

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

CRIMINAL APPEAL NO.524 OF 2017

Bharat S/o. Bhagwan Gavhane
Age: 25 years, Occu.: Agri.,
R/o. Belgaon, Tq. Gevrai,
Dist.Beed.

..Appellant
(Ori. Accused)

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Gevrai, Tq.Gevrai,
Dist.Beed.
2. Manjusha d/o. Sadashiv Gire
Minor u/g. Sangita w/o. Sadashiv Gire,
Mother, Age: 35 yrs., Occu.: Household,
R/o.Belgaon, Tq.Gevrai, Dist.Beed. ..Respondents.

...
Advocate for Appellant : Shri B.A. Darak
APP for Respondent – State : Shri S.J.Salgare
Advocate for Respondent No.2 : Shri V.P.Savant
...

CORAM : P.R.BORA, J.
DATE: 3rd September, 2019

ORAL JUDGMENT:-

1. The appellant has preferred the present appeal against the Judgment and order dated 11.10.2017, passed by the Additional Sessions Judge and the Special Judge at Beed in Special (Child Protection) Case No.10 of 2017. Vide the impugned Judgment, the appellant has been convicted for the offence punishable under Section 307 and Section 354-A(i)(ii) of the Indian Penal

Code (IPC) and under Section 7 read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act'). The maximum sentence imposed upon the appellant is rigorous imprisonment for ten years and fine of Rs.1,000/- for the offence punishable under Section 307 of the IPC.

2. When the present appeal is taken up for hearing, the learned counsel appearing for the appellant has restricted the challenge to the impugned Judgment in so far as quantum of punishment is concerned. The learned counsel submitted that a very harsh punishment has been imposed by the Trial Court, ignoring the contentions raised on behalf of the appellant that, he has no criminal antecedents and he is aged about 25 years and having responsibility of his family, which consists of one daughter and one son, who are below the age of five years. The learned counsel further submitted that, in fact, if the evidence of the prosecution is perused, no conviction under Section 307 of the IPC was liable to be recorded against the present appellant. The learned counsel submitted that, except the statement of the victim girl, there is no other evidence to show that the appellant threw the victim girl into a well. The learned counsel further submitted that, it was consistent defence raised by the accused

that heap of the firewood was kept near the well and it was in pressed condition. The learned counsel pointed out that the witnesses have admitted that, if an attempt is made to bring out some firewood from the said pressed firewood, one was likely to slip into the well, which was just near the heap of the said firewood. The learned counsel pointed out that, it is not in dispute that the well was not constructed. In the alternative, the learned counsel submitted that from the evidence on record, there is reason to believe that, the appellant not with intention to kill the prosecutrix but out of fear seems to have pushed the prosecutrix into the well. The learned counsel submitted that, in such circumstances, even if the offence under Section 307 of the IPC is held to have been proved against the appellant, the punishment, which has been imposed upon the appellant is too harsh. The learned counsel, in the circumstances, prayed for reducing the sentence to the period of imprisonment already undergone by the appellant.

3. Shri S.J.Salgare, learned APP appearing for the respondent State and Shri V.P.Sawant, learned counsel appearing for the victim girl, have strongly opposed for any reduction in the period of sentence. The learned APP, taking me through the evidence on record, submitted that the prosecutrix, in her testimony

before the Court, has stated that the appellant accused had twice asked her whether she knows swimming or not. After confirming that the prosecutrix can not swim, the appellant threw her in the well. The learned APP submitted that, from the acts of the appellant, it reveals that the appellant was intending to cause death of the prosecutrix by throwing her into the well, which was having deep water therein. The learned APP further submitted that, the request made by the appellant to reduce the period of substantive sentence imposed upon him and to release him on the period of imprisonment undergone, can in no case be accepted having regard to the fact that the offence proved against the appellant is under the POCSO Act and the minimum sentence provided for the said offence is of three years. The learned APP appearing for the respondent State and the learned counsel for respondent No.2, in the circumstances, prayed for rejecting the appeal.

