

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 647 OF 2014****WITH****CRIMINAL APPLICATION NO. 96 OF 2018****IN****CRIMINAL APPEAL NO. 647 OF 2014**

Ajit Vasant Kalokhe,

....Appellant/
Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. M.N. Gawankar, for the Appellant/Applicant.

Mr. V.V. Gangurde, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 27th APRIL, 2018.****P.C.:-**

The Appellant is convicted for an offence punishable under Section 376(2)(i) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo simple imprisonment of six months and under Section 5(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, “*the*

POCSO Act”) and is sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo simple imprisonment for six months by the learned Ad-hoc Additional Sessions Judge, Kalyan in Sessions Case No. 60 of 2013 by its Judgment and Order dated 14th July, 2014. The Trial Court has directed that the substantive sentences to run concurrently.

The said Judgment and Order dated 14th July 2014 is impugned herein.

2 Heard Mr. M.N. Gawankar, the learned counsel for the Appellant and Mr. Gangurde, the learned APP for the Respondent State. Perused the record.

3 The victim girl was minor, aged about eight years on the date of incident and with a view to protect the identity of the victim girl and in consonance with the provisions of Section 228-A of the Indian Penal Code and Section 33(7) of the POCSO Act, the name of the victim girl, her close relatives and the detailed narration of facts mentioned in the first information report and/or in their substantive evidence, is hereby avoided.

4 The victim girl was aged about 8 years on the date of incident i.e. on 15th December 2012. The Appellant was her

neighbour. That, on 15th December 2012, when the victim girl was playing outside her house, the Appellant on the pretext of showing her 'goats' took her near a bridge outside of their village and committed sexual assault on her. When the prosecutrix started crying, the Appellant threatened her to kill. The prosecutrix came home crying and narrated the said fact to her mother. The mother (PW No.2) of the victim girl thereafter, lodged first information report with Manpada Police Station, Taluka Kalyan.

5 During the course of investigation, the Applicant came to be arrested on 15th December 2012 itself. The medical examination of the victim girl was conducted by Dr. (Mrs.) Rekha Saraswat (PW No. 1). After completion of investigation and after receipt of the reports from the Forensic Science Laboratory, the police submitted charge sheet before the Competent Jurisdiction. As the offences punishable under Section 376(2)(i) of the Indian Penal Code and under Section 5(m) read with Section 6 of the POCSO Act, are triable by the Court of Sessions, the learned Magistrate, committed the said case as contemplated under Section 209 of Cr.P.C.

6 After committal of the case, the Trial Court framed charges below Exhibit 5. The said charges were read over and explained to

the Appellant, to which he pleaded not guilty and claimed to be tried.

The defence of the Appellant was of total denial. The prosecution in support of its case examined in all four witnesses. The learned Trial Court after recording the evidence and after hearing the parties of the said case was pleased to convict and sentence the Appellant by the impugned Judgment and Order dated 14th July, 2014, as stated hereinabove.

7 Mr. M.N. Gawankar, the learned counsel appearing for the Appellant submitted that the version of the prosecutrix (PW No. 3) pertaining to forcible sexual intercourse is an improvement *qua*, the statement of her mother (PW No. 2). He submitted that, the victim girl, at the first instance when confided with her mother, did not tell her about the penetrative intercourse, but has only stated about an attempt committed by the Appellant and therefore, the Appellant may be given benefit of the same to that extent. He further submitted that, if the evidence of PW No.2, i.e. the mother of the victim girl and PW No.3 i.e. the victim girl is scrutinized minutely, it will clearly indicate that there are material improvements in the evidence of the victim girl. He therefore, prayed that the present Appeal may be allowed and the Appellant may be acquitted from the charges framed against

him.

8 Per contra, the learned APP Mr. Gangurde, vehemently opposed the present Appeal and submitted that, the evidence of prosecutrix and her mother is trustworthy and reliable. He further submitted that, the prosecution has proved the case against the Appellant beyond the reasonable doubt and therefore, the conviction and sentence of the Appellant may be upheld by dismissing the Appeal.

9 The prosecutrix in her evidence has stated that, on the date of incident, the Appellant lured her by stating that he will show her 'goats' and took her near the bridge outside the village and thereafter committed forcible sexual intercourse with her. That, when she started crying loudly, he threatened to kill her and also threatened her not to tell his name to anyone at home. That, the victim girl got scared and went home crying and immediately told the said fact to her mother. The mother of the victim girl (PW No.2) has duly corroborated the version of the prosecutrix. She has stated that, after the victim girl told her about the said sexual assault, she checked her private part and found sticky substance on her thighs. Dr. Rekha Saraswat (PW No.1) after examining the prosecutrix has opined that,

the victim girl was subjected to sexual intercourse through vulva and vagina.

10 It is the well settled position of law as has been enumerated by the Hon'ble Supreme Court in the case of *Aman Kumar & Anr. Vs. State Of Haryana* (AIR 2004 SC 1497), that the prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. That in the later case, there is injury in the physical form, while in the former it is both physical as well as psychological and emotional. The same view is further expressed by the Supreme Court in the case of *State of Himachal Pradesh Vs. Shree Kant Shekari* (AIR 2004 SC 4404).

11 A minute perusal of the evidence of the victim girl (PW No.3) would reveal that it is indubitably reliable and trustworthy. The evidence of the mother (PW No.2) of the victim girl and Dr. (Mrs.) Rekha Saraswat (PW No.1) further lends credence to the testimony of the victim girl thereby, establishing the fact beyond reasonable doubt that, the victim girl was subjected to sexual assault by the Appellant. The prosecution has proved the case against the Appellant, beyond

reasonable doubt.

12 In view of the above, I find no error in the impugned Judgment and Order passed by the Trial Court dated 14th July, 2014.

 The Appeal being devoid of any merits, is accordingly rejected.

13 In view of the dismissal of the Appeal No. 647 of 2014, Criminal Application No. 96 of 2018 for bail, does not survive and is accordingly disposed off.

(A.S. GADKARI, J.)