

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 392 OF 2016**

Ram Panchappa Kambale,
Age: 21 years, Occu: Labour,
R/o. Bhimnagar, Mandrup,
Tal : South Solapur, Dist. Solapur
(At present in Solapur Jail)

...Appellant

Versus

The State of Maharashtra

...Respondent

Mr. Ritesh Thobde for the Appellant

Mrs. P. P. Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 13th MARCH 2019

ORAL JUDGMENT :

1 By this appeal, the appellant has challenged the judgment and order dated 6th May 2016 passed by the Additional Sessions Judge, Solapur in Special Case No. 182 of 2014, convicting and sentencing him as under :

- for the offence punishable u/s 363 of the Indian Penal Code ('IPC'), to suffer RI for 3 years and to pay a fine of Rs. 5,000/-, in default, to undergo further SI for 3 months;

- for the offence punishable u/s 376 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act ('POCSO'), to suffer RI for 10 years and to pay a fine of Rs. 10,000/-, in default, to undergo further SI for 6 months.

Both the sentences were directed to run concurrently.

The appellant was, however, acquitted of the offence punishable under Section 366A of the IPC and under Section 8 of POCSO.

2 The prosecution case is as under :

The prosecutrix (PW 4) is alleged to have been kidnapped by the appellant on 5th April 2012, when she was alone at her house at Mandrup and taken to Solapur, on a motorcycle. It is alleged that thereafter, the appellant sexually assaulted the prosecutrix (PW 4) and after the said incident, the appellant came to the police station along with the victim girl.

3 At the outset, learned counsel for the appellant does not seriously press for acquittal u/s 363 of the IPC. He, however, contends that no offence u/s 376 of the IPC and under Section 4 of POCSO is disclosed *qua* the appellant. He submits that the medical evidence as well as the 164 statement of the prosecutrix, does not, in any way, support the prosecution case, vis-a-vis sexual assault.

4 Learned A.P.P is also at pains to point out any material/evidence *qua* the appellant, showing his complicity for the offences under Section 376 of the IPC and Section 4 of POCSO.

5 Perused the papers. It is the prosecution case that on 5th April 2014, PW 4 (victim girl) aged about 14 years was kidnapped by the appellant, aged 19 years and was taken from Mandrup to Solapur, where she was sexually assaulted by the appellant and thereafter was brought to the police station. It is not in dispute, that as PW 4 went missing, her mother (PW 1) lodged a missing complaint with the Mandrup Police Station alleging an offence punishable under Section 363 of the IPC. The appellant was arrested on 6th April 2014, when

the appellant brought the victim girl (PW 4) to the Police Station. Pursuant to the statement of the victim girl, the police added Section 376 of the IPC and Section 4 of POCSO. The victim girl was sent for medical examination to the Civil Hospital, Solapur.

6 After investigation, charge-sheet was filed. After the case was committed to the Court of Sessions, the learned Sessions Judge framed charge as against the appellant for the offence punishable under Sections 363, 366A, 376 of the IPC and Section 4 of POCSO.

7 The appellant pleaded not guilty and claimed to be tried. The prosecution, in support of its case, examined 8 witnesses. The evidence of PW 1 (mother of the victim girl) shows that on the date of the incident i.e. 5th April 2014, she and her husband had been to Solapur to visit her brother, who was suffering from an illness and as such PW 4 was alone at home. She has stated that when she and her husband returned to Mandrup at 5:00 p.m, they found their daughter (victim girl-PW 4) missing, pursuant to which, they lodged a missing

complaint with the Mandrup Police Station alleging an offence u/s 363 of the IPC, as against the appellant. She has further stated that on the next day i.e. on 6th April 2014, the appellant returned home with their daughter and when she made inquiry with their daughter-PW 4, she disclosed that the accused had taken her forcibly. The evidence of PW 2 (father of the victim girl) is on identical lines as that of PW 1. It is pertinent to note, that both – PW 1 and PW 2 i.e. mother and father of the victim girl respectively have not made any allegations of 376 as against the appellant, nor does their evidence show that the victim girl had made any disclosure to them, of sexual assault on her by the appellant. It was suggested in the cross-examination to both the witnesses that the appellant who was about 19 years of age at the relevant time and their daughter, were in love and as such, their daughter had gone willingly with the appellant, which suggestion was denied by the said witnesses.

8 As far as PW 4-the prosecutrix is concerned, she has stated that on 5th April 2014, at about 7:30 p.m., she was alone at home and was cooking food when the appellant came to the house, gagged

her and took her on the motorcycle to Solapur. She has stated that the appellant took her to an open land, where he sexually assaulted her and threatened to kill her, if she raised an alarm. She has further stated that thereafter the appellant took her to his maternal aunt's house, early in the morning on 6th April 2014 and disclosed to his maternal aunt about her. She has stated that the appellant's maternal aunt, on hearing, asked them to leave her house, pursuant to which, the appellant took her to the Mandrup Police Station, where her mother (PW 1) had lodged a complaint. Although it was suggested to the said witness that she was having a love affair with the appellant, she has denied the same. She also denied the suggestion of a marriage proposal by the appellant's mother to PW 4's parents. She has further stated that she did not raise any hue and cry, as the appellant had threatened her not to raise an alarm. She has also denied the suggestion that a false complaint was lodged against the appellant, so as to ensure that the appellant does not create any obstacle in her marriage. She has admitted that she and the appellant belonged to the same village.

9 The evidence of the Doctor i.e. PW 8 – Dr. Dhuldeo Shantaram Thengal shows that the prosecutrix was examined by him on 6th April 2014. He has stated that the victim girl had given history of single penetrative sexual intercourse, however, on examination, he found that there was no injury to hymen and as such, recorded a finding that sexual intercourse was inconclusive. The said certificate is at Exhibit 41. A perusal of the prosecutrix's 164 statement recorded by the Magistrate, shows that the appellant had kidnapped her and there is no reference to any physical contact or sexual assault by the appellant on her. It is also pertinent to note and as mentioned hereinabove, there is no disclosure of any sexual assault by the victim to her parents on her return and therefore, neither PW 1 nor PW 2 have deposed to that effect in their evidence. Although, the clothes of the victim girl were seized, there is no Chemical Analyser's report on record to show/suggest that PW 4 was sexually assaulted.

10 There is no cogent material on record to suggest sexual assault by the appellant on PW 4, except the bare statement of PW 4, which is also not corroborated by her parents or the medical evidence.

Having regard to the evidence on record, it is difficult to come to the conclusion that the appellant has committed the offences punishable u/s 376 of the IPC and Section 4 of POCSO.

11 As far as Section 363 of the IPC is concerned, PW 4 admittedly was a minor (14 years) at the time of the alleged incident and her age is not seriously disputed by the defence. The evidence with regard to Section 363 is borne out by the evidence of PW 1, PW 2 and PW 4. Infact, learned counsel for the appellant also does not seriously dispute the conviction and sentence of the appellant u/s 363 of the IPC.

12 Having regard to what is stated aforesaid, the appeal is partly allowed. The conviction of the appellant u/s 363 of the IPC is maintained, however, the appellant's conviction u/s 376 of the IPC and Section 4 of POCSO is set-aside.

13 Appeal is disposed of accordingly.

14 All concerned to act on the authenticated copy of this
Judgment.

REVATI MOHITE DERE, J.