



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application (APPA) No.410/2024 in Criminal Appeal No.220/2024

Vyankatesh Kalraj Paspleti,
Aged 32 years Occ. Driver, R/o-Gadwal Krishna Reddy,
Gudgeri, Telangana 509125. Applicant.

Versus

State of Maharashtra, through Police Station Wadi,
Nagpur. Non-applicant.

Mr. S.I. Khan, Advocate for applicant.
Mr. U.R. Phasate, APP for Non applicant.

CORAM : Smt. Vibha Kankanwadi & Mrs. Vrushali V. Joshi, JJ
Date : 08-07-2024.

J u d g m e n t (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed for suspension of sentence. The present applicant is the original accused no.2, who faced the trial for the offence punishable under Sections 376(2) (j), (l), (n), 506(II) r/w 34 of the Indian Penal Code ('IPC', for short) and Section 4 r/w Sections 5, 6, 7 of the Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016. The present applicant/original accused no.2 has been convicted for the offence punishable under Section 376(2) (j), (l), (n) of the IPC and has been sentenced to suffer imprisonment for life along with the fine that is imposed in Sessions Case No.517/2019 by the learned Additional Sessions Judge-15, Nagpur on 24-08-2023.

ii. It has been vehemently submitted on behalf of the applicant/appellant that the learned trial Judge has not appreciated the evidence properly. Learned Judge failed to consider that PW-7 is the victim, who has not supported the prosecution. PW-4 is the mother of PW-7 victim and also the informant. Though she has stated that the present applicant is her relative, and was residing with her at the relevant time, yet she had not noticed any ill acts committed by the applicant with her daughter. She only realized that her daughter is pregnant after much delay and then she says that upon enquiry with PW-7, she disclosed the name of present applicant as well as original accused no.1 as a persons who had committed rape on her. However, PW-7 has not spoken a single word against both the accused. Accused no.1 has been acquitted from all the charges. However, only on the basis of DNA report, the applicant has been roped. The prosecution had come with a case that the victim has mild retardation, but it can be considered from the evidence of the near relatives that the victim is able to carry her daily pursuit. At no point of time if the act was going on for a long period, she had disclosed it to the mother about the incident, and therefore the applicant/appellant has a very good case in appeal. Therefore, the conviction needs to be suspended as the appeal is already admitted, it will take long time to hear his appeal.

iii. *Per contra*, learned APP strongly opposed the application and supported the reasons given by the learned trial Judge while

convicting the applicant. He submits that the hostility of the victim cannot give any kind of advantage to the present applicant and it has been sufficiently brought on record that the victim is a mentally challenged person. PW- 6 is the Medical Officer and PW-14 is the Clinical Psychologist, who have stated that upon examination of the victim it was found that she is having IQ of 58 score and her category is mild impairment in intellectual functioning. Therefore, even if she was not able to depose all those acts which happened with her yet, the DNA report as against the present applicant is positive. The victim had given birth to a girl. Samples were taken and the DNA matches. On the basis of this evidence, when the applicant has been convicted after a full fledged trial and giving him opportunity to cross examine the prosecution witnesses, then the applicant need not be released on bail by suspending the sentence.

iv. At this stage, we are required to consider the *prima facie* case. The prosecution has examined in all 16 witnesses to bring home the guilt of the accused, and it has also been brought on record that (PW-6) Dr. Pravin and (PW-14) Monali Mahurle are the witnesses who had tested the Intelligence Quotient (IQ) of the informant. They have stated that the victim has mild impairment in intellectual functioning. They both have stated that the IQ which they had calculated of the victim is '58'.

v. PW-4 is the informant, the mother of the victim, who has stated as to under which circumstance the applicant was residing in her house. It appears that the present applicant is the cousin brother of the PW-4. No doubt it appears, that she could not come to know about the acts of sexual harassment/assault on the victim at earlier point of time, but she says that it could be revealed when PW-7 was four months pregnant. After enquiry she disclosed the names of both the accused, thereby stating that both the accused had established physical relations with her. Important point to be noted is that in the cross examination of PW-4 the mother, it was suggested that present applicant and the victim had gone for eight days out of the house and there was love affair between them. She has claimed ignorance of the said fact. Though she has admitted that victim had not talked to her that both the accused had physical relations with her, but that denial or admission is of only one sentence. There again, there are suggestions that as the accused did not pay towards the maintenance of the victim as agreed by them in the Panchayat, therefore she went to Police Station intentionally. This aspect appears to have been kept vague. Who had taken the matter to Panchayat and what was then agreed has not been brought on record. Accused has not examined any witness in defence on the said point. If the accused/applicant had not done any act, then why he should agree to pay maintenance to the victim in the Panchayat, is a question. We can get the details of the same in the FIR (Exhibit-96), but those details were not told by PW-4 in her

examination in chief. If we are supposed to read the contents of the FIR then she has stated that there was a meeting of the respectable persons from her community on 29-10-2018. At that time, the present applicant and accused no.1 admitted that they had physical relations with the victim and they would give the expenses of the hospital as well as of the child that will be born and the expenses of her marriage. However, thereafter, they did not come and they had not picked up her call. Therefore, she went to Police Station to lodge the report. If this fact from the (Exhibit-96) is taken, then it will have to be interpreted as to whether there is a admission by the applicant.

vi. Another fact to be noted is that, merely because the victim has turned hostile or was not supporting the prosecution, it cannot be said that it is a case of acquittal. (PW-5) Dr. Surekha had examined the victim. She had taken history at the time of examination of the victim from the victim and in her examination in chief she has quoted the said history, which we take it as gone unchallenged as there is no cross in respect of the same on behalf of the present applicant. The said history recorded by the Medical Officer whether can be taken against the present applicant is also required to be considered. Another main evidence which goes against the applicant is the DNA report (Exhibit-138). In his statement under Section 313 of the Code of Criminal Procedure, the applicant has not given any explanation in respect of the same.

Therefore, when there is evidence against the applicant, it will not be a fit case where the sentence should be suspended.

vii. In view of above, the application stands rejected.

(Mrs. Vrushali V. Joshi, J.)

(Smt. Vibha Kankanwadi, J.)