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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1211 OF 2013

Shashikant Radheshyam Oza
Aged about 36 years
Residing at Mari Pipeline
Sainagar, Andheri (East), Mumbai
At present undergoing the sentence
imposed upon him at Kolhapur
Central Prison, Kolhapur

...Appellant

Versus

The State of Maharashtra
(at the instance of Senior Inspector of
Police, Sahar Police Station,
vide C.R.No.9 of 2013)

...Respondent

Mr.Rahul S. Arote, for the Appellant.

Ms.P.P.Shinde, A.P.P for the Respondent-State

***CORAM : REVATI MOHITE DERE, J.
DATE : 14th JUNE, 2016***

ORAL JUDGMENT :

1. By this Appeal, the appellant has impugned the Judgment and Order dated 5th September, 2013, passed by the learned Special Judge, for Protection of Children from Sexual Offences Act, 2012, Greater Bombay,

convicting the appellant for the offences punishable under Section 8, 4 r/w Section 18 and Section 12 of the Protection of Children from Sexual Offences Act and under Sections 376 r/w 511 and 506 (II) of the Indian Penal Code.

2. The sentence awarded for each of the aforesaid offences is as under:-

- under Section 8 of the Protection of Children from Sexual Offences Act to suffer RI for 3 years and to pay fine of Rs.1000/- in default to suffer RI for 1 month;
- under Section 4 r/w Section 18 of the Protection of Children from Sexual Offences Act, 2012, to suffer RI for 7 years and to pay fine of Rs.3000/- in default to suffer RI for 3 months;
- under Section 12 of the Protection of Children from Sexual Offences Act, 2012, to suffer RI for 3 years and to pay fine of Rs.1000/- in default to suffer RI for 1 month;
- under Section 376 r/w Section 511 of Indian Penal Code to suffer RI for 7 years and to pay fine of Rs.3000/- in default to suffer RI for 3 months;
- under Section 506 (II) of Indian Penal Code to suffer RI for 7 years and to pay fine of Rs.3000/- in default to suffer RI for 3 months.

The aforesaid sentences were directed to be run concurrently.

Out of the said fine, awarded for each of the offences, the appellant was directed to pay Rs.5,000/- as compensation to the victim.

3. A few facts as are necessary to decide the appeal are as follows:-

The victim girl aged 7 years was studying in a School, at the relevant time. In the evening, after school, the victim girl would attend tuition classes from 6.00 p.m. to 8.00 p.m. According to the prosecution, the appellant, known as 'Shashikaka' would restrain the girl from going for tuition classes and on the pretext of showing her a rabbit and giving chocolate, would lure her to his house. It is stated that the appellant would take the victim girl to his house and would sexually assault her. The last incident is alleged to have taken place on 4th January, 2013. According to the prosecution, as the appellant had threatened the victim girl with dire consequences i.e. he would throttle her, she did not disclose the same, to her family members. It is the prosecution case, that on 7th January, 2013, the victim girl woke up screaming 'Kaka Kaka' and when the mother of the

girl enquired with her, as to why she was screaming 'Kaka Kaka' and crying, the girl is stated to have disclosed the incident of sexual assault to her mother. Pursuant to the said disclosure, the complainant (mother of the victim girl), father and other family members went to the appellant's house and thereafter, the victim girl's mother lodged a complaint with the Sahar Police Station, alleging offences punishable under the Protection of Children from Sexual Offences Act and the Indian Penal Code. The statement of the victim girl came to be recorded in question and answer form, by the police. Pursuant to the complaint, the appellant was arrested. It also appears that during investigation, the victim girl identified the appellant and a panchanama was prepared to that effect. Clothes of the appellant were seized under a panchanama and sent to the chemical analyzer. Medical examination of the victim girl as well as of the appellant was conducted and after completion of investigation, charge-sheet was filed. The learned Special Judge framed charge against the appellant for the offences punishable under Sections 7, 8, 3 r/w 4 and 12 of the POCSO Act and under Sections 376 and 506 (II) of the Indian Penal Code. The appellant pleaded not guilty to the charge and claimed to be tried.

The prosecution in support of its case examined 5 witnesses.

PW.1 – the victim girl, PW.2 – the mother of the victim girl (complainant), PW.3 – PSI – Nilima Manohar Jadhav, the investigating officer, PW.4 – Dr.Baban Shripati Shinde, the medical officer who examined the victim girl as well as the appellant and PW.5 – PI Geetanjali D. Joshi, the investigating officer. The defence of the appellant was of false implication. The learned Special Judge after considering the evidence on record was pleased to convict and sentence the appellant as aforesaid in para 1.