4. Though, the learned counsel appearing for the appellant also attempted to point out that the evidence on record was insufficient to convict the appellant for the offence punishable under Section 307 of the IPC and canvassing certain circumstances in support of his said contention, eventually he restricted his argument only to the quantum of punishment. In

view of the fact that the challenge to the order of conviction is impliedly given up, the only question for my consideration is whether any case is made out by the appellant so as to reduce the period of sentence imposed upon him. As noted herein above, maximum sentence is awarded to the appellant for the offence punishable under Section 307 of IPC i.e. rigorous imprisonment for ten years. The appellant has also been convicted for the offence punishable under Section 354-A(i)(ii) of the IPC as well as under Section 7 read with Section 8 of the POCSO Act. The punishment provided for the offence under Section 354-A(i)(ii) is upto three years and in so far as offence under Section 7 of the POCSO Act is concerned, it is not less than three years but can be extended upto five years. Considering the allegations against the appellant, which have been duly proved by the prosecution during the course of trial, the appellant deserved to be awarded the maximum punishment, which is prescribed for the said offences. Thus, one thing is certain that in no case period of sentence can be reduced to less than five years.

5. Now, the only question, which falls for determination is whether the sentence awarded to the accused under Section 307 of the IPC, can be reduced as has been prayed by the appellant.

As noted herein above, though the request so made for release of the appellant on the period of sentence already undergone, which is bit more than two and half years but less than three years, cannot be considered having regard to the offence under Section 7 of the POCSO Act, however, having regard to his age and further having regard to the fact that there are no criminal antecedents and this seems to be the first offence registered against the appellant, the punishment of rigorous imprisonment for ten years certainly appears to be on a higher side.

6. The Honourable Apex Court in the Case of ***State of Uttar Pradesh Vs. Sanjay Kumar [(2012) 8 Supreme Court Cases 537]*** has elaborately discussed about the “Sentencing Policy” and has laid down certain guidelines. It may also be useful to refer the article published in Criminal Law Journal way back in the year 1976, written by Honourable Shri V.P.Tyagi, the then Chief Justice of Rajasthan High Court. The gist of the Judgment referred and the article written by the Honourable Shri V.P.Tyagi, is that the deterrence as well as reform of the culprit both are necessary.

7. In the present matter, it appears to me that the appellant being not having any criminal antecedents and considering his age and responsibility on him, the sentence of rigorous

imprisonment for the period of six years would be sufficient deterrence for him. From the overall conduct of the appellant, it cannot be said that his presence in the society will be as hazardous as refusing him leniency. While reducing the period of sentence from ten years to six years, a balance has to be struck by increasing the amount of fine. The Court below has imposed a very meager amount of fine on the appellant. No doubt, while imposing the amount of fine, the Court has to be very reasonable and judicious. From the evidence, it can be gathered that the appellant belongs to a weaker section of society. However, increase in the amount of fine would also be a deterrence for him and if he want to save further four years behind the bars, he must be subjected to pay more amount by way of fine. During the course of argument, it was suggested by learned APP for respondent State as well as learned counsel for respondent no.2 that fine amount shall be around Rs.1,00,000/-, which would be an adequate punishment and the said amount can be paid to the victim by way of compensation. Learned counsel Shri Darak has however submitted that it would be beyond the capacity of the appellant to pay that much amount. After having considered overall circumstances, it appears to me that if the following order is passed, it would meet the ends of justice.

ORDER

I) Except Clause (01), the impugned order dated 11.10.2017, passed by the Additional Sessions Judge and Special Judge, Beed, in Special (Child Protection) Case No.10 of 2017, is maintained as it is.

II) Clause (01) of the impugned Order be substituted as under:

Accused Bharat Bhagwan Gavhane is convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 307 of the IPC and is sentenced to suffer rigorous imprisonment for six years and to pay fine of Rs.75,000/-, in default, to undergo rigorous imprisonment for six months.

III) Fine amount, if deposited by the accused, a sum of Rs.70,000/- out of it, be paid to the victim. The Trial Court shall ensure remittance of the said amount in favour of the victim by following usual process.

IV) The appeal is partly allowed in the aforesaid terms.

(P.R.BORA)
JUDGE