

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1260 OF 2023

Raj Johri Patel ... Appellant
versus
The State of Maharashtra & Anr. Respondents

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Mr. B. J. Shaikh a/w. Mr. Santosh S. Madkami, Advocates for the Appellant.
Mr. H.J. Dedhia, APP for the State.
Mr. Dushyant Pagare, Advocate for the Respondents.

CORAM : R. M. JOSHI, J.

DATE : 24th NOVEMBER, 2025.

P.C. :

1. The appellant / accused being aggrieved by the Judgment and Order dated 06.05.2023 passed by the Special Judge (POCSO) thane in Special Case (POCSO) No. 187 of 2018 has preferred this appeal in connection with Crime No. I-299 of 2018 registered with Kashimira Police Station for the offences punishable under Sections 377 and 324 of Indian Penal Code, 1860 read with Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”).
2. The accused is brother-in-law of victim who is aged about 13 years.

According to the First Information Report (FIR) lodged by the victim, accused abused and assaulted her on several occasions and also committed sexual assault on her including incident of unnatural sexual intercourse. Investigation into the said crime was done. Statements of victim and other witnesses were recorded. Spot panchnama was prepared in the presence of panch witnesses. The victim was referred for medical examination and medical papers were included in the investigation papers. On conclusion of the investigation, chargesheet is filed against the accused before the competent Court.

3. Learned Trial Court framed charge at Exhibit-3. The accused abjured the charge. The prosecution in order to bring home guilt of the accused led evidence of 10 witnesses including victim Sangita Vishvakarma, PW-1 (Exhibit-34), Sagar Soni, PW-6 (Exhibit-72) neighbor, Dr. Sadhana Thorat, PW-7 (Exhibit-74), age determination of victim, Rammilan Sharma, Headmaster of the school, PW-11 (Exhibit-119- School record to prove date of birth of victim), Dr. Gunjan Bahuguna PW-9 (Exhibit-87) who clinically examined victim, panch witness and Investigating Officer. On the basis of evidence on record Trial Court accepted guilt of accused and convicted him for the same.

4. Learned counsel for the appellant / accused submits that except for the evidence of the victim, there is no evidence to indicate the involvement

of the appellant in the crime. It is submitted that statement of the victim on various particular is not supported by any corroborative material. It is also claimed that original statement recorded under Section 164 was not brought before the Trial Court. It is his contention that the victim herself was kept in correction home on account of allegation of theft of mobile phone and therefore her testimony is not reliable. At these amongst other contention, learned counsel for the appellant seek acquittal.

5. Learned APP and learned counsel for the respondent No.2 supported the impugned Judgment and Order of conviction. According to them testimony of victim is unblemished and moreover supported by the medical evidence on record. It is also argued that evidence of the victim about neighbors having known to the atrocities done to her gets support from evidence of PW-6 Sagar. It is their contention that the medical evidence conclusively establishes the act of assault as well as unnatural sex committed by the accused with victim. It is contended that in the absence of any contrary evidence, in view of section 29 and 30 of POCSO Act, the challenge to the conviction does not deserves any merit.

6. In order to prove the offence under the POCSO Act, prosecution was required to prove the age of the victim to be below 18 years. For this purpose prosecution has placed reliance on the evidence of Dr. Thorat who conducted radiological examination / ossification test in order to

determine age of the victim. According to her the age of the victim was 14 to 15 years with margin of error of two years either side. Her evidence indicates that even if margin of error is considered by plus two years, still the victim was minor. There is further evidence led by the prosecution by examining headmaster of the school wherein the victim was studying. The school record indicates date of birth of the victim to be 22.11.2002. There was no reason for the parents of the victim to record the said date of birth of the victim incorrectly at the time of her admission in the school. Apart from this, there is nothing brought on record by the accused in the cross examination of these witnesses to discard their testimony. The evidence on record therefore conclusively proves the age of the victim to be below 18 years and that the provisions of POCSO Act apply to the present case.

7. The victim in her substantial evidence before the Trial Court narrated in detailed incidents of physical and sexual assault on her by the accused, who would happened to be husband of her sister. She gave details as to how the incident of assault occurred and her sister after coming back home gave medication to her. She specifically states about the neighbors gathering near the house in one of such incidents. This evidence of the victim gets support from the testimony on Sagar, PW-6, who deposes about having heard cries of the victim. In the cross examination, it was suggested that the cries / screaming was not of victim

but was of some other person which denied by the witness. This shows that there is no dispute made by the defence about the cries /screaming at the relevant time. This supports victim's contention that on one of such occasion neighbors did gather at the spot.

8. Victim clearly states about she being physically and sexually assaulted and unnatural sexual intercourse being done with her. This evidence of the victim gets support from the testimony of Dr.Bahuguna who had clinically examined the victim. On her testimony it is clear that there is support to the case of the victim about unnatural sex with her by the accused. Medical Officer has also categorically recorded following injuring being seen on the person of the victim which reads thus :

- “(1) Abrasion of size 8 x 3 cm. Rectangular shape obliquely placed over right buttock medially with granulation tissue at base of abrasion, age of abrasion is more than 7 days.
- (2) Abrasion with black scab present over right buttock laterally of size 6 x 2.5 cm, age appears to be more than 7 days.
- (3) Contusion of size 3 x 2 cm. Over upper 1/3rd of leg black in colour on extensor aspect of left side, age appears to be more than 7 days.
- (4) Contusion of size 4 x 2 cm. Over mid 1/3rd of leg on ventral aspect anteriorly black in colour, age appears to be more than seven days.
- (5) Contusion of size 6 x 12 cm. Black in colour noted over left thigh posterior aspect, age more than 7 days.
- (6) Abrasion of size 1 x 3 cm present over left elbow extensor aspect, age appears to be more than 7 days.
- (7) Abrasion of size 6 x 1 cm over right wrist radial aspect, age appears to be more than 7 days.

All the injuries 1 to 7 were more than 7 days old.”

The injuries caused to the victim include the burn injuries which

corroborates her statement about she being severely assaulted by the accused.

9. Nothing is brought on record by the defence in order to hold that the victim had any motive to falsely implicate the accused in this crime. Having regard to the evidence on record, this Court finds no hesitation to hold that the testimony of victim is not only trustworthy & reliable but the same is also supported by the medical evidence on record and as such conviction recorded by the learned Trial Court against accused for the offence charged does not deserves interference.

10. At this stage, learned counsel for the appellant submits that the appellant has already undergone sentence of more than 8 years. He further submits that since the minimum sentence at the relevant time was 5 years, the sentence undergone by the appellant would be sufficient. He claims that conduct of appellant in jail is satisfactory. This contention is opposed by the learned APP and learned counsel for the respondent No.2. However, learned APP does not dispute the fact that the appellant has already undergone sentence of 8 years 2 months and 11 days including period of remission.

11. The appellant has been convicted for the offence punishable under Section 4 of POCSO Act which at the relevant time had minimum punishment of imprisonment of 5 years. Here in this case, the appellant

has undergone more than 5 years of imprisonment. Having regard to the said fact as well as considering the age of the appellant and his conduct in jail, the sentence already undergone by the appellant would be sufficient to will meet ends of justice. Hence following order :

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Judgment and Order of conviction of appellant is maintained.
- (iii) The appellant is sentenced to suffer rigorous imprisonment for the period already undergone, including imprisonment for default in non payment of fine.
- (iv) The appellant be released from Jail forthwith if not required in any other crime.

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(R. M. JOSHI, J.)