

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 843 OF 2017

Parshuram Kautikrao Pawar & Anr. ...Appellant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr Ajay Talreja, Appointed Advocate, for the Appellant.
Mr Ashok S. Gawai, APP, for Respondent No. 1-State.
Mr Sushan Mhatre, Appointed Advocate, for Respondent No. 2.

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CORAM: R. M. JOSHI, J.

DATE: 17TH FEBRUARY 2026.

PC:-

1. The Appellant/convict takes exception to the Judgment and order dated 7th September 2017 passed in POCSO Special Case No. 146 of 2014 whereby he was convicted for the offences punishable under Section 354A(2) of the Indian Penal Code (for short "IPC") and for the offence under Section 7 punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") and sentenced to suffer imprisonment of three years with fine and default sentence.

2. It is a case of the prosecution that victim, who was studying in 5th standard in year 2014 was going to school by school bus with her friends. The accused was one of the conductors/cleaners

deputed on the said school bus. On 6th February 2014, while victim along with her friends was returning to home in the school bus, she found that accused had consumed liquor. She claims that accused pulled her hair and moved his hand over her chest, which was also noticed by her friends. After having noticed the same victim got down from the bus before her regular stop and informed the said incident to the mother of her friend. Thereafter, mother of the victim was communicated the incident by victim as well as mother of her friend.. On the next day, i.e., on 7th February 2014, father of victim along with victim went to the school and met Principal of the school. They were advised to file a complaint to the police. Accordingly, First Information Report ('FIR' for short) came to be lodged with Mulund Police Station. Crime was register vide CR No. 83 of 2014. Investigation in the said crime was conducted by a woman police officer. She recorded statements of victim and other witnesses. The victim was sent for medical examination. On conclusion of investigation charge-sheet came to be filed before the competent Court.

3. Charge was framed against the accused vide Exh. 6. Since accused abjured the charge, the prosecution examined eight witnesses and also relied upon documentary evidence. Incriminating circumstances were put the accused in his statement under Section 313 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."). Learned trial Court found evidence led by the prosecution to be sufficient to prove the guilt of the accused

beyond reasonable doubt and hence, recorded conviction against him by impugned Judgment and Order.

4. Learned Counsel for the Appellant submits that there is 19 hours delay in lodging of the FIR and, therefore, it creates doubt genuineness thereof. It is his further contention that there are inconsistencies in the statement of victim as compared to her earlier statement, so also, the statement/evidence of the informant as well as PW-3, who is mother of victim's friend. According to him, the prosecution has not examined on the alleged eye witnesses of the incident and non examination of female friend of the victim makes the case of the prosecution doubtful. It is submitted that she was the best witness but was withheld by the prosecution without any explanation. He drew attention of the Court to the cross-examination of victim wherein she admits that whenever the children were playing and shouting in the bus, the bus cleaner used to scold us and that they used to inform about the same to their parents. This, according to him, is reason for lodging report and the possibility of the accused/Appellant be falsely implicated on this count is not ruled out. On these amongst other submission he seeks acquittal of the accused.

5. Learned APP and learned Counsel for respondent No.2-victim supported impugned Judgment and Order. It is their contention that there is no dispute made by the defence with regard to the age of the victim to be below 18 years and the provisions of POCSO Act rightly invoked in this case. They took

this Court through the evidence recorded before the trial Court to submit that the evidence of victim is consistent to her previous statement so also, statement of the witness, i.e., the boy who was present at the time of occurrence of the incident. It is pointed out that the victim got down at the earlier stop than to her regular stop and disclosed occurrence of the incident immediately to PW-3. Evidence of PW-3, and this, according to them, supports the version of victim in regard to occurrence of incident. It is argued that it was not necessary for the prosecution to examine all witnesses to the incident and examination of the boy, who also witnessed the said incident, is sufficient to prove the guilt of the accused. Lastly, it is contended that there is no delay in lodging of the FIR nor any reason is brought on record by the defence for false implication of the Appellant/accused in this crime.

6. The law on the point of appreciation of evidence of the victim of a sexual assault is fairly settled to say that if the evidence of the victim is wholly reliable and free from doubt, it can become sole basis of the conviction of the accused. Keeping in mind the said principle, so also, requirement for the prosecution to prove the guilt of the accused beyond reasonable doubt, the evidence led before the trial Court is assessed/evaluated.

7. Evidence of informant (PW-1) and FIR lodged by her indicates that the incident in question has occurred on 6th February 2014 at about 6:00 p.m. It is thereafter the victim disclosed the said incident to her mother. The father of the victim was informed

about the same over phone. However, father of the victim came home late in the night. On the next day, he took the victim to the school and thereafter went to the police station for lodging report. Informant in her substantive evidence before the trial Court provides explanation for not lodging the report immediately. The sequence of events that is apparent from the evidence on record is self explanatory. In the facts of case it cannot be said that there was any delay much less any deliberate delay on the part of the informant to lodge report. It is settled position of law that causing of delay in lodging report by itself would not become a ground for discarding the case of prosecution. The conduct of the parents of the victim is that of a prudent person. The father of the victim took the victim to the school and met Principal of the school intimating the Principal about the occurrence of the incident. It is thereafter they went to the police station and lodged report. Thus, no fault can be found from the act of the parents of the victim of the lodging of the report on the next date of the incident. Moreover, there is absolutely no material on record to hold that the report has been lodged with *mala fide* intention or any ulterior motive. The facts appearing from evidence on record clearly explain the time taken for lodging of report and, hence, accused would not be entitled to get any benefit from the same.

