



a-1123-2023

1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO. 1123 OF 2023

IN CRIMINAL APPEAL NO. 690 OF 2023

(Saurabh s/o Anil Wankar Vs. State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Ms Deeplata Pandey, Counsel for the applicant/appellant.
Ms Kavita Bhondge, Additional Government Pleader for
the non-applicant/respondent.

.....

CORAM : ANIL L. PANSARE, J.
DECEMBER 14, 2023.

None present for the applicant when called.
As such, the learned Counsel for the applicant, in the
morning, made a request for adjournment, which was
refused and the learned Counsel was directed to remain
present before the Court, since the application was heard
on merits at length yesterday. Despite such fact, the
learned Counsel is absent when called.

2] At this stage, the learned Counsel has
appeared. Heard both sides.

3] By the present application, the
applicant/original accused no.1 is seeking suspension of
sentence. He has been convicted for the offence
punishable under Section 6 of the Protection of Children
from Sexual Offences Act, 2012 and under Sections 324
and 367 read with Section 34 of the Indian Penal Code,
1860.

4] I have, with the assistance of the learned Counsel for the applicant and the learned Additional Public Prosecutor, gone through the evidence led before the trial Court. I will refer to the same to the extent necessary to decide the application.

5] The evidence led before the trial Court indicates that the child's date of birth is 13/10/1999. The child has deposed that in August – 2017, the applicant called her near the Government Hospital, Wardha. The child went to the said place. The applicant took her on scooty to his room and on the pretext of marriage, committed sexual intercourse. Sexual activities continued for some time. The child became pregnant. The child and her mother visited doctor, who, upon examination, informed them that the foetus cannot be aborted. The child then made a phone call and informed the applicant of her pregnancy. On 7/2/2018, the applicant made a phone call and called the child to the Railway Station, Wardha and informed her that he will not marry her. He further said that he will get the foetus aborted. On 8/2/2018, the applicant and his maternal uncle (original accused no.2) took the child to Hinganghat, where accused no.2 resides. Both the accused took the child to Mogre Hospital, Wardha where the Sonography was done. The doctor informed that the foetus cannot be aborted.

6] The evidence of child further indicates that on 9/2/2018, the applicant made a phone call to the child and said that he will give certain tablets by which the

foetus would be aborted. The applicant called her. Both the accused met her. They forcibly took her on scooty. Accused no.2 was riding the scooty. The applicant and the child were the pillion riders. The applicant put a cutter on her neck, thus threatened her to not shout. They took the child to a field. The applicant assaulted her on her right thigh as also inflicted injury on her shank by cutter. Her pajama got torned. Blood was oozing from her injury. The child was then taken to the house of accused no.2. The child got to know, on the basis of conversation between the applicant and the co-accused, that on the next date, both the accused were to take the child to Madhya Pradesh. The accused snatched the mobile phone from the child. After some time, the applicant left the place and did not return. The child, accused no.2 and his wife were present in the house. In the night, the child somehow managed to escape from the house of accused no.2 and at about 5:00 am, came to Hinganghat Bus Stand, where she met an unknown person and requested for his phone and made a call to her mother. The child's parents came at Hinganghat, took her to Wardha and lodged the report with the Sawangi Police Station. Her medical examination was done. The investigation culminated into filing chargesheet.

7] The learned Counsel for the applicant submits that this is a case of consensual sex. The child was 17 years and 10 months old at the time of incident and, therefore, she was fully aware of the consequences of the acts which she was indulged into.

8] I am not in agreement with the theory of consensual sex. The evidence is indicative of the fact that the consent has been obtained by misrepresentation of performing marriage. The conduct of the applicant, once he came to know about the child's pregnancy, is writ large of his intention to exploit the child. He flatly refused to marry the child and thereafter made all attempts to get the foetus aborted. In doing so, he has used a weapon known as cutter and inflicted injury on child's leg.

9] The medical evidence in the form of PW/5 - Dr. Manisha supports this theory. The medical evidence of penetrative sexual assault is also corroborating the version of the child. In the cross-examination, the child has firmly answered the questions and withstood the cross-examination. *Prima facie*, the evidence is overwhelming.

10] The Hon'ble Supreme Court in the case of *Omprakash Sahni Vs. Jai Shankar Chaudhary [(2023) 6 SCC 123]* has, while dealing with the scope under Section 389 of the Criminal Procedure Code, 1973, held in paragraph 33 thus :

"33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we

shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

11] Considering the law laid down by the Supreme Court and the evidence led before the trial Court, I am of the considered view that the applicant has a challenging task to get the order of acquittal. There is, thus, no merit in the application.

12] The application is accordingly rejected.

CRIMINAL APPEAL NO. 690/2023

13] The registry shall prepare the paper-book and process the appeal for final hearing in accordance with the Rules.

(ANIL L. PANSARE, J.)

Sumit