

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4659 of 2022
IN
CRIMINAL APPEAL NO. 1308 OF 2022

Santosh Bhausaheb Tile .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents
...

Mr. Satyavrat Joshi with Mr.Nitesh Joshi for the applicant.
Mr.Kamran Shaikh for respondent no.2.
Mr.S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 27th MARCH 2023

P.C:-

1 Interim Application is filed by the appellant who has called in question the judgment delivered by Sessions Court in POCSO Case No.154/2018, where he stand convicted for the offence punishable u/s.376(2) (f) & (n), 323 IPC and Section 506 IPC along with Section 66-E of the Information Technology Act. He is also convicted for the offence punishable u/s.5(1)(n) and 6 of the POCSO Act and has been sentenced to undergo RI for 20 years and is directed to pay fine of Rs.20,000/-, in default to undergo SI for six months.

In the wake of the sentence being imposed under the POCSO Act, no sentence imposed though being convicted u/s.12 of the POCSO Act and Section 66E of the Information Technology Act as well under Section 323 and 506 of the IPC.

2 Heard learned counsel for the applicant, learned counsel for respondent no.2 and the learned APP.

3 The prosecution case which could be culled out from the impugned judgment dated 13/12/2022, would reveal that the victim girl was 17 years old at the time when the incident took place, her date of birth being brought by the prosecution through PW 2 as '6/3/2000'. The applicant is her brother-in-law i.e. her sister's husband, who was married in May 2012 and it was a love marriage.

The victim girl was pursuing her education in 10th Std and was friendly with a male person. The applicant is alleged to have told her that she should not indulge with any male except him and if she does so, she will face dire consequences. He also threatened her that he would make this relationship known to her family members and she assured him that in return, she would act as directed by him.

She was asked to break up with her male friend. Thereafter, it is the case of the prosecution that one day, when she was alone at home, he committed forcible sexual intercourse with

her and she did not mention about this incident to anyone, since she thought that this would bring her sister's marriage into turmoil. Thereafter, the act was repeated on several occasions and she was forced to accompany him to several lodges, hotels and the prosecution allege that on 10 to 12 occasions, the sexual assault was committed by threatening her and by taking her semi-nude photographs with the threat being administered that they would be made known to the public. In the month of December 2017, when she was unable to bear the pressure and was not able to focus on her studies, she disclosed the incident to her mother and that is how the applicant was roped in.

4 For establishing the case of the prosecution, the victim deposed as PW 1 and though, she concede to the fact that she did not report about the incident to any member in the family, she has offered an explanation for that. She specifically deny a suggestion that she consented to the physical relationship on account of the love that had blossomed between them. Though she admit that she accompanied the applicant on several occasions and they had visited at distinct public places outside Nashik. She also gave an admission that she was careful in not making their meetings known to the family members which included their chatting and mobile conversation.

In order to establish that the victim girl was minor, PW 2 has been examined who has produced on record, the birth certificate (Exhibit-42) which has disclosed the age of the victim

girl to be '6/3/2000' and though Mr.Joshi tried to vehemently canvass that except this document which has referred to the girl as 'female', there is no proof that it is her birth certificate. It can be clearly seen that the female child is born to Leelabai Keshav Ugale and Keshav Shripad Ugale on 6/3/2000 in Dr.Gupta Hospital, Chehedi, Nashik Road.

Though the witness has been subjected to cross-examination, the Sessions Court did not find it sufficient to discredit his version and so also, Exhibit-42 which was brought on record through him.

5 The applicant in his statement u/s.313 has denied the case of the prosecution, but did not examine any witnesses on his behalf and except, stating that the incident has been blown out of proportion, he has no explanation to offer.

The medical report at Exhibit-34 where the hymen is shown to be torn, being accepted by the accused during the trial, no medical expert has been examined. The Sessions Court also had an opportunity to view the CD which was produced before the Court, which contained nude and semi-nude photographs of the victim which were stored in the phone of the accused which was duly recovered vide Exhibit-50 and 51.

6 In the wake of the material that has surfaced on record, the trial Judge took into account an important aspect of the matter, being that the victim girl was below 18 years and

hence, 'a child' within the meaning of POCSO Act. Though the defence put up was that the relationship was consensual, accepting the version of the complainant, who was a minor, the Court construed that her consent was immaterial and as far as the cloud being raised about the date of birth, the Court clearly recorded a finding that the accused has failed to discharge the burden cast on them u/s.29 and 30 of the POCSO Act.

Finding him guilty of committing aggravated penetrative sexual assault, he deemed it appropriate to impose the befitting sentence, to undergo Imprisonment of 20 years along with fine.

7 On appreciation of the material that is placed on record through the judgment which has sufficiently established the case of the prosecution beyond reasonable doubt and the only defence adopted by the accused, being the consensual relationship, in my considered opinion, has been rightly brushed aside by Sessions Court, since the POCSO Act deal with the instances of sexual assault upon the child and make it an offence punishable u/s.4, 6, 8, Section 10 and 12 of the Act.

The sexual intercourse with the victim girl, not being denied and the medical certificate produced on record is specifically admitted, the argument that, it was consensual relationship, is not worth consideration, since the act committed on a minor girl in the nature of penetrative sexual assault on

multiple times, has been rightly considered to be an offence and the accused stand punished for that.

8 Considering the relationship shared by the applicant along with victim girl, she has filed an affidavit expressing her consent for releasing the applicant on bail. I am not impressed by the said affidavit since merely because of the relationship between the trio i.e. the applicant, and his wife and the victim, which is definitely a sensitive one in nature and it can just be left to one's guess as to why the victim girl has accorded no objection for releasing the applicant on bail.

However, considering the fact that the offence has been committed within the meaning and scope of the POCSO Act, the applicant having been found guilty with the presumption of innocence no longer being available to him, as in the wake of the evidence placed before the trial court, a finding of conviction has been clearly recorded. I do not deem it expedient to consider the application and secure his release on bail only on the ground that throughout the trial, the applicant was on bail.

Hence, Application is rejected.

(SMT. BHARATI DANGRE, J.)