

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

**DB Criminal Misc. Application for Suspension of Sentence  
No.551/2018**

**In**

**D.B. Criminal Appeal No. 1411/2017**

Arshad Khan S/o Mohd. Yunus B/c Musalman, R/o New Colony,  
Raipur, Police Station Raipur, District Jhalawar, Raj. Accused  
Presently Confined In District Jail, Jhalawar.

----Appellant

Versus

State Of Rajasthan Through P.p.

----Respondent

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For Appellant(s) : Mr.Nawab Ali Rathore

For Respondent(s) : Mr.Alladeen Khan, Public Prosecutor

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**HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI  
HON'BLE MR. JUSTICE DINESH CHANDRA SOMANI**

**Order**

**31/08/2018**

Heard learned counsel for the accused-appellant and  
learned Public Prosecutor on the application for suspension of  
sentence.

The accused-appellant has been convicted for offence  
under Sections 376 (D), 366(A), 363 and 385 IPC. The prosecutrix  
in her court statement as PW – 1 has made specific allegation  
against the accused-appellant along with other Sabir @ Waseem  
for commissioning of offence. Taking into consideration the  
aforesaid and other corroborative evidence, the accused-appellant  
has been convicted.

Learned counsel for the accused-appellant submits that if the statement of prosecutrix recorded under Section 161 Cr.P.C. is looked into, no allegation exists against the accused-appellant, rather, it is against Sabir @ Waseem. It is only by way of improvement that statement was subsequently given under Section 164 Cr.P.C. implicating the accused-appellant for commissioning of offence.

The story of withdrawal of a sum of Rs.9000/- from ATM belonging to prosecutrix's father has not been corroborated by producing evidence thus the whole story given by the prosecutrix is unreliable and what should be considered is the statement recorded by police under Section 161 Cr.P.C. It is further stated that prosecutrix has not received any injury either internal or external to prove alleged commissioning of offence thus for all these reasons, the accused-appellant is entitled for suspension of sentence.

Learned Public Prosecutor has opposed the application for suspension of sentence. It is submitted that PW – 1 prosecutrix has made specific allegation against the accused-appellant for commissioning of offence under Sections 376 (D), 366(A), 363 and 385 IPC. The prosecutrix was at the age of 17 years at the time of commissioning of offence. She has clarified about her statement under Section 161 Cr.P.C. She has specifically stated complete story to the police but it has not been narrated. It is also stated that what is to be considered by the Court is the court statement of prosecutrix and not the statement recorded under Section 161 Cr.P.C.

Learned Public Prosecutor has further stated that in view of catena of judgments of the Apex Court, consideration of

the case for offence under Section 376 IPC can be made even on the basis of the statement of prosecutrix and in the instant case, prosecutrix was minor. She may not have diagnosed for internal or external injury and according to the accused-appellant, it may be a case of consent but then also looking to the age of prosecutrix, offence is made out. So far as the withdrawal of Rs.9000/- from ATM is concerned, it was not such a fact to corroborate the accused-appellant with the offence under Sections 376 (D), 366(A), 363 and 385 IPC. Taking into consideration the aforesaid, the application for suspension of sentence may be dismissed.

After hearing learned counsel for the parties, we find that a case is not made out for suspension of sentence. Any comment on the arguments of either of the parties may affect final hearing of the appeal but taking into consideration the statement of prosecutrix PW -1, we find that specific allegations have been leveled against the accused-appellant for commissioning of offence under Sections 376 (D), 366(A), 363 and 385 IPC and it cannot be discarded at this stage in view of catena of judgments of the Apex Court.

Accordingly, the application for suspension of sentence is dismissed.

(DINESH CHANDRA SOMANI),J

(M.N.BHANDARI),J