

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2667 OF 2012

Digamber Pandurang Kadu
VERSUS
The State of Maharashtra

APPLICANT

RESPONDENT

.....
Mr. S.J. Salgare, advocate (appointed),
for the applicant.
Mr. N.R. Shaikh, A.P.P. for the Respondent-State.
.....

CORAM : A.V. POTDAR, J.

DATED : 31st JULY, 2012

ORAL ORDER:

1. By the present application, the applicant/
appellant, who stands convicted for an offence
punishable under section 376 of the I.P. Code and
sentenced to suffer rigorous imprisonment for seven
years, has approached this court for his release on
bail during the pendency of the appeal filed by him
which is already admitted by order dated 2nd July,
2012, by suspending the substantive sentence awarded
by the court below.

2. Heard learned counsel Mr. S.J. Salgare for

the applicant/appellant followed by the submissions of learned A.P.P. Mr. N.R. Shaikh for the respondent/State. Also perused the judgement impugned and the record & proceedings received from the court below.

3. The record discloses that an incident took place on 29th November, 2010 around 3.00 p.m. to 3.30 p.m. On the fateful day, the prosecutrix PW4 (her name is not disclosed as per the guidelines of the Supreme Court) was picked up from her school by the applicant under the pretext that her grandmother was ill and she was called at her residence. To corroborate this version of the prosecutrix, the Headmistress of the school where the prosecutrix was studying, was examined as PW5 by name Jayshree Nanaware. She identified the applicant/ appellant - accused as the person who had collected the prosecutrix from the school on that day at about 3.00 p.m. It is further story of the prosecution that the applicant/appellant asked the prosecutrix to sit on the pillion seat of the motorbike and took her to the agricultural field of one Chormunge. He forced the

prosecutrix to accompany him in the said field where he forcibly ravished her. After his satisfaction, he brought the prosecutrix outside the said field from where she returned to her residence and reported the incident occurred with her to her father Dadasaheb (PW1). As the family was following mourning (*sutak*), they reported the incident in the Police Station on the third day i.e. on 3rd December, 2010. Thereafter, the prosecutrix was referred for her medical examination and she was examined by Dr. Rajendra Vairagar, a Medical Officer attached to the Rural Hospital, Rahuri, who on medical examination of the prosecutrix, opined that recently the prosecutrix was sexually ravished.

4. During the trial, the prosecution has examined total eleven witnesses, including the prosecutrix (PW4), the Headmistress of the school - Jayshree (PW5) and the Medical Officer, attached to Rural Hospital, Rahuri, namely, Dr. Rajendra Vairagar as PW8.

5. During the course of submissions across the bar, learned counsel appearing for the applicant/

appellant drew my attention towards certain admissions given by the prosecutrix in her cross-examination and would urge that the prosecutrix was giving the evidence on oath before the court below on the say of her parents and as stated by them. He would urge that on reading of these admissions given by the prosecutrix in her cross-examination, it is to be inferred that the prosecutrix was tutored before her entry in the witness box. He would further urge by drawing my attention towards the version of PW8 Dr. Rajendra, Medical Officer, who has opined that no doubt, her hymen was ruptured; but it was ruptured in past. It is not necessary that this opinion relates to the rupture of hymen three days prior to the alleged incident. According to the learned counsel, that story given by the prosecutrix is not acceptable and prayed for release of the applicant on bail during the pendency of the criminal appeal.

6. Per contra, learned A.P.P. vehemently opposed to release the applicant on bail during the pendency of the appeal on the sole ground that on appreciation of the evidence led by the prosecution

before the court below, the learned court below has come to the conclusion that guilt stands proved against the applicant beyond reasonable doubt. He would also urge that this is not the stage to re-appreciate the entire evidence on record to find out whether the guilt of the applicant/appellant is properly established or not. In addition to this, he would urge that the applicant was not on bail during the pendency of the sessions trial, but his trial was conducted as an under-trial prisoner and hence, prayed for rejection of the bail application.

7. Perusal of the record discloses that the applicant/appellant was not on bail during the pendency of the sessions trial before the court below. A finding is recorded by the learned trial court on the basis of medical evidence, which cannot be disputed that soon before her medical examination the prosecutrix was sexually ravished. So far as the delay part is concerned, considering the evidence by the father of the prosecutrix, the delay, which cannot be said to be delay atleast at this stage, appears to have been explained properly. The evidence

of the prosecutrix clearly established that the applicant and applicant only is the author of the injuries found on her person, which is required to be considered in the light of evidence of the Headmistress of the school PW5 Jayshree that in the afternoon of 29th November, 2010, the applicant/appellant had collected the prosecutrix from the school under the pretext that her grandmother was ill. It is to be considered that the applicant/appellant was identified by the prosecutrix as her maternal uncle and considering this fiduciary relationship between the applicant/appellant and the prosecutrix, the school authorities allowed the prosecutrix to accompany the applicant/appellant from the school. If the elderly member to whom the prosecutrix treated as a family member, has taken disadvantage of the situation, then this is not a fit case wherein the applicant deserves to be released on bail during the pendency of the criminal appeal, as there is prima facie strong evidence against the applicant/appellant about his involvement in the offence, which is held to have been proved against him. Thus, no case is made out for release of the

applicant on bail. The application sans any merit, and therefore, stands rejected.

8. Considering the fact that the applicant/appellant is in custody since the date of his arrest, hearing of the criminal appeal stands expedited.

9. Before parting with the final order passed in this application, this court appreciates the able assistance provided by Mr. S.J. Salgare, learned counsel, who was appointed to represent the applicant/appellant in this appeal. His fees to argue this application is quantified in the sum of Rs. 1000/- (rupees one thousand). The application accordingly stands disposed of.

[A.V. POTDAR, J.]

npj/criapln2667-12