

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

CRIMINAL APPEAL NO. 697 OF 2016

Balaji Ramesh Shendge,  
age 18 years, Occu. Education,  
R/o Dhanagar Galli, Murud,  
Taluka and District Latur

.. Appellant

Versus

1. The State of Maharashtra
2. Dinesh s/o Digambar Panchal,  
Age 35 years, Occu. Carpenter,  
R/o Murud, Taluka and Dist. Latur

.. Respondents

Mr S.J. Salunke, Advocate h/f Mr R.D. Raut, Advocate for appellant  
Mr A.A. Jagatkar, A.P.P. for respondent no.1  
Mr S.H. Bali, Advocate h/f Mr S.R. Choukidar, Advocate for respondent  
no.2

- WITH -

CRIMINAL APPEAL NO.486 OF 2016

Amar s/o Balaji Savase,  
age 18 years, Occu. Agril.,  
R/o Dhanagar Galli, Murud,  
Taluka and District Latur

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mr S.J. Salunke, Advocate for appellant  
Mr A.A. Jagatkar, A.P.P. for respondent

**CORAM : SMT. SADHANA S. JADHAV, J.**

**DATE : 23.07.2019**

**ORAL JUDGMENT :**

1. The appellant no.1 Balaji Ramesh Shendge is convicted for the offence punishable under Section 377 of the Indian Penal Code read with Sec.34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.2,000/- in default to suffer rigorous imprisonment for six months, and under Section 4 of the Protection of the Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.2,000/- in default to suffer rigorous imprisonment for six months. The appellant no.2 Amar Balaji Sawase is convicted for the offence punishable under Section 17 of the Protection of the Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.2,000/- in default to suffer rigorous imprisonment for six months, by Additional Sessions Judge-2, Latur in Special Case (POCSO) No.12 of 2015 vide judgment and order dated 14.7.2016. Hence, these appeals.

2. The learned Additional Sessions Judge, Latur had granted compensation of Rs.5,000/- to the victim, however, the victim was not made a party-respondent. He is added at the stage of final hearing and hence, this Court had requested learned Counsel Mr S.R.

Choukidar to espouse the case of respondent no.2 and he has graciously accepted the request.

3. Such of the facts as are necessary for the decision of these appeals are as follows :

4. On 21.12.2014, father of the victim namely Dilip lodged the report at the police station against the appellants alleging therein that his son P.W.4 Prathamesh is studying in 4<sup>th</sup> Standard. On 21.12.2014, in the evening after returning home, he saw his son was weeping. Upon enquiry, he had disclosed that sometime ago, while he was playing, appellant Balaji and Amar had called him. The appellant Balaji had asked him to accompany them. He has obliged. Thereafter, they had gone in the sugarcane field. The accused no.2 had denuded him of his clothes and asked him to bend down and thereafter, accused no.1 Balaji had performed sodomy (anal intercourse) on him. On the basis of the report lodged by the father of the victim, Crime No.124 of 2014 was registered at Murud police station against the appellants for the offence punishable under Section 377 of read with Sec.34 of the Indian Penal Code and under Sections 4 and 17 of the of the Protection of Children from Sexual Offences Act, 2012. After completion of the investigation, the

charge-sheet was filed, the case was committed to the Court of Sessions and registered as Special Case no.12 of 2015. The prosecution examined as many as thirteen witnesses to bring home the guilt of the accused.

5. P.W.1 Dinesh Panchal happens to be the father of the victim, P.W.2 Govind and P.W.3 Daji are witnesses for the scene of offence. P.W.4 Prathamesh is the victim. P.W.5 Amar and P.W.6 Pandurang are the panchas for the seizure of clothes of the victim. P.W.7 Balasaheb happens to be the uncle of the victim, P.W.8 Suresh happens to be the panch for seizure of the clothes of the accused and P.W.9 is Dr.Parmeshwar, who is Medical Officer had examined the victim and issued certificate at Exh.41. P.W.10 Anuradha seems to be the mother of the victim, P.W.12 Santosh and P.W.13 Archana are the investigating Officers.

6. The case rests upon the evidence of P.W.1, first informant, P.W.4 the victim, P.W.9 Dr.Parmeshwar and P.W.10 Anuradha and, therefore, it is not necessary to discuss the evidence of other witnesses.

7. P.W.1 Dinesh, father of the victim has deposed in consonance

with the first information report. According to him, he had reached home upon receiving a phone call from his wife and his wife had called him telephonically. When he reached home, he found his wife and son were crying. Upon enquiry, his son had disclosed him that when he went towards Vatola road for answering nature's call, he was called by the accused no.2 who had offered him sugarcane. At that time, accused no.1 Balaji was grazing buffalo. Thereafter, accused no.2 had removed his pant and facilitated accused no.1 to commit sodomy. Upon receiving this information, P.W.1 Dinesh had taken the victim to the police station and lodged report under Section 154 of Cr.P.C., which is marked at Exh.25. It is true that the evidence of P.W.1 Dinesh is hearsay evidence. He has disclosed to the police all that he had learnt from his son. It was suggested that since the date of the incidence was yel-amavasya, which is normally celebrated in the said area, all farmers having their fields on Vatola road and the said road were busy with people. It is admitted in the cross-examination that the incident had occurred at about 6.30 p.m. The defence has failed to create dent in his examination-in-chief by way of cross-examination. P.W.4 is the victim himself. He has deposed in accordance with his statement recorded under Section 161 of Cr.P.C. and as per the information narrated in the first information report. He has narrated the incident as it has occurred.

