

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

**CRIMINAL APPLICATION NO.3717 OF 2022
IN APEAL/872/2022 WITH APEAL/872/2022**

**VILAS KONDIBA GALANDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicants : Mr. Salunke Sudarshan J
APP for Respondent/State : Mr. Y.G. Gujarati
Advocate for Respondent No.2 : Mr. Namita P. Thole

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CORAM : S.G. MEHARE, J.

DATED : JUNE 07, 2023

PER COURT:-

1. The applicant has been convicted for the offence punishable under Section 376(3) of Indian Penal Code and sentence to suffer RI for 20 years with a fine amount of Rs.7,000/- and in default to suffer RI for two months. He has also been convicted for the offence punishable under Section 323 of Indian Penal Code and sentence to suffer RI for two months. The accused has also been held guilty under the Protection of Children From Sexual Offences Act. However, no separate conviction was passed under Section 4(2) r/w 42 of the Protection of Children From Sexual Offences Act, 2012.
2. Learned counsel for the applicant has referred to the evidence of the medical expert and argued that the contention of the victim about sexual assault has not been corroborated. In other

words, he pointed out that there was no penetrative assault nor the evidence is there to complete the rape as defined under Section 375 of Indian Penal Code. He would submit that the applicant is languishing in jail since last five years. The learned Extra Joint Additional Sessions Judge misread the evidence and erroneously held the accused guilty for the offence punishable under Section 376(3) of Indian Penal Code. The appeal may take its time to conclude. The applicant has a good case on merit. He is the only earning member of his family. Hence, the sentence may be suspended till conclusion of the appeal.

3. Per contra, the learned APP and learned counsel for the victim have strongly opposed the application. They would submit that the law is settled that corroboration of medical evidence in a rape cases is not essential. The evidence of the victim inspire confidence. The applicant/accused was unknown to the victim. At the time of the incident, she was around 13 years old. The conduct of the applicant is self-sufficient to believe that he had intention to assault the victim sexually. There is no material on record to disbelieve the victim and other witnesses. Considering the nature of the offence and growing sexual assault with girls, it would not be appropriate to suspend the sentence.

4. The law is settled that the period required for disposal of the appeal is not a ground to suspend the sentence. In the case of

Kiran Kumar Vs. State of Madhya Pradesh, (2001) 9 SCC 211, it has been held that the normal rule is that when the appeal of a person convicted and sentence is pending, the sentence passed on the accused should be suspended unless any exceptional reason existing therein requires the denial of the sentence.

5. The suspension is not a mechanical process. The Court has to apply the mind and consider the relevant aspect. The sentence cannot be suspended as a matter of routine.

6. The Court has gone through the impugned judgment and order and the evidence referred to by learned counsel for the applicant. It is not in dispute that the applicant was unknown to the victim. The victim was around 13 years old and the applicant was 40 years old married man. He forcibly took the victim in a field and did sexual assault. The conduct of the applicant indicates his intention. The victim was like a daughter to the applicant. But his lust to have a sex was apparent from his acts. The definition of rape under Section 375 has been redefined and made wider. The offence committed was apparently grave. The law is also settled that corroboration of medical evidence is not required if the evidence of the prosecutrix inspire confidence. If this principle laid down by the Hon'ble Supreme Court is borne in mind, only for want of corroboration of the medical evidence, the victim who was around 13 years old cannot be disbelieved. The nature of the offence, the way in which it was

committed and the circumstance that goes against the applicant, does not permit the Court to exercise the discretion under Section 389 of Cr.P.C.

7. For the above reasons, the Court is not inclined to suspend the sentence as prayed. Hence, the application stands dismissed. However, since the applicant is languishing in jail for around five years and the paper print is prepared, the appeal is expedited.

8. List the matter on 13.07.2023.

(S.G. MEHARE, J.)