



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.9 OF 2020

The State of Maharashtra	.. Applicant
VS.	
Harish Raosaheb Narwade	..Respondent

Ms.U.S.Bhosale, APP for applicant

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : MARCH 05, 2024**

ORDER :-

Mr.R.V.Gaikwad, learned counsel for Mr.G.J.Pahilwan, learned counsel for the respondent – sole, states that there are no instructions from his client. He, therefore, seeks discharge of his appearance.

2. In view of the above, appearance of Mr.G.J.Pahilwan, learned counsel, is discharged.

3. Heard learned APP for the applicant – State. Perused the papers on record.

4. This is an application for leave to file appeal by the State against the judgment and order dated 29.04.2017, passed by learned Addl. Sessions Judge, Aurangabad, in Sessions Case No.372 of 2021 for

the offences punishable under Sections 363, 366(a), 376 and 506 of Indian Penal Code.

5. The prosecution case, in nutshell, is that the respondent-sole, allegedly, kidnapped the informant's minor daughter on 23.04.2011. Since the respondent was residing in the same locality and was behind his minor daughter, the informant suspected that the respondent - sole kidnapped his daughter. He, therefore, lodged the report. On completion of investigation, the respondent came to be charge-sheeted.

6. Perusal of the impugned judgment shows that the trial court found the victim-girl unreliable. Relevant observations from the impugned judgment are reproduced below:-

“25. All those questions put up to the victim during her cross-examination. But she replied that it did not happen. She denied that she has stated such contents before the police. However, the Investigating Officer has admitted all those things. She has admitted that victim had stated all those contents. Those contents are marked at portion Mark “A” to “D” which are exhibited at Exh.62 to 65. The victim has specifically stated before the police that there was no sexual intercourse between them during the above period.

26. PW 1 Ratan say victim was referred for medical examination. Police came to know that there was sexual intercourse with the victim. The police told him about it. It means, informant PW 1 Ratan came to know about the sexual intercourse from the police and not from the victim. Medical Officer says that there was intercourse with the victim.

27. *The victim is totally silent about their stay at the house of Abhijit at Jadhavwadi, Aurangabad, while making statement to the police. She is very much silent about their stay at Kannad and Chalisgaon while deposing before the court. The victim is making two different statements in respect of the same incident. Once she is saying that she never had a sexual intercourse by accused. At the same time, she says that accused had sexual intercourse with her on 23.04.2011 and 24.04.2011. When a victim put up two different statements then it is very difficult to accept one and discard another. It is very difficult to know whether victim is deposing false before the Court or she had stated false before the police. But, one thing is clear that the victim is not a trustworthy witness. Because a person making different statements about the same incident, she cannot be a trustworthy. There may be difference in the statement in certain contingencies, but unless, those contingencies are explained, it is very difficult to accept it. The victim has not at all explained it. She had shown her inability to explain how there is difference in her two statements. Out of two, one may be false and one may be correct. Out of two statements, both may be false but both may not be correct at any costs. Therefore, the evidence of victim cannot be relied on. It is not a trustworthy evidence.*

28. *As per medical evidence the prosecutrix was accustomed with sexual intercourse. Therefore, it is very difficult to say that the accused had intercourse with her. Samples were sent to the C.A. The C.A. report is at Exh.49. But it is not supporting to the prosecution case. Because as per the C.A. report, neither blood nor tissue matter is detected, no semen is detected in the sample.*

29. *If we consider the situation as it is under which the victim has left her house, then it is clear that there was no criminal force used by the accused for moving her from her house. What she says, accused came to her and asked that we will marry within one day and she eloped with him. If the victim was not willing, if she was taken away against her will, then, naturally, she will have raise hue and cry. She had ample opportunity to defend the accused. She had ample opportunity to ran away and rescue from the clutches of the accused. But it is not so happened. The victim very skillfully left her house, accompanied with*

accused at Aurangabad. She moved with him for 2/3 days without any complaint, without any objection. They moved in a public place and travelled by public conveyance. It indicates that the victim was consenting party.

30. The prosecutrix has stated before the police that she was acquainted with the accused since last one year. They were meeting each other isolately. She was making phone call on the cell phone of the accused from the public booth. All these things clearly indicates that the prosecutrix was taking initiative all the time. She was meeting the accused at isolated place. She used to call accused from the public phone booth and this fact was noticed by her parents. Accused and victim were residing in same locality. They were acquainted with each other. They were of teen age group. In such circumstances, naturally they were attracted with each other. But parents of victim was not agree for the same. Thinking of parent may be different than thinking of child. The parents of victim were not agree, because, accused was from different caste and there were obstacle of the caste system and social system, which resulted in such elopement of the victim.

7. In view of the above, we do not see merit in the present application for leave to file appeal. Hence, the the application is rejected.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP