

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 415 OF 2016

Sayed Aslam S/o Sayed Yusuf
Age 25 years, Occ. Labour
R/o Nitrud, Tq. Majalgaon,
Dist. Beed

Applicant

Versus

The State of Maharashtra
Through Police Station Officer,
Police Station, Majalgaon(City)
Tq. Majalgaon, Dist. Beed

Respondent

Mr. S. S. Thombre, Advocate for the applicant.
Mr. Y.G. Gujarati, APP for Respondent-State.
Ms. P.R. Wankhade, Amicus Curie for the complainant.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 19th July, 2019.

ORAL JUDGMENT :

1. It is seen at this stage that the learned Special Judge has granted compensation to the victim to the tune of Rs. 2,000/- however, the victim is not made party. This Court has therefore requested learned counsel Ms. P.R. Wankhade to espouse the cause of the victim. She has graciously accepted the request.

2. Appellant herein is convicted for offence punishable under Section 377 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for five years and fine of Rs. 1,000/-, in default, Simple Imprisonment for two months. He is also convicted for offence punishable under Section 4 of the Protection of Children

from Sexual Offences Act and sentenced to suffer Rigorous Imprisonment for seven years and fine of Rs. 1,000/-, in default, Simple Imprisonment for two months, by the learned Special Judge, Majalgaon, in Special Case No. 4/2015 vide judgment and order dated 15.06.2016.

3. Such of the facts, necessary for decision of this appeal are as follows :

Victim Miss 'X' was studying in Darul Ulum Huseniya Urdu School in Kesapuri Camp at Majalgaon. Accused-appellant happens to be the maternal uncle of her friend Rahemun and he used to come to meet Rahemun in the school.

On 10.01.2015, accused-appellant had been to the hostel and with the permission of the Headmaster, had taken the victim out of the hostel under the pretext of purchasing note books. It is alleged that he had sexually abused her on two occasions by taking her out of the hostel. In the vacation, the victim had visited her grand mother at Bhogalwadi. Parents of the victim are sugarcane cutters. After residing with her grand mother for about ten days, she went to Karnataka to meet her parents. At that time, she had disclosed to her mother that while she was in the hostel, accused had taken her out of the hostel and had committed sexual assault upon her on two occasions. The mother of the victim was shocked and lodged report under Section 154 of the Code of Criminal Procedure at Majalgaon City Police Station. On the basis of said report, Crime No. 8/15 was registered against the accused. In the course of investigation, statement of victim as well as her mother

under Section 164 of the Code of Criminal Procedure was recorded. After due investigation, charge-sheet was filed. The case was committed to Sessions Court and registered as Special Case No. 4/2015.

4. Prosecution examined as many as 8 witnesses to bring home guilt of the accused. The case rests upon the evidence of PW 2 - victim herself, PW 6 Dr. Amol Jogdand, who had examined the victim and, PW 7 Fazle Matin, who was working as the Headmaster of Darool Ulum Arbi School at Kesapuri Camp, Majalgaon.

5. PW 2 - victim has deposed before the Court in consonance with the First Information Report. It is stated that the accused used to purchase note books for the students in the hostel and hence most of the students used to request him to buy note books for them. He took the victim away from the hostel with the permission of the Headmaster on the ground that he would purchase note books for the victim. It appears that the victim was not present when accused had obtained permission from the Headmaster. He took the victim to the agricultural land and sexually assaulted her. On the second occasion, accused took victim away from the custody of the Headmaster under the pretext to take her to the hospital. The victim was under pain and distress and due to the threats extended by accused, she did not disclose the incident to anybody except her friend Rahemun, niece of the accused. Almost one month after the incident, she had been to her grand mother's house since there were holidays. Thereafter when she met her mother, she disclosed the incident to her mother.

6. In the course of investigation, statement of the victim under Section 164 of the Code of Criminal Procedure was recorded. She had given an elaborate narration in her own language to the learned Magistrate. Said statement is at Exhibit 36. Accused has failed to shatter her sterling testimony in the cross-examination. Therefore, the same need not be considered as it is full of suggestions to the extent that she is speaking false.

7. PW 6 Dr. Amol Jogdand has stated that he had found no injuries to her genitals. According to him, there was no evidence of any tear or fresh injury on anus.

8. PW 7 Fazle Matin has deposed before the Court that he is acquainted with the accused-appellant. Accused had come to visit the victim and had disclosed to him that he is the maternal uncle of the victim. He also used to visit the hostel for giving note books and other articles to the victim. Accused had been to the hostel on 10.01.2015 and had disclosed that it is necessary to take the victim to the hospital as she is not feeling well. He took the victim with him and returned back and dropped her in the hostel. In the cross-examination, he has specifically stated that the hostel provides facility of only meal and residence to the students. The accused has failed to create dent in his examination-in-chief by way of cross-examination.

9. The statements recorded under Section 164 of the Code of Criminal procedure are found to be truthful, voluntary and inspire confidence on the Court.

10. Learned counsel for the appellant has vehemently stated that the medical evidence does not corroborate the injuries sustained by the victim as narrated by her and therefore, it is more than clear that there is false implication of the accused. It is further submitted that infact, there was previous enmity due to several reasons between the parties and therefore, the accused has been falsely implicated and therefore, the accused deserves to be acquitted in the present case.

11. As against this, learned APP submits that there is nothing on record which would even remotely indicate that the accused has been falsely implicated. Infact, PW 7 has specifically stated that on 10.01.2015, accused had come to the hostel and had disclosed that he happens to be the maternal uncle of the victim and therefore had taken her away from the hostel. Learned APP further submits that infact the deposition of the victim should have been recorded in consonance with her statement under Section 164 of the Code of Criminal Procedure. However, the learned prosecutor had recorded her statement as per the statement under Section 161 of the Code of Criminal Procedure and therefore, the submission of the learned counsel for the appellant that there are several inconsistencies in both the statements on oath giving rise to suspicion, is not acceptable.

12. There appears to be no reason for false implication. The victim is hardly 10 years old. It is true that medical evidence does not corroborate the allegations of unnatural sexual assault however, there has to be a ground to falsify the evidence of victim on oath. Upon reading deposition of the victim in consonance with

her statement recorded under Section 164 of the Code of Criminal Procedure, it is more than clear that the victim has suffered unnatural sexual assault at the hands of the accused. Section 29 of the Protection of Children from Sexual Offences Act contemplates as follows :

29. Presumption as to certain offences :

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 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 accused has to prove that he has been falsely implicated or rebut the presumptions. In any case, the Statute contemplates mandate of presumption as the word used is "shall" and not "may". The accused has failed to prove contrary and therefore, there is no reason to interfere with the justifiable reason assigned by the learned Special Judge for convicting the accused.

13. For the reasons stated above, the appeal deserves to be dismissed.

14. Learned counsel appointed for the victim has espoused the cause of the victim and hence she is entitled to professional fees as per rules.

15. The victim deserves to be compensated as per 'The Manodhairya Scheme' contemplated by Government Resolution dated 01.08.2017.

(SMT. SADHANA S. JADHAV, J.)

dyb/