

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 255 OF 2016

Eknath Pandurang Koli,
Age 61 years, Occu. Labourer,
R/o. HUDCO colony, Chopada,
Taluka Chopada, District Jalgaon.

... APPELLANT
(Original Accused)

VERSUS

The State of Maharashtra
through the Police Station,
Chopada, District Jalgaon.

... RESPONDENT
(Original Complainant)

...
Mr. Joydeep Chattergi, Advocate for Appellant-accused
Mr. D. R. Kale, APP for Respondent-prosecution
...

**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 2nd AUGUST, 2019.

ORAL JUDGMENT : (Per : K.K. Sonawane, J.)

1. The instant appeal calls in question the legality and propriety of impugned Judgment and order of conviction and resultant sentence, rendered by learned Sessions Judge, Amalner, in Special Case No. 26 of 2014, dated 1st April, 2016 for the offence punishable under sections 376(2)(n), 342, 506 of the IPC and Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 ("Act of 2012"). The learned trial Court imposed the resultant sentence on the appellant-accused as below :-

Under Section 376(2)(n) of IPC -

To suffer Imprisonment For Life and to pay fine of Rs.50,000/- (Rs. Fifty Thousand Only), I.D. R.I. for Three (03) years.

Under Section 342 of IPC -

To suffer R.I. for one (01) year and to pay fine of Rs.1,000/- (Rs. One Thousand Only), I.D. R.I. for three (03) months.

Under Section 506 of IPC -

To suffer R.I. for one (02) years and to pay fine of Rs.5,000/- (Rs. Five Thousand Only), I.D. R.I. for four (04) months.

Under Section 3(a) punishable under Section 4 of the Protection of Children from Sexual Offences Act -

To suffer Imprisonment For Life and to pay fine of Rs.50,000/- (Rs. Fifty Thousand Only), I.D. R.I. for three (03) years.

All these sentences awarded by learned trial Court were ordered to be run concurrently. The appellant-accused, taking recourse of remedy under Section 374 of Code of Criminal Procedure, 1973, preferred the present appeal to redress his grievances.

2. The prosecution case in short compass is that – the ill-fated prosecutrix – minor girl of 11 years studying in VI standard, approached to the Police of Chopada City Police Station, District Jalgaon on 16-10-2014, and ventilated the grievance that, she was residing with her mother, sister and brother in Chopda town. Her father is no more and died prior to six years. She is from Mahar community. Her mother was eking livelihood by doing labour work. The appellant-accused was residing in front of her house with his family

members and they all were having visiting terms at the house of each other. It has been alleged that prior to one month of alleged incident occurred on 15-10-2014, mother, brother and sister of the prosecutrix had been to dispensary for medical treatment of their ailment. The prosecutrix was alone at home. The appellant-accused seizing the opportunity barged into the house of prosecutrix under pretext to have sugar. The appellant-accused put latch to the door from inside of the house. Thereafter, appellant forced the prosecutrix to remove her clothes. The prosecutrix made endeavour to resist the accused. She also tried to yell for help. But, appellant-accused pressed her mouth and threatened her not to raise shout. He, thereafter, forcibly ravished the minor prosecutrix sexually. The appellant-accused give threats of dire consequences to prosecute and went away. The prosecutrix did not disclose about incident to anybody else due to apprehension on the part of appellant-accused. It has been alleged that on 15-10-2014, in the noon hours, the prosecutrix accompanied with her friend - Sunami Shital Vishwas had been to the accused for demanding kerosene oil. The accused bade the prosecutrix to come on the terrace at about 7.00 p.m. in the dusk; He had also given threat, if she fails, he will defame and tarnish the reputation of herself and her mother by making the earlier incident of her immoral relation with him public. The hapless minor prosecutrix under duress of accused went to the terrace of the house in the evening. The accused once again forcibly ravished her. The prosecutrix made an attempt to shout, but, accused put his palm on her mouth. Meanwhile, neighbour Bangali Aunti flashed the light of torch on the person of accused. On seeing Bangali Aunti, accused-

appellant immediately make his escape good from the spot. There was bleeding from the private part of minor prosecutrix. She came to home in frightened condition and started weeping. She disclosed the entire episode to her mother. There were endeavour for confrontation of alleged incident with the accused in front of denizens of the area. Eventually, the mother of minor prosecutrix took her to the police station and filed report.

