



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.12 OF 2024

The State of Maharashtra **... APPLICANT**

VERSUS

Shivaji Isamsing Biganiya **... RESPONDENT**

.....
Mrs. V.S. Choudhari, Addl. P.P. for applicant
Mr. S.N. Patil, Advocate for informant
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

DATE : 16th JANUARY, 2024

ORDER :

Heard learned Addl. P.P. for the State and learned Advocate who is appointed to represent the victim.

2. This is an application for leave to appeal against the judgment and order dated 2/5/2019, passed by learned Additional Sessions Judge, Nanded in Special (POCSO) Case No.13/2018.

3. Perused the papers available on record. C.R. No.123/2017 was registered at the instance of the father of the victim that the accused had kidnapped his daughter and committed rape. It was the prosecution case that, at the time of offence, the victim was a child. After the investigation, the concerned Police Station charge-sheeted the respondent – accused. During the

investigation, the investigating officer added Section of rape. The matter was tried by the learned Additional Sessions Judge. On completion of trial, the learned Additional Sessions Judge passed the impugned judgment and acquitted the respondent – accused of all the charges.

4. Perusal of the impugned judgment show that the prosecution was unable to prove that the victim was a child at the time of the offence. It is seen that the school authorities of the Primary School where the victim had taken her primary education was not examined, and who was examined to prove the age was the Head Master of the High School. The learned Trial Court has discarded the said evidence regarding age, since the Birth Certificate issued by the Municipal Council was not brought on record. It is seen that, no ossification test was conducted to determine the age of the victim.

5. In respect of eloping and committing rape, the learned Trial Court has considered the substantive evidence of the victim and her statement recorded by the learned Magistrate under Section 164 of the Code of Criminal Procedure. It is seen that, there were glaring inconsistency in the statement of the victim before the learned Magistrate and her substantive evidence before the Sessions Court. It is further seen that, the accused and the victim had traveled to another place on motorcycle. Though the

victim had sufficient opportunity to raise alarm, nothing was done. It is seen that, the victim stayed with the accused at Hyderabad. The accused appears to be aged 24 years. From the observations made by the learned Trial Court, it appears that, there were intimate relations between the victim girl and the respondent – accused and she accompanied the accused.

6. On going through the impugned judgment and order, it becomes clear that the learned Trial Court has properly appreciated the evidence available on record and acquitted the accused. In these facts and circumstances, we do not find any merit in the application for leave to appeal and hence, the following order :

ORDER

- (i) The application stands dismissed.
- (ii) Fees of learned counsel Mr. S.N. Patil, appointed for the victim is quantified at Rs.10,000/- (Rupees ten thousand).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-