



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.93 OF 2021

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

... Applicant

Versus

Abhishek S/o. Rupaji Yelne,
Age : 18 years, Occu. : Education,
R/o. Golegaon, Tq. Aundha,
Dist. Parbhani.

... Respondent.
(Orig. Accused)

...
Mr. A. M. Phule, APP for Applicant - State
...

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

DATED : 02 NOVEMBER, 2023

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

1. Acquittal of respondent by Special Judge (POCSO), Parbhani in Special Case No. 21 of 2020 from charges under sections 363, 376 of Indian Penal Code (IPC) and section 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act), is now sought to be challenged by filing appeal and hence vide instant application leave is prayed for.

2. According to learned APP, respondent was charge-sheeted for above offences. He pointed out that victim was minor.

There is strong reliable proof of her age. Mother of victim PW1 is examined by prosecution to whom victim disclosed incident with her. It is pointed out that victim is also examined as PW2. Both mother and victim has given date of birth as 23.04.2003. Even Headmistress of the school where victim took education was examined by prosecution as PW3. That apart, medical expert, who examined victim is also made a witness as PW5. However, in spite of such overwhelming evidence, it is submitted that, learned trial court has refused to accept the case of prosecution. Thus, it is submitted that there is total non application of mind and non appreciation of evidence as required under law. Therefore, the findings reached at and the conclusion drawn by the learned trial court being patently erroneous, State intends to prefer appeal and hence he prays for granting the prayers.

3. In the light of above submissions, we have gone through the papers. It is seen that present respondent was charge-sheeted for offence under section 363, 376 of IPC and section 6 of the POCSO Act and made to face trial before Special Judge (POCSO), Parbhani vide Sessions Case No. 21 of 2020. Paper shows that as many as 6 witnesses were examined by prosecution in trial court.

4. PW1 is the mother of victim. According to her, date of birth of victim daughter is 23.04.2003 and she was taking education. As usual her daughter left to attend college at 8:45 a.m., but did not return and therefore she approached Nawa Mondha police station. On 27.11.2019, her daughter victim and respondent were traced and on inquiry she learnt about respondent having sexual intercourse with her at Nashik.

5. PW2 victim has also deposed and given date of birth as 23.04.2003. According to her, respondent is cousin of her friend and he used to meet her and even proposed for marriage. As her mother was intending to perform her marriage with another person, she informed respondent and he assured that he would take her with him and accordingly at his instance she left the house on 20.11.2019.

6. PW3 Sulbha is the Headmistress of Dnyandeep Primary School where victim had taken admission in 1st standard. This witness has placed on record the copy of the admission and school leaving register and she was carrying original register. She gave date of birth of victim as 23.04.2003.

7. Doctor, who had examined victim is also examined by

prosecution as medical expert in the capacity of PW5 Dr. Munna Afrin, who claims that she recorded history and on examination found her hymen ruptured with healed edges and she issued certificate (Exh.32).

8. Therefore, *prima facie* it seems that on the date of alleged incident, victim was minor. However, learned trial Judge has refused to accept the case of prosecution and has acquitted accused respondent. Therefore, we find it a fit case for re-appreciation and reanalysis to ascertain whether impugned judgment is just, legal and proper. Hence, leave deserves to be granted and accordingly 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.)