

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

CRIMINAL APPEAL NO. 728 OF 2016

Khalid Ahmed Mohd. Hanif
Julaha, age: 25 years, Occ:
Labour, R/o Plot No.92,
Gulshan-E-Hanif, Chalisgaon
Road, Garibnawajnagar, Dhule,
Tq. and District Dhule.

Appellant

Versus

The State of Maharashtra,
through Azadnagar Police Station,
Dhule City, Dhule.

Respondent

Mr. Amol S. Mali, advocate holding for Mr. D. S. Bagul,
advocate for the Appellant
Mr. R. D. Sanap, APP for the Respondent.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 01st September, 2023.

JUDGMENT :

1 The appellant-accused, in this appeal, is
challenging the judgment and order dated 19.09.2016, passed
by the learned Additional Sessions Judge, Dhule (herein after
referred to as “the learned Trial Court”), in Special Case No.
12/2015.

2 The appellant-accused is convicted for the offence punishable under Section 363 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 05 years and to pay fine of Rs.3000/-, in default, to suffer simple imprisonment for one year. He has also been convicted under Section 354-A of the Indian Penal Code and under Section 12 of the Protection of Children From Sexual Offences Act, 2012 (herein after referred to as, “the POCSO Act”) and sentenced to suffer rigorous imprisonment for 03 years and to pay fine of Rs.2000/-, in default, to suffer simple imprisonment for one year, on each count.

3 According to the prosecution, the incident had taken place on 18.01.2015 at about 9.30 a.m. The complainant, who is the mother of victim, lodged a complaint contending that on the day of the incident, the victim had gone to Madarsa near Bahera Madina Masjid. At about 9.00 a.m., when the victim came home weeping, the complainant inquired with her and she told that while coming home from

Madarsa, accused-appellant Tipu caught her and taken her to the terrace of construction site through the lane in front of A to Z Kirana shop. He then showed her currency note of Rs.10/- and kissed her. The accused-appellant also removed her salwar but as the victim shouted, the accused ran away. The complainant P.W. 1 then narrated the incident to her brother-in-law Mohammad Ali and in the evening when her husband came home, they went to Police Station and lodged report about the said incident. On the basis of said complaint, Crime No. 11/2015 was registered for the offences punishable under Sections 363, 354-A of the Indian Penal Code and under Sections 8 and 12 of the POCSO Act. On completion of investigation, charge sheet against the appellant-accused was filed. The learned trial Court conducted the trial and convicted the appellant-accused, as aforesaid. Hence, this appeal.

4 The learned Counsel for the appellant-accused strongly submits that the learned Trial Court has definitely erred in convicting the appellant-accused by relying too much

on the evidence of complainant as well as victim though there were exaggerations and additions in their evidence. He pointed out that the victim, in her cross examination, had admitted that when she was taken to the terrace, she was shouting for help, but the learned trial Court did not pay attention to the said fact and also did not raise any doubt as to how nobody from nearby area came to the rescue of the victim after hearing her shouts. According to him, the prosecution has not proved guilt of the accused beyond reasonable doubt. As such, he prayed for setting aside the conviction of the appellant-accused.

5 On the contrary, learned A. P. P. has supported the impugned judgment and found the evidence of P. W. 1 – complainant and P. W. 4 – victim satisfactory and reliable. According to him, prosecution has established the case beyond all reasonable doubts. He, therefore, prayed for dismissal of the appeal.

6 Heard rival submissions and perused entire oral

and documentary evidence on record.

7 On going through the entire material on record, it appears that the victim i.e. P. W. 4 has stated that at the time of incident, she was taking education in 4th standard in National Primary School. Obviously, it means that the victim was minor at the relevant time. According to her, she used to attend Madarsa at about 9.00 a.m. and to come back from Madarsa at about 11.00 a.m. She has deposed that the appellant-accused Tipu had taken her on the terrace of new construction site near A to Z Kirana shop and removed her salwar up to the knee and by his tongue touched her private part. She has also stated that the accused-appellant entered his tongue into her mouth and pressed her breasts with his hands. According to her, the accused-appellant had given currency note of Rs.10/- to her and after the incident, he had given threatening to her that she should not disclose anything to her mother. According to the complainant i.e. P. W. 1 – mother of the victim, the victim, on the day of the incident, had gone to Madarsa at about 8.00 a.m. and on that day,

since she was suffering from fever, she started coming back to home at about 9.00 a.m. According to her, the victim told her that the accused-appellant Tipu caught her and took her to the terrace of construction site near A to Z kirana shop and removed victim's salwar and kissed her on lips. The accused also gave Rs.10/- to her. Thus, considering the evidence of P. W. 1 and P. W. 4, it appears that though there are certain exaggerations made by the victim by additionally stating that the accused-appellant touched her private part with his tongue and also pressed her breasts by his hands, but these things are not in the evidence of P. W. 1 – complainant.

8 It is significant to note that though there are certain exaggerations or additions in the evidence of victim, as aforesaid, but the learned trial Court, after having added charge under Section 376 (1) of the Indian Penal Code and under Section 4 of the POCSO Act, has refused to believe the same and has acquitted the appellant-accused for the offences punishable under Sections 376 (1) of the Indian Penal Code and under Section 4 of the POCSO Act. Though

such additions are not proved, but P. W. 1 – mother of the victim and the victim herself have corroborated each other on the fact of removal of salwar and kissing the lips. The very acts performed by the accused definitely attract the ingredients of Sections 363, 354-A of the Indian Penal Code and Section 12 of the POCSO Act, for which he is convicted.

9 There are certain admissions given by the victim, that she shouted when the accused was taking her to the terrace. The learned Counsel for the appellant-accused submitted that despite such shouts, it was highly improbable that nobody from the nearby vicinity had come to the rescue of the victim. Though such admission about shouting is there in the cross examination of victim, but that is not on the material aspect and when the victim and her mother are firm about the act of the accused of removing salwar of the victim and kissing her lips, no much significance can be given to the submission of the learned Counsel for the appellant-accused, as aforesaid.

10 In addition to the evidence of complainant as well as victim, evidence of P. W. 5 i.e. the Investigating Officer is also supporting to the case of the prosecution since he had mentioned in the arrest panchanama at Exhibit-19 that the pet name of the accused-appellant was Tipu Ansari. It is significant to note that the victim has also referred the name of the appellant-accused as Tipu and has also identified him by that name in the open Court. Moreover, the spot panchanama is also proved by one of the pancha witnesses i.e. P. W. 2.

11 Thus, considering all the evidence on record, it appears that the learned Trial Court has rightly convicted the appellant-accused for the offences punishable under Sections 363, 354-A of the Indian Penal Code and under Section 12 of the POCSO Act. Further, it appears that the learned Trial Court has rightly acquitted the appellant-accused from serious offence under Section 376(1) of the Indian Penal Code and Section 4 of the POCSO Act labelled against him on the additions made by the victim in her evidence.

12 It is extremely important to note that the learned A. P. P., by tendering the report of Superintendent of Nasik Road Central Jail, has pointed out that the appellant-accused has already undergone the sentence of imprisonment imposed upon him by the learned Trial Court and he has been set free on 17.04.2019 i.e. during the pendency of this appeal.

13 In view of the same and on going through the entire material on record, I am of the opinion that there is no reason to interfere with the impugned judgment of the learned Trial Court.

14 In the result, the appeal, being devoid of merit, stands dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

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