8. Victim in her deposition before the trial Court gives narration of the incident and the manner in which it occurred. She states that when she was studying in 5th standard, on the fateful day while returning home from school in the bus, there were only

three students left in the bus including victim. She further states that she along with her female friend was sitting on the last seat of the bus and the boy was sitting in front. She claims that while the bus was in motion the conductor/cleaner came towards her and while coming he was seen falling. When he came closed to her, she perceived the smell of liquor. She specifically states that the accused pulled her hair and thereafter put his hand on her shoulder and moved his hand on her chest. She then states having seen mother of the boy outside the bus. The said lady stopped the bus and along with the boy, the victim as well as the female friend of the victim alighted from the bus. Immediately after getting down from the bus, she caught hold of the hand of the mother of the boy and disclosed the occurrence of the incident to her immediately.

9. The said version of the victim gets support from PW-3, who states on oath before the trial Court that on 6th February 2014, when her son and victim got down from the bus she was crying and hugged her. The witness further states that the victim disclosed to her about the incident which has occurred in the bus and the acts done by the accused to her. There is further corroboration to the version of victim from the evidence of PW-4, i.e., the boy who was travelling in the bus at the relevant time. He confirms the fact that at that time only three children remained in the bus. He further specifically states about the conductor touching body of the victim and also pulling her hair. He also states that all three children got down from the bus and he and

victim were crying at that time. He further deposes about the incident being disclosed to his mother.

10. In the cross-examination the victim admits that there used to occur instances wherein the conductor used to scold the children whenever the children were playing in the bus. She, however, denies that because of the same she has any grudge against the conductor. First of all, there is no sufficient/cogent reason brought on record to falsely involve accused and, moreover, there was nothing brought on record by the defence to disbelieve or discard evidence of the victim. Apart from the fact that the evidence of the victim is consistent to the previous statement, the same gets due support from evidence of PW-4 and PW-3.

11. As far as the arguments advanced by the learned Counsel for the Appellant with regard to the non examination of the girl, who was present in the bus is concerned, section 134 of Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact. It is thus clear that examination of any particular number of witnesses to prove a fact is not contemplated. What is material is the quality of the evidence and not quantity thereof. The prosecution has examined victim to substantiate the occurrence of the incident as claimed by the informant in the FIR. There is corroboration to her version from the evidence of the boy witness and the evidence of his mother. The prosecution, therefore, has sufficiently proved the

occurrence of the incident. In such circumstances, non examination of the girl witness, who was present in the bus, is inconsequential and, in any event, does not affect the genuineness of case of prosecution.

12. The evidence led by the prosecution unerringly indicates that the victim was studying in 5th standard. The age of the victim at the relevant time was 11 years. The defence during the trial has not raised any objection with regard to the fact that victim is a minor and hence child under Section 2(d) of the POCSO Act. Even in the statement of the accused under Section 313 of the Cr.P.C., he does not dispute the fact that the victim was studying in 5th standard at the relevant time. The provisions of POCSO Act are therefore, rightly invoked in the present case. Section 29 of the Act provides for presumption of the guilt of the accused prosecution for the offences under Sections 3, 5, 7 and 9. Once the prosecution proves the fundamental and foundational facts the onus would shift upon the accused to rebut the presumption under the said provision. Herein this case, there is absolutely no evidence on record in order to hold that the accused/Appellant has been falsely implicated in this crime.

13. The evidence of the victim is wholly reliable and it get supports from the other evidence on record in the form of testimony of the the boy, who was present in the bus, so also, his mother to whom immediately the occurrence of the incident came to be disclosed by the victim. This Court, therefore, finds no

hesitation to hold that the prosecution has proved the guilt of the accused beyond reasonable doubt. The defence/accused on the other hand, has failed to rebut the presumption under Section 29 of the Act and consequently, this Court finds no reason or justification to cause inference in the impugned Judgment and Order of conviction.

14. At this stage, there is nothing on record to indicate the exact period of imprisonment undergone by the Appellant/accused and hence, it would be appropriate to direct to undergo the remaining sentence, if any. Hence, the following order.

ORDER

- (a) The Appeal stands dismissed.
- (b) In case the Appellant has not undergone the entire sentence imposed against him by the impugned Judgment and Order, it be ensured that he undergoes the same.
- (c) The Appeals stands disposed of accordingly.
- (d) R & P be sent back to the Trial Court.

15. In view of disposal of the Appeal, pending Interim Applications, if any, shall also stand disposed of.

(R. M. JOSHI, J.)