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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. 972 OF 2014

Vikram Sakharam Jadhav	)	
Aged about 30 years,	)	
Residing at Anant Nagar,	)	
Opposite Acharya College,	)	
Chembur, Mumbai	)	
At present undergoing the sentence	)	
imposed upon him at Taloja Central	)	
Prison, Taloja	)	...Appellant

Versus

1. The State of Maharashtra	)	
(At the instance of Senior Inspector	)	
of Police)	)	
Khandeshwar Police Station,	)	
vide C.R. No. I-169 of 2013)	)	
2. Mayuresh Mohan Bhopi,	)	
Aged about 14 years,	)	
Residing at C/5/7, 1 st Floor, Room No.3	)	
New Panvel	)	..Respondents

Ms. Akshata B. Desai i/b. Mr. Nitin Sejpai for Appellant
Mr. S.S. Pednekar – APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : JANUARY 28, 2019

JUDGMENT :

1. The Appellant herein is convicted for the offences punishable under Section 355 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for two months. He is also convicted for the offence punishable under Section 9(l) (o) (p) r/w. Section 10 of Protection of Children from Sexual Offences Act and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for one year by the Additional Sessions Judge, Raigad – Alibaug vide judgment and order dated 24.11.2014 in Spl.(Child) Case No.8.2014. Hence, this appeal.

2. Such of the facts necessary for the decision of the appeal are as follows.

3. The Appellant herein was conducting private tuition classes in the name and style of Gurukul Coaching Class. The victim was attending the said class. The Appellant was mainly teaching Sanskrit subject. It was an optional subject opted by the victim. The victim was attending the tuition class since 2013. It is the case of the prosecution that on 27th December, 2013, the victim

along with his father had been to the tuition class, they mounted assault upon the Appellant, he sustained bleeding injury. The staff then immediately called upon the police and informed about the said incident. The accused-Appellant was arrested and on 27th December, 2013. Mohan Bhopi, the father of the victim lodged a report at the police station alleging therein that on 27th December, 2013, his son had not attended the tuition class and, therefore, his wife was constrained to call him home and told him to ask the victim the reason for not attending the tuition class. Upon inquiry, the victim has disclosed that he fears his tuition teacher i.e. the present Appellant. He had also disclosed that during the period of tuition class, the Appellant had committed aggravated sexual assault on him with sexual intent. He had also disclosed that the Appellant had made other students to leave the class and, thereafter, he used to show indecent and pornographic photos and videos to the victim and, thereafter, molest him. Upon receiving the said information, the father of the victim had gone to the tuition class to inquire. In the course of verbal altercation, the police arrived at the spot.

4. On the basis of the said report, the Crime No. 169 of 2013 was registered against the Appellant at Khandeshwar Police

Station, Navi Mumbai. After completion of the investigation, the charge sheet was filed on 27th February, 2014. The case was committed to the Court of Sessions and registered as Spl. (Child) Case No. 8/2014. The prosecution examined five witnesses to bring home the guilt of the accused.

5. PW1 is Mohan Bhopi, the father of the victim, who lodged the FIR. He had proved the contents of the FIR. The FIR is marked as Exh.11. It is elicited in the cross examination that the victim had not attended the tuition classes on few occasions since there were Christmas vacation. It appears that the defence of the accused is that the victim was not attending the classes regularly. He could not answer the tests properly and insisted upon the Appellant to teach numerical topic repeatedly and since the Appellant had refused to oblige, the student had falsely implicated him in the heinous offence.

6. PW2 is the victim himself. He has admitted that his statement is also recorded in Panvel Court under section 164 of Cr.P.C. The victim has neither been confronted with the 164 statement nor the contents are proved. Hence, the same is marked as 'Article X'.

7. Upon perusal of the statement recorded under Section 164 of

Cr.P.C., it is clear that there is no inconsistency in his statement under section 164 of Cr.P.C. and the substantive evidence recorded before the Court. The defence is consisted that the victim is told that he was not attending the class regularly and, therefore, he has been falsely implicated the Appellant teacher. It is true that there are minor discrepancies in the substantive evidence of the victim such as switched-off lights and closed doors of the class room in order to molest the victim is not mentioned in the statement of 164 of Cr.P.C. However, these are minor discrepancies and do not go to the route of matters.

8. In the cross examination, it is admitted by the victim that he could not attend the Sanskrit classes intermittently.

9. The Learned APP vehemently submits that an admission to the effect that the victim was not attending the classes regularly does not by itself mean that the victim would falsely implicate him. It is also urged that in the cases falling under the provisions of POCSO, the implicit reliance is placed on the substantive evidence of the victim unless it is a case of no corroboration.

10. PW3 happens to be the mother of the victim. She has disclosed before the Court the facts as narrated by her son and also the reason for not attending the classes regularly.

11. In view of above, there is no reason to set aside the findings recorded by the Learned Special Judge.

12. The learned counsel for the Appellant has also stated before the Court that the Appellant has undergone the sentence imposed upon him. He deserves to be acquitted or else he would be carrying the stigma over his life. As against this, the learned APP submits that the security, humility and dignity of the students attending the classes would be at stake. It is submitted by the learned APP for the State that the Appellant has indulged into an heinous offence. He has molested the growing student which would affect their personality in future.

12. The learned counsel for the Appellant submits that the prosecution has not proved the offence of the Accused beyond reasonable doubt. It is submitted that the investigating officer has not recorded the statement of any staff members or teachers of the tuition classes. The investigating agency has also not seized the attendance register of the students. According to the victim, the incident had occurred on 25th December, 2013 and 26th December, 2013. However, the investigating officer has not recorded the statement of any witnesses showing the presence of the victim boy in the tuition class on 25th and 26th December, 2013. According to

the learned counsel there was no occasion to lodge the FIR against the Appellant as the victim was not attending the tuition classes on 25th and 26th December, 2013. In such cases, the benefit of doubt cannot be extended to the victim only because the investigation is faulty. Hence, the appeal stands dismissed since the findings recorded by the Learned Sessions Judge do not call for any interference.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam