



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

PPLN. FOR LEAVE TO APPEAL BY STATE NO. 261 OF 2019

The State of Maharashtra

... Applicant

VERSUS

Sachin @ Satish Madhukar Bharare

... Respondent

...

Mr. S. D. Ghayal, Addl. PP for Public Prosecutor, Advocate for
Appellant

...

CORAM : R.G. AVACHAT &
NEERAJ P. DHOTE, JJ.

DATE : 21.02.2024

PER COURT :

1. This is an Application for leave to Appeal by State.
2. The Respondent has been acquitted by the learned Trial Court vide Judgment and Order dated 09/05/2017, in Special (POCSO) Case No.03/2015 for the offences punishable under Sections 363, 366-A, 376(2) (i) of the Indian Penal Code, Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3 (1)(xi) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
3. Heard the learned Additional P.P. for the Applicant – State. Perused the papers on record.
4. What is seen from the Judgment passed by the learned Trial Court that except the Medical Officers, Police Officers and one panch

witness, all other witnesses including the Victim girl, her mother and uncle did not support the case of Prosecution. It is further seen that the evidence in respect of DNA test was not considered by the learned Trial Court and the reasons thereof are given in Paragraph No.15 of the Judgment, which is reproduced below:

“15. To prove that the victim girl had become pregnant due to sexual relations with the accused the prosecution has relied upon the DNA report Exh.35. Of course as per the said report the opinion was given by the expert that the accused and the victim girl are concluded to be the biological parents of foetus of the victim girl. However before relying on the said DNA report the prosecution has to prove beyond reasonable doubt that the blood samples of the accused, victim girl and the foetus were taken by the medical officers in proper manner and in the special DNA kit. Any of the two medical officers have not stated in their respective deposition that they had collected blood samples for the purpose of DNA test. They have also not deposed that they had obtained consent of the accused and victim girl for DNA test. Even it is not contention of the Investigating Officers in their deposition that they had obtained permission from the Magistrate for DNA test of the victim girl and the accused. Even in the medical reports Exh.44 45 and 71 there is no reference of collecting blood samples for DNA test. Therefore in the absence of said basic evidence of collecting blood samples for DNA test and in absence of the evidence that for collecting blood samples special DNA kit was brought from the forensic lab, the said DNA test report cannot be accepted as proof”.

5. In view of the above observations, we do not see any merit in the Application for leave to Appeal by State. Hence, the same is dismissed accordingly.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]