3. Pursuant to First Information Report (FIR), Police of Chopada City Police Station, District Jalgaon, registered the crime bearing No. 148 of 2014, for the offence punishable under Sections 376(1), 342 and 506 of IPC, and set the penal law in motion. The Investigation Officer (IO) visited to the spot of incident and drawn panchanama of scene of occurrence. He recorded statements of witnesses acquainted with the facts of the case. IO seized the clothes of accused in presence of panchas. IO collected the document of date of birth certificate of the minor prosecutrix. IO also referred the prosecutrix and accused for medical examination. IO collected the documents of medical Certificate of both of them. IO recovered the C.A. report. After completion of investigation, IO preferred the charge-sheet against the accused bearing Special Case No. 26 of 2014. IO also applied the provision of Section 3 read with Section 4 of the POCSO Act in this case.

4. After compliance of procedural formalities, learned Special Judge framed the charges against accused. But, he pleaded not guilty and claimed for trial. The prosecution, in order to bring home guilt of the accused, examined in all seven witnesses in this case. The learned Sessions Judge recorded statement of appellant-accused prescribed

under Section 313 of Cr.P.C. Learned Sessions Judge, after hearing both sides, considered the evidence adduced on record and held the accused guilty for the offence punishable under Sections 376(2)(n), 342 and 506 of IPC, so also, under Section 3 read with Section 4 of the POCSO Act. Accordingly, the learned Special Judge passed the Judgment and order of conviction and imposed resultant sentence as indicated above. The impugned Judgment and order of conviction and resultant sentence is the subject-matter of present appeal.

5. Mr. Chatterji, learned counsel for appellant-accused vehemently submits that the impugned Judgment and order of conviction and resultant sentence passed by the learned trial Court is erroneous, illegal and contrary to the well settled principles of law. The entire findings of conviction expressed by learned trial Court are based on surmises and conjectures. The learned trial Court did not appreciate the evidence adduced on record in its proper perspective and committed error for convicting the appellant-accused in this case. According to learned counsel, there were no injuries to the private part nor there were symptoms of bleeding from private part of prosecutrix. The factum of perforation of hymen would be possible by riding the bicycle. Learned trial Court did not consider this material aspect deposed by the concerned Medical Officer – PW-6 Dr. Wagh, in this case. The conduct and demeanor of minor prosecutrix was also suspicious and dubious one. The spot of incident was located in the bustling area. The prosecutrix did not attempt to disassociate herself from the company of accused-appellant. There was no cogent evidence on record for inference that she was minor at the time of alleged

incident. The document of CA report produced on record did not support the prosecution case. Therefore, it would unsafe to fasten guilt on the appellant – accused bare on the version of prosecutrix, her mother and PW-5 Saraswatibai. According to learned counsel, the prosecution failed to prove the charges against appellant-accused beyond all reasonable doubt. The appellant-accused is 60 years old senior citizen and it would unjust, improper to draw adverse inference against him at the instance of prosecutrix. Hence, learned counsel prayed to allow the appeal and exonerate the appellant-accused from the charges pitted against him.

6. Learned Prosecutor raised the objection to the contention propounded on behalf of learned counsel for the appellant-accused and submits that the learned trial Court appreciated the entire evidence adduced on record on behalf of prosecution in proper manner. There is no illegality or infirmity or doubt in the prosecution case. The appellant-accused ravished the minor prosecutrix. He was residing in the neighbourhood of the house of prosecutrix.

7. We have given anxious consideration to the arguments canvassed on behalf of both sides. We have also carefully delved into the oral and circumstantial evidence adduced on record. The intense scrutiny of evidence adduced on record reveals that the arguments advanced on behalf of learned counsel for appellant accused appears not sustainable and considerable one. It is worth to mention that the prosecutrix and accused have an acquaintance with each other being resident of the same locality in the village. According to prosecution,

alleged incident of rape occurred on 15-10-2014 in the evening hours at about 7.00 P.M.. There were endeavour to make the confrontation about the incident to the accused. Thereafter the prosecutrix accompanied with mother came to the Police Station and lodged the FIR immediately at about 12.35 A.M. in the intervening night of 15-10-2014 and 16-10-2014. She was referred for medical check-up and medical experts clinically examined her in the same night at about 2.00 A.M.

