



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 52 OF 2019

The State of Maharashtra,
Through,
Police Station
Sadar Bazar, Jalna.

... Applicant/Appellant
[Ori. Complainant]

Versus

1. Faruqkhan Hafijkhan Pathan,
Age : 21 years, Occu. Labour,
2. Shaikh Juned Sk. Anis Bhagwan
Age : 19 years, Occu. Labour,
3. Afrojkhan Hafijkhan Pathan,
Age : 27 years, Occu. Labour,
4. Shaikh Salman Sk. Aslam,
Age : 22 years, Occu. Labour,
5. Shaikh Rijwan Sk. Aslam,
Age : 24 years, Occu. Labour.

... Respondents
[Ori. Accused]

.....
Mr. N. D. Batule, APP for the Applicant-State.
Mr. Sohail E. Siddiqui, Advocate for Respondents.
.....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 27.06.2024

ORDER :

1. Aggrieved by the order of acquittal passed by learned Special Judge and Additional Sessions Judge, Jalna dated 19.04.2018 in Special Case (Child) No. 28 of 2014, acquitting present respondents from offence under Sections 354-A, 354-D r/w 34 of the Indian Penal

Code and Sections 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012, State is seeking leave to file appeal.

2. Learned APP pointed out that on complaint of victim PW2, crime was registered by Sadar Bazar Police Station for above offences. He pointed out that there is clear evidence of victim at Exhibit 23 wherein she has narrated the conduct and behaviour of accused. Accused are named. Mother of victim (PW1) and maternal uncle of victim (PW3) are also examined by prosecution in support of their case and charge. However, learned trial court has disbelieved the prosecution version and has acquitted the accused vide judgment dated 19.04.2018. According to learned APP, learned trial court has failed to appreciate the testimony of victim herself. That, her sole testimony, which is inspiring confidence, ought to have been accepted. That, there is improper appreciation of her evidence as well as settled legal position. Hence, he seeks leave to question the same by filing appeal.

3. Learned counsel for the respondents-accused would submit that there are mere allegations of catching hand and expressing love. That, prosecution could not establish its case beyond reasonable doubt and therefore, learned trial court rightly acquitted the accused.

4. After considering the above submissions and on going through the testimony of the victim, which is of relevance, it is clear that victim has narrated that on 22.05.2014, while she was managing shop, accused initially started making gestures. According to her, out of fright, when she was about to enter the house, accused came and caught her hand and even expressed his love, and therefore report was lodged. As stated above, accused have not disputed the occurrence. Learned trial Judge, in para 39, has observed that witnesses have not given details of the incident and finally, holding that ingredients of the offence are not clearly made out, acquitted the accused. Therefore, it is a fit case for granting leave as prayed by the State. Hence, I proceed to pass the following order :

ORDER

- I. Application is allowed.
- II. Leave is granted 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.]