

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

**CRIMINAL APPLICATION NO. 714 OF 2019
IN
CRIMINAL APPEAL NO. 1009 OF 2019**

Amar Mahadev Aarekar .. Applicant
v/s.
The State of Maharashtra & Anr. .. Respondents

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Mr. Arun Rajput i/b Mr. Amit A. Nalavade for the applicant
Mrs. M.H. Mhatre, APP for respondent – State
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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE: 28th JANUARY, 2020.

P.C.

1. Heard the learned Counsel for the applicant.
2. The applicant has been convicted by Special POCSO Court, Mumbai of an offence punishable under Section 376(2)(1) of the Indian Penal Code. He is sentenced to suffer Rigorous Imprisonment for 20 years with fine of Rs.1,000/- in default, simple imprisonment for 15 days. He is convicted under Section 366A of the Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for 3 years with fine of Rs.500/- in default, simple imprisonment for 7 days. He

is further convicted under Section 363 of the Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for 3 years with fine of Rs.500/- in default, simple imprisonment for 7 days. He is convicted of the offence punishable under Section 341 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 1 month with fine of Rs.100/- in default simple imprisonment for 2 days. He is convicted of the offences under Section 6 of POCSO Act and is sentenced to suffer Rigorous Imprisonment for 10 years and fine of Rs. 1,000/- in default, simple imprisonment for 15 days.

3. The substantive sentences were directed to run concurrently. The age of the victim was 12 years at the time of incident. The victim testified that at the relevant time she was studying in 7th standard. On 14th March, 2017, she did not attend the school and was at home due to pain in her ear. Her parents were out for the work. The applicant, who is a neighbourer asked her to come to the terrace. When she met him at the terrace, he asked her to come to *Bharatmata* at Parel as he had some work. When the victim went there, she noticed a blue coloured Omni car. The applicant asked her to accompany him in the car. They went to Parel in an old

garage for repairing his car. The applicant and his friend Harshad were in the car. The girl friend of the victim with her another two male friends were standing over there. The girl-friend of the victim went to the college, however, the applicant took the victim in a room at Sarvodaya Hotel. After some time, all of them left the hotel room. The applicant closed the door and made the victim lie on the floor. He removed his clothes as well as clothes of the victim. He did sexual intercourse with the victim against her will. The victim cried due to pains. Thereafter, the applicant's friend came inside the room and asked the applicant whether he had enjoyed, upon which, the applicant said that he did. Thereafter, they left the victim near Curry Road bridge by the car. The victim went home and informed her mother about the incident. On the same night, they approached Bhoiwada Police Station and lodged the report. The victim was referred to K.E.M. Hospital where she was medically examined. The applicant was arrested. The clothes of the victim and the applicant also came to be seized and sent for chemical analysis. The defence could not make any dent in the testimony of the victim during cross. So called omissions are not material.

4. PW-4 – Dr. Manoj Parchake, who works as an Assistant Professor in Forensics examined the victim aged about 12 years on 15th March, 2017. The victim had narrated the history of sexual harassment by the applicant. She categorically informed that there was a forceful vaginal and anal intercourse twice between 6.00 p.m. to 7.00 p.m on 14.03.2017. She further made it clear that the applicant was under the influence of alcohol.

5. On examination, PW-4 Dr. Manoj Parchake noticed following injuries which needs no further elaboration :-

“i. contusion present on back (lower), extending from mid line upwards towards left axilla of size 26 x 0.5 cm Redish Bluish in colour.

On local Examination, I find :-

1. abrasion present between labia majora and minora on left side of size 1 x 0.5 cm, reddish in colour, hymen was ruptured. Evidence of tear of 4 O'clock reddish in colour.

2. abrasion of 0.5 x 0.5 cm present at 6 O'clock position on anal region. No active bleeding present. Anal tone normal. Per rectal no bleeding. On proctoscopy no abrasion inside anal.”

6. It is apparent from the evidence of the Medical Officer that the victim was subjected to forceful vaginal as well as anal intercourse. The injuries between labia majora and labia minora as well as tear of

4 O'clock clearly indicates the manner and mode in which the victim was subjected to forceful vaginal as well as anal penetration.

7. The examination of the applicant by the same Doctor – PW-4 also confirms the fact that there were linear abrasion present over the antero lateral aspect of right fore arm middle one third obliquely placed of length 08 cm, which is reddish in colour. There were recent injuries over right fore arm of the applicant. It is opined that there was nothing to indicate that the applicant was unable to perform sexual intercourse.

8. PW-9 – Vitthal Kulal is a motor mechanic, whose evidence reveals that in March, 2017 two boys and one girl came in a blue Maruti Van. He repaired the said van and accepted charges of Rs.150/-. He had identified the applicant sitting in the Dock.

9. The learned Public Prosecutor submits that there is a DNA Report, which conclusively proved that the victim was a child at the time of incident.

10. Taking into consideration the nature of evidence, gravity of offences and the act with which a small girl of 12 years was brutally exploited by the applicant by forceful penetrative vaginal intercourse and also unnatural penetration in the anal aperture exhibits the tendency and the nature of the applicant. It would not at all be safe to release such elements which may pose threat to the society. Releasing such persons pending the appeal would tantamount to incurring the risk of repeating such offence, more particularly when he is the next door neighbour of the victim. Emotional wound leading to psychological injury needs to be healed not aggravated. Therefore, this is not at all a fit case in which sentence can be suspended.

11. For the reasons aforesaid, the Criminal Application is rejected.

(PRITHVIRAJ K. CHAVAN, J.)