8. In regard to age of the prosecutrix, she has deposed that her date of birth was 01-07-2003. The PW4-Shri Sunil Choudhari, Headmaster of the Junior College of prosecutrix produced the document of Bonafide Certificate of the prosecutrix (Exhibit-41), which demonstrate the date of birth of prosecutrix as 01-07-2003 and at the relevant time she was studying in fifth/sixth standard. The PW 6 – Dr. Wagh, while medical examination of the prosecutrix for sexual assault noted down her age as 11 years old girl. These circumstances are not put into controversy seriously on behalf of appellant-accused. Obviously, the attending circumstances on record are sufficient to draw inference that at the relevant time of incident, the prosecutrix was a minor girl below the stipulated age of 18 years as prescribed under Law for sexual offences against the woman/child.

9. Now, turning to the another spectrum of the matter in regard to offence of rape/sexual assault, it appears that the entire edifice of the prosecution case rests on the evidence of PW 1 - victim of the crime, PW2 her mother and PW 5 – neighbour of victim. In order to

corroborate the version of these witnesses, the prosecution kept reliance upon the evidence of PW 6-Dr. Wagh. PW 1- victim girl verbalized about the sexual assault committed by the appellant-accused on two occasions. She was ravished sexually by the accused prior to one month of the alleged incident and thereafter, on 15-10-2014. She categorically deposed that the appellant-accused under threats committed physical intercourse with her. She attempted to yell for help but accused did not allow her by giving threats of dire consequences. The prosecutrix also divulged that when the appellant-accused was ravishing her that time the neighbour Bangali Aunti flashed the light of torch on the person of accused. Thereafter, the accused became frightened and he ran away from the spot. The frantic prosecutrix returned to home and disclose the incident to her mother and uncle etc.

10. The PW 2 - Shamabai stated that on the day of incident i.e. 15-10-2012 in the evening hours, the neighbour Bangali Bhabi gave the call to her and disclosed that the appellant-accused committed illegal act with her daughter. Thereafter, the PW-2 attempted to get it confronted with the accused, but he denied the same. The PW-2 mother made enquiry with the daughter. The frightened prosecutrix spill – the - beans that accused ravished her sexually on the terrace.

11. The PW-5 Saraswati was the resident of neighbourhood, in front of house of prosecutrix. She received an opportunity to watch the spectacle. The PW-5 Saraswati testified that on 15-10-2014 at about 7.00 p.m. she had been to terrace of her house for some errand. She

saw accused caught hold the minor victim on the terrace of another house. She attempted to reprimand the appellant-accused. But he picked up quarrel with her and make his escape good from the spot.

12. The PW 6 – Dr. Wagh clinically examined the prosecutrix after the alleged incident. He issued the medical certificate (Exhibit-45). He had not seen any external injuries to the genital area of prosecutrix, but he came across with central perforation of hymen of prosecutrix. It has been suggested that the perforation of hymen of the girl was possible due to riding of bicycle. We are unable to persuade ourselves to subscribe this theory in this case. It cannot be ignored that there was substantive evidence of prosecutrix available on record. She in explicit manner blamed the appellant for sexual assault. In such circumstances, we have no hesitation to perceive that the accused-appellant, who is of 61 years old senior citizen, committed such heinous act with the tender aged girl.

13. The question as to whether conviction can be sustained on the sole evidence of prosecutrix, is no longer *res-integra*, as it has been decided by catena of decisions of the Hon'ble Apex Court. In the case of ***State of Maharashtra Versus Chandraprakash Kewalchand Jain*** reported in ***(1999) 1 SCC 550***, the Honourable Apex Court held that -

"The prosecutrix of a sex offence cannot be put on par with an accomplices. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Evidence Act and her evidence must

receive the weight as is attached to an injured in cases of physical violence."