4. Learned Counsel for the appellant submitted that the appellant has been falsely implicated in the said case. He submitted that neither the identity of the appellant nor the place of residence of the appellant was properly established by the prosecution. Alternatively, he submitted that the sentence awarded by the trial Court be reduced as it was harsh and excessive.

5. Per Contra, learned APP submitted that no interference was warranted in the impugned Judgment and Order. She submitted that there was ample material on record to show the complicity of the appellant in the aforesaid offences. She submitted that the victim girl was only 7 years of

age and there is no material brought on record to show, why she or her family members would falsely implicate the appellant. She further submitted that the evidence of the victim girl and her mother is corroborated by the medical evidence of the Doctor i.e. PW.4 – Dr.Shinde. Learned APP further submitted that the act and conduct of the appellant was such, that it does not warrant any interference whatsoever, in the sentence awarded to the appellant.

6. Perused the papers with the assistance of the learned counsel for the appellant and the learned APP. PW.1 – the victim girl (name withheld) has stated that at the relevant time she was studying in a School (name withheld) and that she would go to school at 7.00 a.m., on a bicycle with her father and would return in the afternoon. She has stated that in the evening, she would attend tuition classes from 6.00 to 8.00 p.m. She has further stated that when she would go for tuition classes alone, the appellant (Shashikaka) would meet her on the way and would obstruct her from going for classes. She has stated that even if she changed her way, the appellant would come on that route and restrain her from going for her classes and would take her to his house. She has stated that the appellant would tell her

that he was taking her to show “khargosh” (rabbit). She has stated that if she refused to go, the appellant would compel her and take her by force. She has stated that after the appellant took her home, he would remove her underclothes, apply oil to his penis and put his penis in her private part. She has stated that the appellant would ask her to hold his private part in her hand and would ask her to press it, and thereafter clean the sticky substance with a cloth. She has stated that the appellant had threatened to kill her, if she disclosed the same to her mother. She has further stated that the appellant had done this 'bad act' with her on 2 to 3 occasions. According to PW.1, she would weep a lot, however, the appellant would not release her. She has stated that the said 'bad act' was done by the appellant, when his wife was not at home. She has stated that thereafter, she had disclosed the said incident to her parents, pursuant to which, her mother lodged a complaint. The victim girl has identified the appellant in the Court, as being Shashikaka who had done the 'bad act' with her.

7. The said witness was cross-examined at length, but nothing substantial has come in her cross-examination to discredit her testimony. She has denied the several suggestions made by the advocate for the

appellant.

8. PW.2, is the mother of the victim girl. She has stated that on 7th January, 2013, her daughter (victim girl) woke up from her sleep, screaming 'Kaka Kaka'. She has stated that when she asked her daughter as to what happened, her daughter again screamed as 'Kaka Kaka' and went back to sleep. She has stated that in the morning when her daughter woke up at 6.30 a.m for going to school, she asked her why she was screaming 'Kaka Kaka', pursuant to which her daughter disclosed the bad act done by the present appellant. She has stated that her daughter disclosed to her, that the appellant would lure her by saying, that he would show her khargosh (rabbit) and give chocolates and would forcibly take her to his house and would sexually assault her thereafter. She has stated that her daughter had specifically disclosed to her that the appellant would put his private part in her private part. On examination, she found that her daughter's private part had some reddish injuries. She has stated that thereafter, her daughter took her and other family members to the house, where the said act was committed by the appellant. Accordingly, PW.2, lodged a complaint with the police station on the very same day i.e. on 8th January, 2013. The said

FIR is at Exhibit - 1. The said witness was cross-examined at length, however, nothing substantial has come up in the cross-examination of the said witness. The said witness in her cross-examination has stated that on 7th January, 2013, she had not asked her daughter why her private part had become reddish, as she had no knowledge about the same, prior to 7th January, 2013. She has stated that prior to 7th January, 2013, her daughter would only say that there was pain in her private part and hence she had not examined her daughter's private part, prior to 7th January, 2013. She had denied the suggestion that no such incident had occurred and that she was falsely implicating the appellant in the said case.

9. PW.4 -Dr.Baban Shripati Shinde, was the medical officer who was attached to the Police Hospital, Nagpada, Mumbai at the relevant time. He has stated that on 8th January, 2013, he examined the victim girl. He has stated that the history given by the victim girl was that for the last six months, Shashikaka (appellant) had called her 5 to 6 times at his house, on the pretext of giving her chocolates and that he had sexually assaulted her. He has further stated that the victim girl disclosed that the appellant had threatened to kill her and therefore she did not disclose about the same to

anybody. He has disclosed the injuries sustained by the victim girl after examination, which are as under :-

Injuries:-

(1) bruise 0.5 cm X 0.1 cm in between labia majora and urethral fold, right side, vertical in direction, brown in colour, tenderness present.

