

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.217 OF 2019

The State of Maharashtra,
Through Police Inspector,
Ajintha Police Station, Ajintha,
Tq. Sillod, Dist. Aurangabad.

... Applicant

Versus

Shalilk Tukaram Bhotkar,
Age : 30 years, Occu. : Agriculture,
R/o. : Sasurwada, Tal. Sillod,
Dist. Aurangabad.

... Respondent
(Orig. Accused)

...
Mr. S. D. Ghayal, APP for Applicant - State
...

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

DATED : 02nd AUGUST, 2023

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

1. Vide instant application, State is seeking permission of this Court to prefer an appeal against judgment and order passed by learned Additional Sessions Judge-8, Aurangabad, dated 06.06.2019 in Sessions Case No.504 of 2011 by which present respondent is acquitted from charges under sections 363, 366 and 376 of Indian Penal Code (IPC).

2. According to leaned APP, offence is serious. That, victim was minor. That, taking disadvantage of absence of parents, accused used to visit victim, induce her on the promise of marriage and on that pretext he had twice thrice committed sexual intercourse against her wish. That, prosecution has examined as many as 9 witnesses. Parents and relatives have all supported prosecution. She was kidnapped from lawful custody. Therefore, including kidnapping there is offence of rape on minor. Prosecution had adduced cogent and reliable evidence in that regard, but it is submitted that said evidence is not properly appreciated and by disbelieving the case of prosecution, accused has been acquitted from serious charges. That, State has every hope of succeeding in appeal, and therefore it is prayed that, leave to file appeal be granted as there is apparent non appreciation of evidence in law in its proper perspective.

3. In the light of above submissions, we have gone through the judgment under challenge. It seems that there are charges for offence under sections 363, 366 and 376 of IPC. Evidence in trial court shows that, in all 9 witnesses were examined apart from relying on FIR, panchanama, CA report and school extract etc.

4. Victim is examined as PW1. According to her, on 10.07.2011, her mother was out of station and she was working in the field. Her father also left the field around 5:00 p.m., at that time, accused approached her and induced her to perform marriage and took her to the field of one Baburao Kale and there against her wish he had sexual intercourse. That, thereafter he took her to Ajintha, Jalgaon and Shegaon on the pretext of promise of marriage and against her wish had sexual intercourse with her.

5. Prosecution case is that, she was minor. However, victim herself admitted her date of birth is 11.04.1993. Medical expert on the basis ossification test seems to have opined her age between 16-17 years. School record though placed on record by examining DW1 Narsing, the said extract is merely of a admission register. Going by the date of birth, which she admits, on the day of occurrence she was almost 18 years of age, and so, she is not minor. Therefore, there is no reliable and trustworthy evidence in support of age.

6. Very cross-examination of victim shows that she had accompanied accused to various places. There seems to be element of consent. Only on being brought to police station, there seems to be FIR. Therefore, apparently evidence on the point of age and

rape is weak in nature. Even on going through the medical evidence, it is not proved that there was forceful sexual intercourse. It is reported that there is old hymen ruptured. Evidence of victim itself shows that, there was not solitary, but several encounters. Therefore, accusations are not cogently established.

7. We have gone through the judgment under challenge, learned trial Judge has considered each and every aspect of the case and settled law has been taken into account while reaching to the findings about guilt. As stated above, prosecution has not discharged its burden of establishing the case beyond reasonable doubt, neither age nor forceful rape is proved. Consequently, no fault can be found in the appreciation of evidence and conclusion reached at by learned trial Judge.

8. In our opinion, with such quality of evidence, no purpose would be served by granting leave as prayed. Therefore, we are not inclined to grant the prayers and hence we proceed to pass following order :-

ORDER

The application is hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)