



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2011 OF 2024
IN
CRIMINAL APPEAL NO. 462 OF 2024

Shaikh Sohail S/o Shaikh Akhil

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. N. S. Ghenekar – Advocate for the Applicant

Mrs. M. L. Sangit – APP Respondent/State

Mr. Prasad B. Kadam – Advocate (appointed) for Respondent No. 2

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CORAM : NEERAJ P DHOTE, J.

DATED : 7TH NOVEMBER, 2025

PER COURT : -

1. This is an Application for suspension of sentence imposed by the learned Spl./Addl. Sessions Judge, Parbhani, in Special Case No. 99 of 2021, by Judgment and Order dated 11.03.2024, convicting and sentencing the Applicant/Appellant as follows:-

- “1. Accused – Shaikh Sohail s/o. Shaikh Akhil, Age : 24 years, Occ. : Labour, R/o. Ali Nagar, Purna, Tq. Purna, District Parbhani, is hereby convicted for the offence punishable under Section 376(2) (n) of the Indian Penal Code, vide section 235 (2) of the Code of Criminal Procedure and sentenced to undergo Rigorous Imprisonment for a period of 20 (Twenty) Years and to pay a fine of Rs.25,000/- (Rupees Twenty-Five Thousand Only). In case of default of fine, he shall further undergo Simple Imprisonment for a period of 06 (six) months.
2. He is further convicted for the offence punishable under Section 506 of the Indian Penal Code, vide section 235 (2)

of the Code of Criminal Procedure and sentenced to undergo Rigorous Imprisonment for a period of 2 (Two) Years and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only). In case of default of fine, he shall further undergo simple Imprisonment for a period of 01 (One) month.”

3 to 9.

2. Heard the learned Advocate for the Applicant/Appellant, learned APP for the State and the learned Advocate for the Victim. They took me through the relevant evidence and relevant observations from the impugned order.

3. It is the case of the Prosecution that the Applicant/Appellant, who was neighbour of the Victim, raped her once in his house and twice in the house of the Victim. After the Victim's pregnancy was revealed, she disclosed about the rape by the Applicant/Appellant to her aunt. The matter was reported to the concerned Police Station and Crime bearing No. 214 of 2021 came to be registered with the concerned Police Station. Investigation was carried and the Applicant / Appellant was Charge-sheeted. The Applicant / Appellant came to be tried and convicted as above.

4. In paragraph no. 15 of the impugned Judgment, the learned Trial Court has recorded the finding that *“the prosecution, however, did not provide any evidence to establish that the victim's age was under 18. Prosecution has thus failed to prove that victim was Child as*

contemplated under POCSO Act". The evidence on record indicates that the Victim was pregnant and she was aborted. In respect of the DNA report, the learned Trial Court in paragraph no. 34 observed that, *"certainly, as pointed by defence there are material irregularities in conducting the DNA test. Prosecution should have brought on record as to where the samples were preserved for such a long period, under what conditions it was preserved and why there was delay in sampling etc."* Further, the learned Trial Court has observed that, much importance cannot be attached to the CA report as the defence counsel has pointed out various procedural defects while conducting the DNA profile of the accused. It is clear that, the learned Trial Court did not consider the DNA report seriously. Admittedly, the Charge-sheet and the Charge was not for the offence punishable under Section 376(2)(l), which is for commission of rape on woman suffering from mental or physical disability. The Charge and Conviction is for the offence punishable under Section 376(2)(n), which is for commission of rape repeatedly on same woman. There is no evidence at all that the Victim was suffering from mental illness as defined under Mental Health Care Act, 2017. It is also not the case of Prosecution that the Victim was suffering of such illness. The evidence on record go to show that the Victim was deaf and dumb. However, the learned Trial Court considered the said handicap of the Victim as the mental illness as seen from the observation in paragraph no. 48, wherein it is observed that, the Prosecution has

successfully proved the Charge of rape against a woman who was not able to give consent owing to her disability. The said finding is based on no evidence.

