

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

CRIMINAL APPEAL NO.336 OF 2018

Fakkad Narayan Shinde
Age 41 years, Occu. Service,
R/o Khalwandi, Kharwandi,
Tq. Newasa, District Ahmednagar ... **APPELLANT**

VERSUS

The State of Maharashtra,
through the Police Station Officer,
Police Station, Shani Shingnapur,
Tq. Newasa, District Ahmednagar ... **RESPONDENT**

.....
Mr. V.D. Sapkal, Advocate for appellant
Mr. S.N. Morampalle, A.P.P. for respondent – State
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 3rd July, 2021

Date of pronouncing judgment : 4th August, 2021

J U D G M E N T :

This appeal is directed against the judgment and order dated 25/4/2018, passed by learned Additional Sessions Judge, Newasa, District Ahmednagar in Special Case No.10/2017, convicting the appellant for the offences punishable under Sections 8 and 10 of the Protection of

Children from Sexual Offences Act, 2012 (POCSO Act for short) and sentencing him to suffer rigorous imprisonment for seven years and to pay fine of Rs.10,000/-, in default to suffer simple imprisonment for six months. The appellant is also convicted for the offence punishable under Sections 354-A and 506 of the Indian Penal Code (IPC for short) and sentenced to suffer rigorous imprisonment for six months. Both the sentences have been directed to run concurrently.

2. Facts giving rise to the present appeal are as follows :

Santosh (P.W.12 informant) is a resident of Hingoni, Taluka Newasa, District Ahmednagar. He has two daughters. His younger daughter, X was in 4th Standard in Zilla Parishad Primary School in the year 2017. the informant returned home from his field in the evening of 22/2/2017. His wife Sunita (P.W.1) informed him that the appellant, teacher in the school sexually abused X. The informant and his wife, therefore, approached some of the parents of the girls who were classmates of X. The parents, therefore, enquired with their respective daughters and thereupon realised that their daughters had also been abused the way X was. All of them, therefore, first approached the Village Sarpanch. Then the

informant lodged the F.I.R. (Exh.64) with Shani Shingnapur Police Station for the offence punishable under Sections 354-A and 506 of the Indian Penal Code and Sections 8, 9 and 12 of the Protection of Children from Sexual Offences Act. Vaibhav (P.W.13), Police Sub-Inspector serving with Shani Shingnapur Police Station was entrusted with the investigation. He first paid visit to the school. Drew the scene of panchanama. Recorded statements of the victim girls and persons acquainted with the facts and circumstances of the case. On completion of investigation, the appellant was proceeded against by filing the charge sheet.

3. The learned Judge framed the charge (Exh.8). The appellant pleaded not guilty. His case is of false implication.

4. To bring home the charge, the prosecution examined 13 witnesses and tendered in evidence documents in the nature of scene of offence panchanama etc.

5. It is the case of the prosecution that the appellant sexually abused minor school girls. All these girls had appeared before the Trial Court. 2 -3 of them have not been examined since due to their age, the girls were unable to understand the nature of questions and give rational answers

thereto. P.W.1 to P.W.3 are the mothers of the victim girls X, X-1 and X-2 respectively. I do not propose to refer to the evidence of mothers of the victims since the same is hearsay.

6. Let us now turn to the evidence in the case. As stated above, P.W.12 Santosh is the informant. He did lodge the F.I.R. (Exh.64). It is in his evidence that, on 20/2/2017 by 7.00 p.m., he returned home. His wife Sunita (P.W.1) informed him the appellant to have sexually abused their daughter. He, therefore, enquired with his daughter. Then both Santosh and his wife went to parents of friends (classmates) of X. On enquired with classmates of X, it was realised, they too had been abused the way X was. The parents of the girls, therefore, approached the Village Sarpanch and then Santosh (P.W.12) lodged the F.I.R.

In cross-examination of P.W.12-Santosh suggestions in the nature of appellant's defence were put. He did not give in to any of the questions. Although his relations with the village Sarpanch are cordial, nothing could be elicited from his cross-examination to infer him to have lodged a false F.I.R.

7. X (P.W.4) was examined in question – answer form. It is in her evidence that, she was Class IV student of 10 years age. The appellant was her teacher. It is in her

evidence that the appellant would kiss her. He would make her sit on his lap. He made her hold his private part. He inserted his hand in her undergarment. The appellant had asked her not to disclose these things to anyone, lest he would beat her up. According to her, the appellant did behave same way with her other classmates. She disclosed these facts to her parents only when her cousin sister told her how the appellant behaved with her. Both of them, therefore, disclosed these incidents to her mother (P.W.1). X stated to have not disclosed the said incident to her parents therebefore due to threat extended by the appellant. Such incidents took place with her once or twice a week. It is further in her evidence that, her statement was recorded by lady police officer and then by a lady Judge.

