
Vadira Vs State Of Rajasthan

Criminal Miscellaneous Suspension Of Sentence Application (Appeal) No. 1184 Of 2019

Court: Rajasthan High Court

Date of Decision: Feb. 18, 2020

Acts Referred:

Indian Penal Code, 1860 “ Section 376D#Protection of Children from Sexual Offences Act, 2012 “ Section 6#Code Of Criminal Procedure, 1973 “ Section 389

Hon'ble Judges: Sandeep Mehta, J; Vijay Bishnoi, J

Bench: Division Bench

Advocate: Amardeep Lamba, Anil Joshi

Final Decision: Allowed

Judgement

Heard learned counsel for the applicant-appellant and learned Public Prosecutor on the application for suspension of sentences.

Learned counsel for the applicant-appellant has submitted that the trial court has grossly erred in convicting and sentencing the applicant-appellant for

the offences punishable under Section 376D IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

It is submitted that there was a delay in filing the complaint; there is interpolation in the date mentioned in the same and no satisfactory explanation

regarding said interpolation was given by the complainant and other witnesses.

Learned counsel for the applicant-appellant has further submitted that mother of the prosecutrix PW.1, in her court statements, has specifically stated

that in relation to the crime committed by one Gula, a Panchayat was convened, wherein it was decided that Rs.60,000/- would be given to them by

Gula, however, Gula died and the said amount was not given to them, therefore, this report was lodged. It is submitted that PW.1 has not stated

anything against the applicant-appellant.

It is also submitted that the prosecutrix in her cross-examination has admitted that she did not know the applicant-appellant and Gula before the alleged

incident and for the first time, she saw them on the day of the incident, whereas the Investigating Officer PW.11 Ranjeet Singh has admitted in his

statement that he did not conduct test identification of the applicant-appellant.

Learned counsel has further submitted that father of the prosecutrix PW.4 in his court statement has specifically stated that Gula died and his family

was demanding Rs.21,00,000/- from him but he gave Rs.65,000/- to them and thereafter the complaint was lodged. In his cross-examination, PW.4

has also admitted that Gula wanted to contract Nata with the prosecutrix and when they refused, he committed suicide. He has further stated that

they demanded money from the family of applicant-appellant but when the money was not given to them, they lodged this complaint. The said witness

had feigned ignorance about the date of birth of his daughter.

Learned counsel has argued that from the above piece of evidence, it is clear that the prosecutrix and deceased Gula were in relation, however, when

the parents of the prosecutrix refused to contract Nata of both of them, Gula committed suicide and his family members demanded and took money

from the parents of the prosecutrix, then this FIR was lodged. Learned counsel for the applicant-appellant has also submitted that the applicant has

falsely been implicated in this case because he was with the family of the deceased Gula in settling the dispute in the Panchayat.

Learned Public Prosecutor has opposed the bail application.

PW.1 mother of the prosecutrix has only stated about the crime committed by Gula and has not named the appellant. PW.2 prosecutrix, in her

statement, has specifically stated that she did not know the deceased Gula and the applicant-appellant prior to the incident and saw them for the first

time at the time of incident and the Investigating Officer PW.11 Ranjeet Singh, in his court statements, has admitted that he did not conduct test

identification of applicant-appellant. PW.4 father of the prosecutrix in his statement has stated that they demanded money from the family of the

applicant-appellant but when they did not give money, the complaint was lodged.

Upon a consideration of the arguments advanced on behalf of the appellant, having regard to the facts and circumstances of the case and gone

through the statements of the aforesaid witnesses, without expressing any opinion on the merits of the case, we are of the opinion that the grounds on

the basis of which this appeal has been filed, are prima facie found to be strong, hence, it is a fit case for suspending the sentences awarded to the

convict- appellant.

Accordingly, the application for suspension of sentence filed under Section 389 Cr.P.C. is allowed and it is ordered that the sentences awarded by

learned Special Judge (Protection of Children from Sexual Offences Act, 2012) No.2, Udaipur vide judgment dated 23.07.2019 in Sessions Case

No.130/2018 against the appellant-applicant Vadira son of Makna, shall remain suspended till final disposal of the aforesaid appeal and he shall be

released on bail, provided he executes a personal bond in the sum of Rs.40,000/- with two sureties of Rs.20,000/- each to the satisfaction of the

learned trial Judge for his appearance in this Court on 19.03.2020 and whenever ordered to do so till the disposal of the appeal on the conditions

indicated below:-

1. That he will appear before the trial Court in the month of January of every year till the appeal is decided.
2. That if the applicant changes the place of residence, he will give in writing his changed address to the trial Court as well as to the counsel in the

High Court.

3. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.

The learned trial Court shall keep the record of attendance of the applicant-applicant in a separate file. Such file be registered as Criminal Misc. Case

related to original case in which the applicant-applicant was tried and convicted. A copy of this order shall also be placed in that file for ready

reference. Criminal Misc. file shall not be taken into account for statistical purpose relating to pendency and disposal of cases in the trial court. In case

the applicant-appellant does not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.