14. In the case of ***State of Punjab Versus Gurmit Singh*** reported in ***(1996) 2 SCC 384***, the Honourable Apex Court observed that:-

"In cases involving sexual harassment, molestation etc. the Court is duty bound to deal with such cases with utmost sensitivity. The minor contradictions or insignificant discrepancies in the statement of prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. The evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are any compelling circumstances for seeking corroboration. The Court may look for some assurance of her statement to satisfy judicial conscience."

15. In the matter in hand, it is evident from the testimony of prosecutrix herself coupled with report of her medical examination (Exhibit-46), that the minor -victim about 11 years old, was subjected to sexual exploitation by the accused. The evidence of PW 2- her mother was relevant under Section 8 illustration (j) of the Evidence Act. The version of PW5 - Saraswati also strengthen the allegation nurtured on behalf of prosecution against accused. There was no reasonable cause for the prosecutrix or her mother to embroil the accused in this case by making false accusation against him. The Honourable Apex Court, time and again, enunciated that - In the traditional non-permissive bounds of our society, no girl or woman of self-respect and dignity would depose falsely, implicating somebody else for allegation of ravishing her chastity by sacrificing and

jeopardising her future prospect of getting married with a suitable match. In addition, it would invite the wrath of being ostracised and cast out from the society she belongs to and also from her family circle. In the matter in hand, it would be reiterated that prosecution has proved the case of sexual assault by appellant-accused on the minor victim beyond all reasonable doubt. In totality the circumstances on record adumbrates that prosecutrix does not have any strong motive to falsely implicate the appellant-accused in this case. In such circumstances, we do not find any impediment to accept the evidence of the prosecution witnesses in regard to sexual assault by the appellant-accused on victim minor girl.

16. As per Section 29 of the POCSO Act, when a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3 and 4 of this Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. The appellant has not produced any evidence nor he was seen able to shatter the evidence of the prosecution disclosing that he committed sexual assault on the victim. The defence of false implication propounded on behalf of accused found improbable and not sustainable one. The evidence of prosecutrix and other prosecution witnesses, in our view, appears to be natural, credible and inspires confidence. The appellant is, therefore, liable to be held guilty for the offence under Section 3 read with Section 4 of the POCSO Act, 2012. The maximum punishment for the offence under Section 3 is imprisonment of either description for a term which shall not be less than seven years but

which may extend to imprisonment for life and shall also be liable to fine.

17. As referred supra, it becomes manifestly clear that the appellant-accused – a matured senior citizen, taking disadvantage of tender age of the prosecutrix, ventured to ravish her sexually on two occasion, to slack his sexual urges. Definitely, the act committed by the matured appellant-accused was heinous, disgusting and highly offensive one. It would be reiterated that the prosecutrix was from rural and rustic area. Her father was no more. The mother eking livelihood by doing labour work. The accused seizing the opportunity committed such disgraceful act with the prosecutrix. It is highly deprecated that the accused-appellant tried to molest the honour and virginity of a minor girl of 11 years leaving her with an unmatched stigma for her remaining life. The amorously behaviour of the matured 61 years old appellant-accused with the unmarried hapless minor girl did not permit us to consider the case of appellant-accused sympathetically by adopting liberal approach for the sake of reducing the sentence of his imprisonment imposed by the learned trial Court.

18. In the above premises, we are of the considered opinion that the conclusion drawn by the learned trial Court for conviction of the appellant-accused and resultant sentences imposed on the accused in this case appears to be just, proper and reasonable one. There is no perversity or error in the findings expressed by the learned trial Court. In contrast, adverse inference drawn by the learned trial Court for sexual assault on prosecutrix is required to be made confirm and absolute. The quantum of sentence awarded to appellant-accused also

justify to the heinous nature of act committed by him in this age of 60/61 years old. Hence, there is no propriety to cause any interference in the findings of learned trial Court at the behest of appellant-accused. Therefore, present appeal being devoid of merit deserves to be dismissed. Accordingly, the Criminal Appeal stands dismissed. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE

MTK