(2) bruise 0.4 cm X 0.1 cm in between labia majora and urethral fold, left side, vertical in direction, brown in colour, tenderness was present.

Age of injuries : 3 to 4 days

Type of hymen : circular and hymen was intact

Hymenal orifice did not admit finger.”

In his cross-examination the said witness has denied the suggestion, that if a girl of a tender age sits on the bicycle rod, spreading her legs on both sides, the injuries as noted by him in his report are possible. He has denied the suggestion that he had fabricated the report.

10. Heard learned counsel for the appellant and the learned APP. Perused the evidence adduced by the prosecution. At the outset it is pertinent to note, that the appellant has admitted the spot panchanama, his arrest panchanama, identification parade panchnama and memorandum

panchanama. In view of the same, the defence of the appellant that he was not properly identified or that he was not residing at the address where the alleged offence is stated to have been committed, does not hold ground. The appellant in his statement under Section 313 has also admitted that his clothes were seized from the room where he was staying; that the room in which he resided stands in his name and one Tarini Kumar; that the room was taken on rent in his name by his brother and that the said room bearing no.114 is in Lane no.8. Accordingly, the plea of the appellant that he was not residing at the aforesaid place and that the prosecution had not proved the appellant's residence does not merit any consideration. In the identification parade which was held, the victim girl had identified the appellant. The same has also been admitted by the appellant. Thus, the identity of the appellant stands established on the basis of the said material on record.

11. The evidence of the victim girl aged 7 years, clearly reveals the manner in which the appellant lured her by taking her to his house and thereafter, how she was sexually assaulted. There is nothing in the evidence of the victim girl aged 7 years to either, doubt her veracity or

trustworthiness. The said evidence of the victim girl i.e. PW.1 is corroborated by the evidence of PW.2 i.e. mother of the victim girl in all material particulars, with regard to the sexual assault on the victim girl by the appellant. There is nothing in the evidence of either of these two witnesses to suggest, that they were falsely deposing against the appellant. Nothing is brought of record or even suggested to either of the witnesses, that there was any animosity between them and the appellant, for falsely implicating him. The victim girl (PW.1) has identified the appellant in the identification parade (which document has been admitted by the appellant) as well as in the Court.

12. The said evidence of PW.1 and PW.2 is corroborated by the evidence of PW.4 – Dr.Baban Shripati Shinde. In the medical report which is at Exhibit – 17, PW.4 has recorded the history given by the victim girl which reads thus :-

“Victim girl states that, she has tuition classes daily at 6 pm, near her home. Since last 6 months, Mr.Shashikaka called her for 5 to 6 times at his home and pretext of giving her a chocolate. He closes door and removes her undergarments and rubs his penis on her private parts. He threatened her to kill, if she spoke about it

to anybody. Last incidence took on 4/01/13 around 6 pm.”

The Local Examination (Private Parts) of the victim girl shows the following injuries:-

1. Bruise 0.5 cm X 0.1 cm in between Labia Majora and urethral fold right side. Vertical brown in colour, tenderness present.
 2. Bruise 0.4 cm X 0.1 cm in between Labia Majora and urethral fold. Left side. Vertical brown in colour, tenderness present.
- Age of injuries:-3 to 4 days.

13. PW.4 – Dr. Shinde, has categorically denied the suggestion that if a girl of tender age sits on the rod of a bicycle, with legs on either side, the injuries as noted by him were possible. Considering the evidence of PW.1 which is corroborated by the evidence of PW.2 and the medical evidence of PW.4 – Dr. Shinde, it is evident, that the appellant had committed sexual assault on the victim girl, aged 7 years. It is also evident that the said act was committed by the appellant by luring her and by compelling her to come to his house and also by threatening her with dire consequences. Considering the material on record, no interference is warranted in the Judgment and Order, convicting the appellant, for the offences under Section 8, 4 r/w Section 18 and Section 12 of the

Protection of Children from Sexual Offences Act and under Sections 376 r/w 511 and 506 (II) of the Indian Penal Code.

14. As far as the quantum of sentence is concerned, no indulgence whatsoever, is warranted for reducing the same. The victim girl was aged 7 years at the relevant time and the appellant was aged 35 years. The appellant had lured the victim girl on several occasions and had sexually assaulted her on 2 to 3 occasions. No leniency can be shown to the appellant, considering the facts of the present case. It may be noted that the incident is of January, 2013 prior to the amendment of 2013 and hence the appellant was convicted for the offence punishable under Section 376 r/w Section 511 of the Indian Penal Code.

15. The appeal, is accordingly, dismissed.

REVATI MOHITE DERE, J.