

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 638 OF 2015

Mohd. Istaq alias Bablu Yakub Patel,
Age : 26 years, Occ : Student,
R/o. Deshmukhnagar, Biloli,
Dist. Nanded.

...Appellant.

Versus

1. The State of Maharashtra.

2. Aditi D/o. Devanand Sarode,
under guardian of father namely
Devanand Ganpati Sarode,
Age. Major,
R/o. Vasarni, Nanded,
Tq. & Dist. Nanded.

...Respondents.

Advocate for Appellant : Mr. R.S. Deshmukh.
APP for State : Mr. S.J. Salgare.
Advocate for Respondent No. 2 : Mr. V.P. Sawant.

CORAM : Smt. Sadhana S. Jadhav, J.
Dated : 18th July, 2019

Oral Judgment :

1. Heard.

2. The appellant herein is convicted for the offence punishable under Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/- by Additional Sessions Judge, Biloli, in Sessions

Case No. 40/2014, vide judgment and order dated 31.07.2015. Hence, this Appeal.

2. Such of the facts in nutshell to decide the present appeal are as follows :

The present accused/appellant happens to be residing in the neighborhood of the victim i.e. daughter of P.W. 1- Savita Sarode. The father of the victim was residing at Vasarni, Tq. and Dist. Nanded. P.W. 1 happens to be a teacher. She was residing with her minor daughter at Biloli. The school timing of P.W. 1 was 11:00 a.m. to 5:00 p.m. and her daughter-the victim was attending Pujya Sane Guruji Primary School at Biloli, and her school timing was 10:00 a.m. to 4:00 p.m.

3. On 24.07.2014, P.W. 1 lodged a report at the Police Station, Biloli, alleging therein that on 23.07.2014, when she returned home she found her minor daughter was crying. Upon inquiry with her daughter, she had disclosed that she had returned from school at 4:00 p.m. She was playing on the platform abutting their house and at that time, the present appellant offered her "Souf" (Aniseed). He had taken her to the first floor of his house. He had denuded

her of her clothes and had committed sexual assault on her. The pain was unbearable, she started crying as she had injury to her vagina. When her mother P.W. 1 returned home, she found her daughter crying and asked her why was she left alone.

4. Since, it was concerning her minor daughter and it would concern the future of the minor daughter she hastened to approach the Police. However, on the next day, she called her husband from Nanded and she has also called her mother-in-law and they had gone to Police Station and lodged a report against the accused. On the basis of her report, Crime No. 58/2014 was registered against the appellant in Biloli Police Station.

5. After following due procedure under the POCSO Act, the charge-sheet was filed. The case was committed to the Sessions Court and registered as Sessions Case No. 40/2014.

6. The prosecution examined as many as ten witnesses to bring home the guilt of the accused. The appellant has also examined the defence witnesses, i.e. the owner of the house in which the complainant has been residing.

6. The case rests upon the evidence of the mother of the victim, the victim herself and P.W. 9 - Dr. Maruti Digamberrao Dake, who examined the victim on 24.07.2014.

7. It would be needless to discuss the evidence of the other witnesses. At the trial P.W. 1 - the complainant has deposed in consonance with her First Information report. It is elicited in the cross-examination of P.W. 1 that she had filed Hindu Marriage Petition, against her husband in the Biloli Court for divorce and she was staying in the house of the father of the accused as a tenant for two to three months from June, 2012, onwards. As far as the incident is concerned the defence has been unable to shatter the sterling testimony of P.W. 1.

8. P.W. 4 - Miss. 'X' happens to be a victim. She has deposed before the Court that on the day of incident, she had returned home at 4:00 p.m. from school. The appellant offered her aniseeds. He had taken her to his house and then to the first floor where he denuded her of her clothes and thereafter, committed sexual assault on her. She returned home and she was waiting for her mother. She

was crying and upon arrival of her mother she told the incident to her. In the cross-examination, her testimony as far as the incident is concerned has not been shattered. She has deposed in consonance with her statement under Section 161 of Cr.P.C.

9. It is pertinent to note that on 30.07.2014, the statement of the victim was recorded under Section 164 of Cr.p.c. There is no inconsistency in her statement under Section 161 and 164 of Cr.p.c. She has signed her statement under Section 164 of Cr.p.c. There is nothing on record to indicate that she was tutored.

10. It is, further, pertinent to note that on 24.07.2014, the victim had undergone medical examination. She has narrated the same history to the doctor. Upon examining the victim, the doctor had found the following external injuries :

*“Lacerated injury on inner side of left labia.
Lacerated injury on inner side of right labia.
Contusion on fourchette. The hymen was torn.
There was inflammation. The position of tear on
hymen 5 O' Clock.”*

11. The medical report is at Exhibit 27 and the same is

proved by P.W. 9 – Dr. Maroti Digamberrao Dake, who had examined the victim on 24.07.2014. The age of all injuries was within 24 hours. He has specifically opined that “Over all findings are consistent with sexual intercourse / assault.”

12. It is pertinent to note that in cross examination it is elaborated that “Lacerated wound means split or tear by hard and blunt object.” Surprisingly, a question was put to the doctor as to whether the injuries are possible by fingers without nail and he has denied the said suggestion. All the marks indicate and establish that the victim had been subjected to sexual assault.

13. The learned counsel for the appellant submits that there is a delay of 24 hours in lodging the FIR and the same needs to be considered. However, the said submission is unacceptable since this is a case of sexual assault upon a minor. It would involve reputation of the family as well as the girl as she has to live with the stigma. It would be a social scar upon her future and therefore, delay in lodging the FIR is not fatal to the prosecution. The victim would have to live with that scar on her body and soul for all her life.

14. Learned counsel for the appellant further submits that since the owner of the house was insisting upon P.W. 1 to vacate the house, she has falsely implicated the present appellant. The said submission is also unacceptable, as no mother would expose her minor daughter to social obloquy at the cost of retaining rental premises. Moreover, P.W. 1 happens to be a teacher by profession and she would be conscious about the future of her daughter. There is no doubt that the prosecution has proved the guilt of the accused beyond reasonable doubt. Hence, Appeal deserves to be dismissed.

15. Appeal stands dismissed.

16. The victim would be entitled to the compensation under the MANODHARYA scheme besides the compensation awarded by the Sessions Court.

(Smt. Sadhana S. Jadhav, J.)