5. The testimony of the Victim nowhere show that, the act of sexual incident was against her wish or will. On the contrary, her evidence indicate that the sexual intercourse was done once in the house of the Appellant and twice in the house of the Victim. From this, the submission of the learned Advocate for the Appellant that the testimony of the Victim nowhere show element of force and it do not lead to establish the offence of rape, has substance. The evidence of the Victim was recorded with the assistance of the interpreter. The evidence on record go to show that, the very interpreter who assisted in recording the statement of the Victim during investigation, was the interpreter who interpreted the evidence of the Victim before the learned Trial Court. The learned Advocate for the Applicant/Appellant relies on the judgment of the Hon'ble Supreme Court of India in **State of Rajasthan Versus Darshan Singh @ Darshan Lal, 2012 (4) Supreme 72**, wherein the manner of recording the statement of the deaf and dumb witness was considered. The relevant paragraphs from the same are reproduced as under : -

“18. The object of enacting the provisions of Section 119 of the Evidence Act reveals that deaf and dumb persons were earlier contemplated in law as idiots. However, such a view has

subsequently been changed for the reason that modern science revealed that persons affected with such calamities are generally found more intelligent, and to be susceptible to far higher culture than one was once supposed. When a deaf and dumb person is examined in the court, the court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also be with the assistance of an interpreter. However, in case a person can read and write, it is most desirable to adopt that method being more satisfactory than any sign language. The law required that there must be a record of signs and not the interpretation of signs.

19. *In Meesala Ramakrishan v. State of A.P., (1994) 4 SCC 182, this Court has considered the evidentiary value of a dying declaration recorded by means of signs and nods of a person who is not in a position to speak for any reason and held that the same amounts to a verbal statement and, thus, is relevant and admissible. The Court further clarified that 'verbal' statement does not amount to 'oral' statement. In view of the provisions of Section 119 of the Evidence Act, the only requirement is that witness may give his evidence in any manner in which he can make it intelligible, as by writing or by signs and such evidence can be deemed to be oral evidence within the meaning of Section 3 of the Evidence Act. Signs and gestures made by nods or head are admissible and such nods and gestures are not only admissible but possess evidentiary value.*
20. *Language is much more than words. Like all other languages, communication by way of signs has some inherent limitations,*

since it may be difficult to comprehend what the user is attempting to convey. But a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing if literate or through signs and gestures if he is unable to read and write. A case in point is the silent movies which were understood widely because they were able to communicate ideas to people through novel signs and gestures. Emphasised body language and facial expression enabled the audience to comprehend the intended message.

21. *To sum up, a deaf and dumb person is a competent witness. If in the opinion of the Court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath.*
22. *In the instant case, there is sufficient material on record that Geeta (PW.16) was able to read and write and this fact stood proved in the trial court when she wrote the telephone number of her father. We fail to understand as to why her statement could not be recorded in writing, i.e., she could have been given the questions in writing and an opportunity to reply the same in writing.”*

6. The testimony of the Victim show that, at the time of recording her statement before the learned Magistrate under Section

164 of the Code of Criminal Procedure, the Police were present and the Police told her to give statement and accordingly, she gave her statement. Her evidence further show that, on the day of her testimony before the learned Trial Court, she was accompanied by her paternal aunt and uncle and after reaching the Court, the Police, paternal aunt and the interpreter told her to give statement. From this, I find substance in the submission of the learned Advocate for the Applicant/Appellant that the possibility of tutoring the Victim cannot be ruled out.

7. The above discussion show that the Applicant / Appellant is having good case on merits. The Applicant / Appellant is behind the bars for a period of four (4) years and five (5) months. The Appeal is not likely to be heard in the near future and hence, I proceed to pass the following order : -

ORDER

- [i] The Application is allowed.
- [ii] The sentence imposed upon the Applicant/Appellant by the learned Spl./Addl. Sessions Judge, Parbhani, in Special Case No. 99 of 2021, by Judgment and Order dated 11.03.2024, is hereby suspended till the final decision of the Appeal. In the meantime, the Applicant/Appellant be released on bail on his furnishing personal bond of Rs.30,000/- [Rupees Thirty Thousand], with one or two surety/sureties in the like amount.

- [iii] The Applicant/Appellant shall cooperate in early disposal of the Appeal.
- [iv] Bail before the Trial Court.
- [v] Application stands disposed off.

[NEERAJ P. DHOTE]
JUDGE

SG Punde