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

CRIMINAL APPEAL No. 908 OF 2014
ALONG WITH
CRIMINAL APPLICATION No. 1157 OF 2016
IN
CRIMINAL APPEAL No. 908 OF 2014
ALONG WITH
CRIMINAL APPLICATION No. 1012 OF 2017
IN
CRIMINAL APPEAL No. 908 OF 2014

Vadivel @ Gundappa Chinnatambi	)	
Devendra	)	
Age 29 years, Occupation Nil	)	
Residing at Samata Chawl,	)	
Nehru Nagar Zopadpatti, V.M. Road,	)	
Vile Parle (West), Mumbai – 400 056	)	
(At present in Kolhapur Central Prison,	)	
Kalamba, Kolhapur	)...Appellant /	
	Applicant	

Versus

The State of Maharashtra	)	
(Notice to be served on A.P.P.,	)	
High Court, A.S. Bombay)	)...Respondent	

Mr. Viresh V. Purwant a/w. Mr. Rushikesh Kale for
Appellant /Applicant
Mr. S.S. Pednekar -APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : DECEMBER 4, 2018

JUDGMENT :-

1. The accused -appellant herein is convicted for an offence punishable under section 366 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and fine

of Rs.2,000/-, in default, rigorous imprisonment for four months. He is also convicted for an offence punishable under section 377 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and fine of Rs.3,000/-, in default, rigorous imprisonment for six months. He is also convicted for an offence punishable under section 354 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and fine of Rs.1,000/-, in default, rigorous imprisonment for one month. He is also convicted for an offence punishable under section 506 (II) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and fine of Rs.2,000/- , in default, rigorous imprisonment for four months. He is also convicted for an offence punishable under section 509 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and fine of Rs.1,000/-, in default, rigorous imprisonment for one month. He is also convicted for an offence punishable under section 4 of The Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for seven years and fine of Rs.5,000/- , in default, rigorous imprisonment for six months. (all the above sentences are run concurrently) vide judgment and order dated 28th August, 2013 passed by the Designated Court

under the Protection of Children from Sexual Offences Act, 2012 for Greater Bombay.

2. It is the case of the prosecution that on 31st January, 2013, PW-2 had sent her child, aged nine years' old, to bring Ariel soap. The child returned after half an hour. She was crying and was in shock. Upon inquiry, she has disclosed to her mother that the present accused had taken her on the top of a tin roof, he had denuded her of her clothes and he attempted to ravish her, upon failure, he had put his private part to her mouth and ejaculated into her mouth. He threatened to kill her with a knife if she made any sound. The mother had suspected three boys. However, the child had identified the present Appellant as the person, who had committed the ghastly act. Thereafter, her mother PW-2 lodged a report at the police station on 1st February, 2013, on the basis of which, Crime No. 37 of 2013 was registered for the offence punishable under section 354, 506 (II), 509 of the Indian Penal Code and under section 8 and 12 of The Protection of Children from Sexual Offences Act, 2012. The child was referred for medical examination. She had given the same history before the doctor. She had complained about pain over vulval region and difficulty in walking since then. The vagina was filled with

mucosa, minimally inflamed. The accused was arrested on 1st February, 2013 and sent for medical examination. The swabs were collected and sent for chemical analysis. After completion of investigation, the chargesheet was filed and the case was registered as Sessions Case No. 292 of 2013. The prosecution examined as many as six witnesses to bring home the guilt of the accused.

3. The prosecution mainly rests on the evidence of the victim PW-1. The evidence of her mother PW-2 Kamsala K.A. Krishna. Evidence of PW-3 Doctor Archana Kumbhar and the evidence of PW-6 Kalpana Yashwant Gadekar, PI attached to Juhu Police Station.

4. PW-1, the victim has narrated before the Court, the ghastly incident, which she had gone through at the hands of the Appellant. She has deposed that the accused had pointed out a knife and threatened her of dire consequences and if she would disclose about the incident to anybody, he would kill her. He had also informed her that he had murdered three girls in the past. The victim has not been shattered in the cross examination. A suggestion was given that the Appellant has been falsely implicated at the behest of the parents of the victim since the Appellant was on inimical terms with the uncle of the victim Chinappa. The

suggestion has been denied.