It is specifically elicited in the cross-examination that one old lady, residing in the said vicinity namely Mathurabai had questioned him as to what was the incident that happened on vel-amavasya and in reply, he had stated that although accused no.2 was not present at the scene of offence and that he had not named accused no.2, he had disclosed name of accused no.2 that accused no.2 is falsely implicated. He has also admitted in the cross-examination that there was a quarrel between his mother and the mother of accused no.2. The mother of accused no.2 was throwing garbage in front of his house. The evidence of the victim, as far as the incident is concerned, appears to be that of a sterling nature and there is nothing which would inspire confidence of the Court.

8. It is pertinent to note that the evidence of the victim is not only corroborated but in fact, substantiated by the evidence of P.W.9 Dr. Parmeshwar Panchal. He had specifically deposed before the Court that on 21.12.2014, the victim was brought for examination by the Police. He examined the patient. He found that there was no evidence of violence on any other parts of the body. He had found abrasions on perineal area, linear abrasion on each side of the buttocks and there was evidence of blood on perineal region. He

issued the certificate to the effect that he is of the opinion that “there is evidence of recent sexual (anal intercourse). There is evidence of fresh injury on perineal region”. He has proved the contents of the certificate, which is marked at Exh.41. The admissions of P.W.9 in the cross-examination are as follows :

“It is true that abrasion means destruction of skin which usually involves the superficial layers of the epidermis. It is not necessary that linear abrasion should be caused by hard, pointed and sharp rough object. It is not always necessary that in case of sodomy, there is always proof of semen and anal portion. It is rarely possible that abrasion injury would be caused if perineal portion comes into contact with the stem of sugarcane if the person sits on the said portion”.

9. Except the history of anal intercourse, the complainant did not give any other information about the incident. Hence, the allegation of sodomy as narrated by P.W.4 stands corroborated by Exh.41 and the substantive evidence of P.W.9 Dr. Parmeshwar.

10. According to mother of the victim, on 21.12.2014, her son had been for playing and did not return home for some time and

therefore, she went in search of her son. She found him crying. She also found both the accused persons standing near her son. Upon seeing the mother of the victim, the accused no.1 Balaji fled from the spot and the accused no.2 lifted the accused and handed over him to his mother and accused no.2 has stated that her son must have sustained the injury due to sugarcane stem. The victim had denied and instead has informed that the accused no.2 had taken him to the field saying that he would give him the sugarcane. Accused no.1 was grazing buffalo and then the incident had occurred. After sometime, the accused no.1 had approached the mother of the victim and had sought pardon from her.

11. It is elicited in the cross-examination that on that day, they had been to the agricultural land of Makude maharaj. The victim had also accompanied but after returning, he had rushed to answer nature's call and there the incident had occurred. She has candidly admitted that the spot of incident was not visited by her but was disclosed by the victim. She has denied the suggestion that the accused have been falsely implicated.

12. Upon considering the sterling testimony of victim P.W.4 which stands corroborated by the substantive evidence of P.W.9 Dr.

Parmeshwar, it can be safely inferred that the prosecution has proved the guilt of the accused no.1 beyond reasonable doubt.

13. The learned Counsel for the appellants vehemently submitted that the possibility of false implication cannot be ruled out. It is further submitted that no role is attributed to accused no.2. The accused were hardly 18 years of age at the time of incident and, therefore, they deserve lenient view at the hands of this Court. The learned Counsel has drawn attention of this Court to the admission of the victim in the cross-examination that in fact, he had not named the accused no.2 as one of the perpetrators, however, due to previous enmity, his mother has falsely implicated him.

14. As against this, learned A.P.P. submits that the admission would be of no significance. It appears that accused no.2 had facilitated the commission of the offence. He was present at the scene of offence and that the mother of the victim had met both the appellants at the same time and, therefore, according to learned A.P.P., there is no sufficient reason to interfere with the judgment and order passed by the Special Court. Besides the admissions of the victim in the cross-examination, it would also be necessary to consider the age of the accused no.2 and the fact that he had

handed over the victim to his mother. He had specifically stated that the victim must be crying because of sustaining injury in the sugarcane field. Upon seeing the mother of the victim, he had made no attempt to flee from the spot. In fact, it was the accused no.1 who had fled away from the scene of the offence. It was naturally so since P.W.4 had a guilty conscience at the relevant time. The mother has also admitted that on the next day, the accused no.1 has pleaded pardon from the mother of the victim and had also stated that he has not done anything or would not do anything in future. There is variance in the conduct of the accused no.1 and accused no.2 which needs to be appreciated under Section 8 of the Evidence Act.

15. Learned Counsel Mr Choukidar for respondent no.2 has also supported the judgment of the Sessions Court.

16. In view of the above discussion, no interference is warranted with the judgment and order passed in Criminal Appeal no.697 of 2015. As far as Criminal Appeal no.486 of 2016 is concerned, it cannot be said that the appellant had actually participated in the ghastly offence. He was on trial during the pendency of the trial and also during the pendency of the appeal. In fact, this is a fit case

where the State could have filed an appeal for enhancement, however, no such appeal has been filed and suo moto notice of enhancement cannot be issued at the stage of final hearing. It would be sufficient to enhance the fine amount of the accused no.1 to Rs.7,000/- for the offence punishable under Section 377 of the Indian Penal Code. Hence, the following order :

ORDER

Criminal Appeal no.486 of 2016 is allowed. The appellant is acquitted of all the charges. The sentence of fine is set aside. His bail bond stands cancelled.

Criminal Appeal no.697 of 2016 is dismissed. The fine amount is enhanced to Rs.7,000/- instead of Rs.5,000/-. Order accordingly.

The learned Additional Sessions Judge, Latur shall issue notice to the first informant to receive the amount of compensation.

**( SMT. SADHANA S. JADHAV, J.)**

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