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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.48 OF
2021

The State of Maharashtra

APPLICANT

VERSUS

Sushil @ Chabya Mahadev Khandagale & Another RESPONDENTS

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Mr. R. B. Dhaware, APP for Applicant – State

Mr. V. B. Deshmukh, Advocate for respondents No.1 and 2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th OCTOBER, 2024

ORDER :

1. By this application, filed under section 378 (1) of the Criminal Procedure Code, the applicant – State seeks leave to file appeal to challenge the judgment and order of acquittal dated 19th March, 2021 passed by learned Special Judge, Osmanabad in Special (POCSO) Case No. 108 of 2018.

2. Respondents, accused were charged for commission of offence punishable under section 354, 354-A (1) (iv), 354-A (3), 354-D (2), 323, 324, 325, read with 34 of the Indian Penal Code and under sections 11 (1) and 12 of the Protection of Children From Sexual Offences Act, for assault on the victim and her mother.

3. It is the case of the prosecution that on 5th August, 2018 at about 1.30 p.m. when mother of the victim asked the accused and to why they were harassing the victim girl, they assaulted the victim girl with iron rod and cricket stump. When mother of the victim went to intervene, accused Sushil assaulted her with iron rod on her right wrist, thereby causing fracture injury. Accused Vaibhav assaulted victim's mother with wooden stumps on head. Accused persons also assaulted them with fists and kick blows.

4. In support of its case, the prosecution examined 8 witnesses. Trial Court acquitted the accused. Hence, this application for leave to file appeal.

5. Heard learned APP for applicant - State and learned advocate for respondent - accused. Perused the documents placed on record.

6. Record indicates that in respect of the incident dated 5th August, 2018, NCR No. 368 of 2018 was registered against other accused persons and not against the present accused. Though the victim has alleged that accused had assaulted her on shoulder and head, no specific role is attributed to the accused persons, as to who assaulted on shoulder and head. When the

Muddemal property, iron pipe and wooden stick was shown to the victim, she has stated that the accused did not use said wooden stick and iron pipe for assaulting her. Victim's mother has failed to disclose the alleged harassment of the victim on 5th August, 2018, in the NC lodged by her. It has come in the evidence of victim's mother that when she had gone to the house of her daughter, accused had beaten her. Her evidence is silent about which accused assaulted her on which part and with which weapon. Thus, it is clear from the evidence on record that the prosecution has failed to prove the charge.

7. Trial Court has passed a well reasoned order, while acquitting the accused. The view taken by the Trial Court is a possible view, which is not liable to be interfered with. The application being devoid of merit is dismissed. Leave refused.

[NITIN B. SURYAWANSHI]
JUDGE