is at Exh.15.

PW2 Jitendra Ramaji Valavi is Pancha to spot panchanama. His evidence is at Exh.21. Spot panchanama is at Exh.21.

PW3 Sarya Satya Valavi is Pancha to seizure panchanama of clothes of victim. His evidence is at Exh.23. Seizure panchanama is at Exh.24.

PW4 Vijaysing Arshi Valavi is Police Patil of village Khuntamodi. His evidence is at Exh.25.

PW5 Jyoti Gulabsing Valavi is cousin sister of victim. Her evidence is at Exh.28.

PW6 Devraj Dhavlu Targe is landlord of the accused. His evidence is at Exh.29.

PW7 Kalidas Gopalkrushna Pathak is Head Master of School where victim was studying. His evidence is at Exh.36.

PW8 Furta Chivnya Valvi is Pancha to memorandum of accused. His evidence is at Exh.41. Memorandum is at Exh.42.

PW9 Dr.Pradnya Karansing Valvi is Medical Officer at Rural Hospital Dhadgaon. Her evidence is at Exh.46.

PW10 Dr.Vandana Pralhadrao Sonone is Medical Officer at Civil Hospital Nandurbar, who examined victim. Her evidence is at Exh.50.

PW11 Chandu Popat Gangurde is the Investigating Officer. His evidence is at Exh.59.

4. Here, in our opinion, in the light of nature of charge, it is first desirable to ascertain and get satisfied whether victim is a minor as claimed by the prosecution. Victim gave her date of birth as 01-06-1999 and according to her, she was taking education at Ashwathama Madhyamik Vidyalaya, Dhadgaon. **PW7** Kalidas is the Head Master and he in his evidence at Exh.36 stated that he received communication from Dhadgaon Police Station for issuance of leaving certificate of the victim. This witness stated that in view of the said communication, he issued bonafide certificate and he identified the same. According to him, as per bonafide certificate, date of birth of victim is 01-06-1999.

In **cross-examination** this witness has admitted that he did not issue copy of the school leaving certificate issued to her by earlier school. He admitted that while admission in the School, certificate regarding date of birth of the student is necessary. He has admitted that there is no endorsement on the xerox copy that it is as per original. He also admitted that, certificate issued by the school also does not reflect the class of the student. He admitted that Police demanded school leave certificate and not bonafide certificate.

5. Surprisingly, father of the victim does not seem to have been examined by the prosecution. PW4 Vijaysing, maternal uncle of victim is examined but his testimony is silent about her date of birth. Therefore, here except a bonafide certificate, which is not a valid document as regards to birth date is

concerned, there is no document to show that victim was a minor. Therefore, prosecution has not established age of the victim by leading cogent and reliable evidence.

6. After visiting evidence of PW1 victim and her friend PW5 Jyoti, it seems that on the relevant day, when they were going to School, in the same bus, accused also boarded and they had all three reached Dhadgaon. Victim as well as her friend admitted that there were other villagers in the same bus. Victim claims that accused expressed love towards her and even offered to marry her and asked her to come to Nashik. Even her friend PW5 Jyoti seems to have deposed on the same line and she claims to be in the company of accused as well as victim at Dhadgaon. It is alleged that at Dhadgaon, accused threatened PW5 Jyoti and sent her to School and he forcibly took victim in the bus and proceeded to Nashik. As no attempt of hue and cry was made by PW1 victim or PW5 Jyoti, it is difficult to accept their versions. There is no evidence regarding accused forcibly taking victim to Nashik by giving threat to kill her. It seems that both PW1 victim and accused had been to Nashik and spent a night and next day victim girl was back in the company of her parents. Thereafter, report seems to have been lodged at her instance. However, the manner of answers given by her in cross-examination clearly suggests that whatever has happened, has not happened forcibly as there is no circumstance or evidence of forcible act. Even PW10 Dr.Sonone, Medical Officer, who

examined her at Nandurbar has not come across any injuries or signs of being forced.

7. Therefore, on taking survey of entire evidence on record, here prosecution has not shown that victim was kidnapped by accused and then taken to Nashik and forcibly ravished. Moreover, as stated above, age of victim is not established to be below 18 years. Therefore, essential requirements for attracting charges are patently missing. Learned trial Court has committed no error in refusing case of prosecution. Therefore, having found no merits in the application, we are not inclined to consider and grant prayer before us. In our opinion, with such quality of evidence, no fruitful purpose would be served by granting leave to State. Hence, we proceed to pass following order :

ORDER

Application for Leave to file Appeal by State is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)