

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4396 OF 2022
IN
CRIMINAL APPEAL NO. 1256 OF 2022

Suraj Mahendra Vishwakarma .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

...

Mr. A.R.Gole for the applicant.
Mr.S.R.Agarkar, APP for the State.
Mr.Shashikant Chaudhari for respondent no.2.

CORAM: BHARATI DANGRE, J.
DATED : 26th APRIL 2023

P.C:-

1 By the present application, the applicant/appellant seek suspension of sentence imposed on him, in Special Case No.108/2019, where he was convicted for committing an offence punishable u/s.509 IPC and Section 12 of POCSO Act.

With the able assistance of the learned counsel for the applicant, the learned APP appearing for the State and learned counsel appearing for respondent no.2, I have perused the impugned judgment and the notes of evidence placed on record.

2 The prosecution has alleged that the accused while

standing in front of house of PW 1 and PW 2, had behaved in an objectionable manner by removing his pants and asking her to look towards him, by signaling. It is the case of the prosecution that the victim reported the said act to her mother, who was present in the house, and when she approached the window of the house, she saw the said person continuing the act, by moving to another place. She video-graphed the said incident and made phone call to her husband and brother-in-law who caught hold of the said person, who was trying to flee away and that is how the present applicant came to be arraigned as accused in the subject C.R, which invoke Section 354 IPC and 12 of the POCSO Act.

On being subjected to trial, he stood convicted for committing an offence punishable u/s.509 IPC and Section 12 of POCSO Act and he is sentenced to suffer Simple Imprisonment for six months and to pay fine of Rs.5,000/-, in default to undergo further SI for one month.

3 Learned counsel Mr.Gole for the applicant would invite my attention to the inconsistencies in the version of the prosecution case. His first submission is that the videographed incident recorded was transmitted to a CD, which was seized under the seizure panchnama at Exhibit-27, but the prosecution has not proved that the C.D was played and shown to the panch witness PW 4.

Apart from this, he would submit that since the videography was done in the mobile phone of the complainant,

when she tendered it in form of a CD, there is no 65B Certificate issued.

The Investigating Officer has admitted in the cross-examination that he had not seized the mobile of the informant on which the incident was recorded.

Further admission on his part is recorded as under :-

“CD of recording of incident now shown is not clear. Witness says that as the distance was more, thereby it is not recorded clearly. It is true to say that video-recording of the incident was produced by the informant. It is true to say that the CD of the same was given by informant”.

5 It is the duty of the prosecution to prove it's case by cogent and reliable evidence, inspiring confidence and when the learned Judge has recorded finding of guilt, for committing an offence, of insulting the modesty of a woman by the alleged gesture, the prosecution ought to prove it's case beyond reasonable doubt. In any case, the discrepancies in the case of the prosecution, which is a specific ground for setting aside the conviction and the sentence, are raised in the Appeal which is pending for adjudication in this Court and will have to be appreciated at the time of hearing of the Appeal.

6 Considering the minuscule sentence and the sentence being of fixed term, in the wake of the decision of the Hon'ble Apex Court in Bhagwan Rama Shinde Gosai & Ors. Vs. State of

Gujarat, (1999) 4 SCC 421, the application deserves to be allowed.

The sentences imposed upon the applicant under the impugned judgment is suspended and he is entitled to be released on bail on furnishing surety of Rs.25,000/-

Interim Application stand disposed off.

(SMT. BHARATI DANGRE, J.)