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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 330 of 2015.

John @ Vivek Ramesh Jadhav
Age 30 years, Occu:Security,
residing at Vasantnagar, Opp.
Railway Station, Baramati,
Taluka Baramati, District Pune
at present in Yerwada Central
Prison, Pune.

..Appellant.

Vs

The State of Maharashtra
At the instance of Baramati City
Police Station, District Pune
vide C.R. No. 109/2013,
tried in Special Case No.59/2014
(old Spl.Case No.36/2014.)

..Respondent.

Mr B. A. Lawate, Advocate for the Appellant.
Mr A.R. Patil, A.P.P., for the State.

CORAM : A.R.JOSHI, J

DATE : 11th SEPTEMBER, 2015

ORAL JUDGMENT.

1) Heard learned counsel for the appellant and also
heard learned APP for the State.

2) This is an appeal preferred by the appellant-accused challenging his conviction for offence punishable under section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act” and for offence under section 506 of IPC. For the offence under section 10 of the POCSO Act, he is sentenced to suffer RI for five years and to pay fine of Rs.1000/-. For offence under section 506 of IPC he is sentenced to suffer RI for one year and to pay fine of Rs.1000/-. As the trial Court had convicted the accused for aggravated sexual assault and awarded punishment under section 10 of the POCSO Act, no separate sentence was imposed under section 354 of IPC and also under section 8 of the POCSO Act.

3) The case of the prosecution is that in the afternoon of 21st April, 2013 when the prosecutrix girl, then aged about 8 years, had come out of her house for collecting some leaves of a tree for playing, the accused called her in his room and closed the door from inside. He made the girl to sit on Sofa by the side. Then he told her to take his penis in her mouth. He also touched the breast of the child. He also gave threats to the child that if she would disclose the things to anybody, he would kill her family members. He also told the child to come to his house everyday and remove the clothes. It is also the case of the prosecution that PW 1 complainant, mother of the

child searched for the child on that afternoon. She came out of the house and over heard what the accused was telling the child. She reached near the house of the accused after entering the compound of his house. According to said witness, she over heard that the accused was threatening the child of killing her family and also telling the child that the child should come to his house everyday and remove the clothes. On allegedly listening this, PW 1 pushed the door of house of the accused. It was opened by the accused. PW no.1 saw her daughter prosecutrix sitting on the Sofa. She took the daughter back to her house and reported matter to her husband over telephone. Within 10 to 15 minutes husband of the complainant came home and on that evening the prosecutrix and her parents went to the police station. The complaint was lodged on that night. Initially, the offence was registered against the appellant for the offences under sections 4 and 8 of the Protection of Children from Sexual Offences Act. After completion of the investigation charge-sheet was filed.

4) During the trial, application is preferred by the prosecution for adding the charge of 'aggravated sexual assault' and it was alleged that the accused has committed an offence of aggravated sexual assault punishable under section 10 of the Protection of Children from Sexual Offences Act.

5) Four prosecution witnesses were examined. PW no.1 is the complainant, PW no.2 is the victim child, then aged about 8 years, PW no.3 is the panch witness and PW no.4 is the Investigating Officer. Admittedly, there is no medical evidence as to the examination of either the prosecutrix girl or the appellant-accused.

6) The trial Court believed the story as narrated by the child. Virtually all the contents of the FIR have been narrated by the child during her substantive evidence before the Court. It is significant to note that the age of the prosecutrix girl PW no. 2 is eight years. She was not administered oath considering her understanding capacity as to the sanctity of the oath. Also the substantive evidence of PW no.1 is in consonance with what is mentioned in the FIR. However, during the cross-examination of PW no.1, the strained relations between the parties were brought on record. It is admitted position that the present appellant-accused is the landlord of the Chawl where in one of the rooms the parents of the victim girl reside as tenants. It was suggested during the cross-examination of PW no.1 that there were arrears of rent and the landlord was demanding arrears of rent to the father of the girl and also the landlord had asked the father of the girl to vacate the premises. On this count, there was dispute. In the considered opinion of this Court, this was the probable

defence raised on behalf of the accused and the prototype evidence of PW no. 1 and 2 would have been critically examined by the trial court in the light of the said defence. However, the trial Court has failed to appreciate the said evidence and believe the testimony of the child witness. Whatever is the evidence of PW no.1 complainant mother, is in fact hearsay evidence, as according to her, entire events were narrated by the child after the child was taken back to home by her mother PW no.1. As such in fact the entire case of the prosecution rests only on the substantive evidence of child witness PW no.2, then aged about 8 years. In the opinion of this Court, it will be definitely risky to rely upon the evidence of child when there is no other corroborative evidence, moreover, there could not have been any medical evidence in the case considering the allegations.

7) The trial Court had disbelieved the allegations against the appellant-accused that he asked the child to take his penis in her mouth. If the trial Court had disbelieved this part of the story then there was nothing to accept the other story as to the accused touching the breast of the child. In the considered view of this Court, when the offence is of serious nature and attracting minimum punishment for five years and maximum it can be up to seven years, great care and caution would have been taken by the trial Court while appreciating

the evidence of the child witness. In the opinion of this Court, it must be said that the trial Court had fallen in an error in appreciating the evidence brought before it and as such the said judgment and order is required to be interfered with in this appeal.

8) Consequently, the present appeal must succeed and same is accordingly disposed of with the following order:-

: ORDER:

- (i) The impugned judgment and order is quashed and set aside;
- (ii) The appellant-accused is acquitted of the offences charged and he be released from jail custody, if not required in any other matter;
- (iii) If the fine amount is already paid, the same shall be returned back to the appellant;
- (iv) The appeal is accordingly disposed of.

(A.R.JOSHI, J.)

CERTIFICATE:-

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED ORDER.