

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***INTERIM APPLICATION NO.1516 OF 2019
IN
CRIMINAL APPEAL NO.1777 OF 2019***

Dadaso Bhaskar Athawale	}	
Aged : 24 years,		
R/o.Gardi, Indiranagar		
Taluka - Khanapur, District - Sangli	}	 Applicant/ Appellant
<i>Versus</i>		

The State of Maharashtra	}	
Through Vita Police Station,		
Sangli, District - Sangli.	}	 Respondent

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Mr.Prosper D'souza, Advocate for the Applicant/Appellant.

Mrs.M.M. Deshmukh, APP for Respondent - State.

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***CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATED : 10th JULY 2024.

ORDER : (PER : Manjusha Deshpande, J.)

1 The applicant herein is originally accused no.3 in Sessions Case No.29 of 2013 and he stand convicted by the Additional Sessions Judge-2, Sangli *vide* judgment and order dated 16th July, 2019, for the offence punishable under Sections 302, 376(2)(g) and 201 read with 34 of the Indian Penal Code, 1860 (IPC) and sentenced to suffer rigorous imprisonment for life till his natural death without any benefit of remission and is

directed to pay fine of Rs.10,000/-, in default, of payment of fine, to suffer rigorous imprisonment for six months. He has been further sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, and in default, to suffer rigorous imprisonment for six months on being convicted for the offence punishable under Section 376(2)(g) read with Section 34 of the IPC. Further punishment of rigorous imprisonment for 7 years and fine of Rs.5,000/-, is imposed under Section 201 read with Section 34 of the IPC also been imposed for disappearance of evidence.

The applicant has challenged the said judgment and order by way of appeal and the present application is filed for suspension of sentence and enlargement on bail, during the pendency of the said Appeal.

2 The applicant has raised various grounds in the present application and contended that considering that the applicant is in jail since past 7 years, he may be released on bail by suspending the sentence imposed.

3 The case of the prosecution in short is the victim aged 19 years girl, was working as a sales girl in a cloth shop at village Vita. She left her house on 12th October, 2012, around 09:30 a.m. for attending her job. However, on 16th October, 2012, around 04:30 p.m. dead body of the girl was found in a well.

P.W. 1 who is the informant, the brother of the victim girl was informed about the victim being found, and he was summoned in the hospital. He noticed that the clothes were worn by her inside-out.

After conduct of postmortem, he was informed that his sister's death has occurred three days prior to her body was found and her death was not due to drowning, but due to throttling.

On 17th December, 2012, P.W.1 lodged report against unknown accused for committing murder of his sister. Accused no.3 Dadaso was arrested on 18th October, 2012.

4 On 26th October, 2012, the applicant gave memorandum statement Exhibit-55 in presence of pancha witness and he led them towards Gardi road, near Pawai-tek, near one gutter, and from one cement pipe took out one purse which was in wet condition and containing one mobile phone of Samsung Company, SIM Card of Uninor Company, and some ladies accessories.

Bajaj Motorcycle of accused No.3 was also seized under panchanama Exhibit-66. After investigation was completed, chargesheet was filed and the trial was conducted.

5 The prosecution has led the evidence in order to establish the guilt of accused persons. Since there was no eye witness to the said incident, the entire case was based on circumstantial evidence.

P.W.8 is the witness who had last seen the accused with victim and he has deposed that he has met the victim while in company of the accused persons. When he enquired about them, the victim had told him, that they were his friends.

P.W.8 has thereafter seen the victim girl with the accused persons on 13th October, 2012, when he alongwith his friend Manoj/Anuj Pawar was returning from Gardi. He further confirmed that it was around 07:30 p.m. to 08:45 p.m., when he saw the victim girl alongwith accused nos.1 to 3 and Sagar Hattekar (deceased accused) at Pawai-tek.

Thereafter, the victim girl was not seen by anybody and her dead body was found in the well in a decomposed condition.

Therefore, P.W.8 is the person who had last seen the victim girl alongwith all the accused persons.

6 The Doctor has been examined by the prosecution in order to prove the offence of rape. The report of the Chemical Analyser (CA) including 13 articles seized from the scene of crime, clothes of deceased victim girl and blood and semen samples of all the accused at Exhibit-27, are proved. The testimony of P.W.13 clearly reveals that death of victim girl was due to throttling and thereafter her dead body was drowned in a well. From the testimony of P.W.13, it is evident that the victim girl was subjected to sexual assault by more than one person. The said report fortifies the aspect of sexual violence.

7 The applicant herein has filed application claiming that since his arrest, he is in prison for a long time, and he has a very good case on merit, and he is likely to succeed in the Appeal. According to the applicant, who is accused no.3, the prosecution has not proved the case beyond reasonable doubt,

and he is innocent, and he has been wrongly involved in the present case.

It is the case of the applicant that he cannot be held responsible for a girl who has gone missing since 12th October, 2012, and later on, her body has been recovered from a well on 16th October, 2012.

8 We have heard the advocate for the applicant and the learned APP. We have also gone through the judgment passed by the Additional Sessions Judge-2, Sangli, in Sessions Case No.29 of 2013.

On its perusal, it is evident that the involvement of the applicant has been proved by the prosecution through memorandum statement Exhibit-55, through panch witness P.W.6 Suresh Gangaram Pawar. In his memorandum statement, he has shown willingness to show the place where he had concealed the purse belonging to the victim girl. The said purse had been seized and the purse was identified by the father, step mother and grandmother of the victim to be belonging to the victim girl.

9 We have gone through the judgment and from the evidence which is produced by the prosecution, the culpability of the present applicant is proved. P.W.8 has in his evidence has categorically stated that he has seen the victim alongwith the present applicant, and, his three friends who were there on two motorcycles on the Gardi road near the water tank. The incriminating evidence points heavily towards the guilt of accused.

Considering the gravity of the offence i.e. rape committed by four persons, including the applicant, on a young girl of 19 years, by administering her liquor, thereafter throttling her and drowning her in well, is not only inhuman but heinous, and gruesome. Therefore, we do not find that this is a case for suspension of sentence, and hence, the application of the applicant is rejected and disposed off accordingly.

Considering that the applicant is in custody since his arrest i.e. since last 7 years, hearing of the Appeal is expedited.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)