5. PW-2, the mother of the victim has deposed before the Court that the child is 9 years' old. That the father of the child is driving rickshaw, whereas she runs a flower business in the same area. She has deposed that on 31st January, 2013, the child had been to the shop to bring Ariel soap, that when she had returned home, she was crying and had disclosed about the act committed by the Appellant. The child had shown the place of incident to her parents. A complaint was made to the police. PW-2 has proved the contents of the FIR which is marked at Exhibit 12. She has also admitted that on first occasion, since the child was frightened, she could not narrate the incident as it had occurred. She had disclosed that she was sexually assaulted. It is elicited in the cross examination that the accused resides after 10 houses of the house of the victim. The shop is about 4 to 5 houses from the house of the victim. That she had sent her child to bring soap at about 10.20 p.m. She has given topography of the place where the incident had occurred. She has denied the suggestion of false implication at the behest of Chinappa.

6. PW-3 Dr. Archana Kumbhar had examined the victim. She has deposed before the Court that she has recorded the history of

the patient as per her say. That there was sexual assault on the victim on 31st January, 2013 at 11 p.m. by person named Gundappa. She has further disclosed that the accused had brandished a knife and threatened the victim of dire consequences.

7. The medical certificate would show that the victim had complained of pains over vulval region and difficulty in walking since then. It is elicited in the cross examination that there was no evidence of injury on her private part. The doctor has clarified that it was a voluntary disclosure by the patient. She has further stated that she had given her report of 'likely attempt of sexual assault'. It is true that the final report depended on C.A. report, but it does not mean there was no attempt of penetrative intercourse. She has further stated that "it is true that except inflamed hymen and inflamed vagina, there was no injury on any other part of the body of the victim. Such inflammation can occur only if somebody is trying to penetrate something forcefully in the vagina.

8. The evidence of the doctor has to be read in consonance with the C.A. report. The C.A. report would show that there were blood stains on front side of the T shirt of the accused and few

semen stains ranging from about 1cm to 2 cm in diameter on front upper portion of full jeans pant. These are the clothes of the accused person.

9. The learned counsel for the Appellant submits that the Appellant has been falsely implicated since he was on inimical terms with the uncle of the victim. It is submitted that the incident has occurred in a dense locality and yet there is no eye witness to the incident. It is also submitted that the place of the incident as shown by the victim would falsify the story of the prosecution.

10. Perusal of Exhibit 22, which is scene of offence panchnama, shows that the incident had occurred on the roof of a dilapidated abandoned house. The house belonged to Govind Kokare, but no-one was residing there. The roof is of tin shed and construction of the terrace of the adjacent house was in progress. The possibility that the incident as narrated, had occurred, cannot be ruled out. PW-5 Prakash Patil attached to Juhu Police Station has recorded the first information report and on the basis of which, Crime No. 37 of 2013 is recorded. He has drawn the spot panchnama and recorded the statement of some witnesses i.e. spot pancha. He has caused the seizure of the clothes of the accused and taken initial steps of investigation. It is elicited in the cross examination that the

accused was residing in Shrilanka Chawl which is near Balraj Chawl. It was a slum area. He had handed over the investigation to PW-5 PI Gadekar. He has arrested the accused on 1st February, 2013. PW-6 Kalpana Gadekar had carried out further investigation. Upon reading the narration of the incident, she was of the opinion that it is not a case under section 354 of the Indian Penal Code but under section 377 of the India Penal Code and, therefore, she had added section 377 of the Indian Penal Code and section 4 of the Protection of Children from Sexual Offences Act, 2012 at the time of filing of the charge-sheet. It was suggested to her that she has filed the chargesheet upon being influenced by a social worker. She has denied the same.

11. There is no material to infer that the Appellant has been falsely implicated. The victim and the witnesses have stood the test of cross examination. The allegations leveled against the Appellant are corroborated by the medical examination which substantiates that the Appellant had attempted to ravish the minor girl. It is a heinous offence. A girl, who has hardly 9 to 10 years' old, was exposed to social oblivious. That it would leave a scar on her future development as a person. The said incident was so traumatic that it would demean her femineity. It is an injury to her

soul and would thwart her growth as a woman.

12. For the above mentioned reasons, there can be no interference in the impugned judgment and order dated 28th August, 2013 passed by the Designated Court under the Protection of Children from Sexual Offences Act, 2012 for Greater Bombay convicting accused-appellant under section 366, 377, 354, 506(II) and 509 of the Indian Penal Code. The Appeal stands dismissed. The conviction and sentence awarded to the Appellant are upheld.

13. In view of the dismissal/ disposal of the Appeal No. 908 of 2014, the criminal applications being Criminal Application No. 1157 of 2016 and Criminal Application No. 1012 of 2017 do not survive and stand disposed of accordingly.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam