

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

***INTERIM APPLICATION NO.1344 OF 2019
IN
CRIMINAL APPEAL NO.102 OF 2020***

Lakhya @ Laxman Sandipan Sargar
Aged : 22 years,
R/o.Gardi, Behind Kalpana Medical,
Taluka - Khanapur, District - Sangli

Applicant/
.... Appellant

Versus

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

.... Respondent

.....
Mr.Rupesh Jaiswal, 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.

P.C.

1 The applicant herein, is original accused no.1 in Sessions Case No.29 of 2013. The applicant has been convicted by the Additional Sessions Judge-2, Sangli in Sessions Case No.29 of 2013 *vide* judgment and order dated 16th July, 2019, for the offences 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 natural death of the convict without any benefit of remission and 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/- each and in default of payment of fine, to suffer rigorous imprisonment for six months for offence punishable under Section 376(2)(g) read with Section 34 of the IPC. Further punishment under Section 201 read with Section 34 of the IPC been imposed for commission of offence of disappearance of evidence with punishment of rigorous imprisonment for 7 years and to pay fine of Rs.5,000/-.

2 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. 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 sentence of conviction.

3 The case of the prosecution in the Sessions case in short was that, the victim aged 19 years 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 victim girl was found in a well. P.W. 1 who is the informant and brother of the victim girl was informed about the victim girl. When he saw his sister, the clothes on her body were in a inside-out condition. After the postmortem, he was informed that his sister's death has occurred prior to three days, before her body was found. Her death was not due to drowning, but due to throttling. Hence, on 17th December, 2012, P.W.1 lodged report

against unknown accused for committing murder of his sister. And after registration of FIR, further investigation was carried out. During investigation, supplementary statement of informant was recorded, and, thereafter accused/applicant Laxman Sagar was arrested on 18th October, 2012.

4 On 18th October, 2012, accused no.1 gave a memorandum statement Exhibit-47 showing his willingness to show the place of incident. Panchanama Exhibit-48 was conducted and it was attested by panch witness P.W.4. Thereafter, on 18th October, 2012, accused nos. 2 and 3 and deceased accused Sagar Hattekar were arrested. All the accused were referred for medical examination on 20th June, 2012. The blood samples and semen samples of the accused persons were collected.

The prosecution has examined P.W.1, who is the informant and brother of the victim girl who has supported the prosecution case. P.W.11 is the father who in his deposition has stated that victim girl had affair with accused no.1, but, the victim girl inspite of being warned to sever her relation with applicant accused no.1, she continued to meet the applicant. P.W.11 had requested P.W.8 to convince the victim and persuade her not to meet accused no.1. P.W.8 also deposed that, he has met the victim while in company of the accused persons. When he inquired about them, the victim had told him, that they were her friends. P.W.8 has thereafter seen the victim girl with the accused persons on 13th October, 2012, when he alongwith his friend Manoj Pawar was returning from Gardi. He further confirms 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 decomposed condition. Therefore, P.W.8 is the person who had last seen the victim girl in the company of all the accused.

5 The Doctor has been examined by the prosecution in order to prove the offence of rape committed by the accused persons. The report of the Chemical Analyser (CA) and the 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 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.

6 The applicant herein has filed application claiming that since his arrest, he is in prison for a long time, he has a very good case on merit, and he is likely to succeed in the Appeal. According to the applicant, accused no.1, the prosecution has not proved the case beyond reasonable doubt. According to him, he is innocent, and he has been wrongly involved in the present case.

7 We have gone through the impugned judgment and order 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 categorically stated that he has seen the victim alongwith the present applicant, and, his three friends. The incriminating evidence points heavily towards the guilt of accused.

 All the incriminating evidence on record, only fortifies the view taken by the Additional Sessions Judge-2, Sangli, in his judgment and order passed in Sessions Case No.29 of 2013.

8 We find that considering the evidence on record, applicant has failed to make out a case for suspending the sentence of conviction. *Prima facie* we do not find that there are chances of the applicant succeeding in the Appeal. In view of the gravity of the offence i.e. rape committed by four persons, including the applicant, at a time, on a young girl of 19 years, by administering her liquor, and, thereafter throttling her and drowning her in the well, being not only inhuman but heinous. 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.

 Since the applicant is in custody immediately after his arrest i.e. since last 7 years, hearing of the Appeal is expedited.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)