In her cross-examination, X has stated that, the village Sarpanch used to visit their school. He would enquire with the students about the performance of teachers including the appellant. The Sarpanch would ask the students to approach him in case they have any problem with any of the teachers. The appellant made infrastructural developments in the school. The village Sarpanch runs his private English medium school. Her school is of Marathi medium. Some of the Marathi medium school boys joined English medium

school. She, however, denied the Sarpanch to have approached her parents before the case. X then described the school premises with class rooms and the computer room therein. She admitted to have not made any complaint to lady staff of the school engaged to cook food for mid-day meal. It is further in her evidence that, all the students were upset with the appellant as he would beat them up. It is further in her evidence that, other girl students and their parents had come to the Court along with her and her parents to give evidence in the case. It is further in her evidence that, before she gave her evidence in the Court, she had read over her police statement, when her father was around.

8. It is in the evidence of X-2 (P.W.5) that, she was in 4th Standard. The appellant and one Chaudhari Sir were her teachers. The appellant would fondle her breast. Kissed her. He would ask her to pluck hair on his legs. He would rub her hands and fingers as well. Such incident happened only once. It is further in her evidence that the appellant behaved the same way with her classmates. She disclosed these things only after X and her parents came to her residence to enquire about the happenings. According to her, she did not disclose earlier due to threat extended by the appellant.

In her cross-examination, she deposed that, she along with her classmates had accompanied the appellant in his car to participate in inter-school sports competition. She also attended Bal Anand function at Amalner along with the appellant. The appellant would take active part in cultural and other school activities. According to her, she did not tell in her statement (Exh.51) that the appellant would ask her to rub his finger, he would fondle her breast etc. as she was frightened as the police were around. She denied to have given her evidence as instructed by her father. According to her, the father had only asked her to state true facts. It is further in her evidence that other schoolmates and their parents had also accompanied her to the Court.

9. X-1 (P.W.6) stated in her evidence that, the appellant used to touch her private part by sneaking his hand lifting her frock. Such incidents happened 7 – 8 times. She did not disclose those incidents due to fear of the appellant. Such incidents took place in class room during recess.

In her cross-examination, she stated that, her statement was not recorded in writing by police. It was recorded in the phone. The Police Madam had enquired with all the girls simultaneously. She stated to have not told the

Police Madam that such incidents happened 7 or 8 times, because the Police Madam did not ask her. It is further in her evidence that, no discussion took place as regards what is to be deposed in the Court. She denied that, her father read her over her police statement before she gave evidence in the Court.

10. X-3 (P.W.7) testified that, she was in 3rd Standard. The appellant would rub her hands and legs. Press her breast. He would touch her private part and used to insert his fingers into her mouth. She shared these happenings with her cousin sister, X (P.W.4). Such incident occurred 2 – 3 times in computer room during recess, lunch break or short interval. It is further in her evidence that such incidents happened for many days. She lastly got angry and, therefore, told it to her cousin sister. She went home weeping.

In her cross-examination, it has come on record that statements of all the girls were recorded simultaneously and videographed as well. The school premises is at the road side. Happenings in the school are visible from outside through windows. She had been to the school trips. The appellant had arranged those trips. It is further in her evidence that, she did not state to the police that the

appellant touched her private part and rubbed her hands. According to her, she did not disclose the same to the police since she answered the questions which were put to her. According to her, since she was confused, she did not state in her statement to the Judge Madam that the incident happened in computer room. She admitted to have had read her police statement before giving her evidence before the Court.

11. X-4 (P.W.8) deposed that, the appellant would insert his hand and press her breast. Asked her to rub his hands and legs. Such incidents happened when she was in 2nd/ 3rd Standard. She did not inform it to anybody as the appellant had asked her not disclose, lest he would beat her. According to her, such incidents took place during recess in computer room. Other students used to be around during such incidents.

In her cross-examination, she denied that the appellant used to call 2 – 3 girls at a time. She, however, could not offer any explanation as to why did she say so in her statement recorded by lady Judge. The Police Madam recorded her statement with the voice recorder. It was not written or typed. It is further in her evidence that she stated

that such incidents happened in computer room since she had such discussion with other girls whose statements were recorded. She, however, denied to have any discussion with her friends over what shall be stated in the Court.

12. X-5 (P.W.11) testified that, the appellant would insert his hand in her frock. He would take her hand into his pant. He would make her sit on his lap and kiss her. Such incidents took place during recess and short intervals in computer room. One or two girls used to be there during such happenings. Such things happened with her twice. Other girls had informed her that the 'Sir' has behaved with them same way.

In her cross-examination, she stated to have not disclosed in her statement to the Judge that the appellant would kiss her and made her sit on his lap since she was frightened. Her father cultivates the land of the village Sarpanch as a tenant. She denied to have given evidence against the appellant at the instance of her parents.

13. Shri Sapkal, learned Senior Counsel representing the appellant would submit that, the appellant used to take part in village politics. He had canvassed in Grampanchayat elections for a candidate from rival group of the Sarpanch.

English medium school was recently started by the Sarpanch. He wanted that all Marathi medium school boys shall join his English medium school. Thus, with a view to teach the appellant a lesson, a false F.I.R. has been lodged. According to learned Senior Counsel, the relevant witnesses in the case are children. The investigating officer has not placed on record their videographed statements. There are material omissions and contradictions in the evidence of the child witnesses. The parents and elders had tutored the child witnesses before they gave their evidence in the Court. These witnesses read over their police statements before they entered the witness box. According to him, child witnesses are prone to tutoring. In the fitness of things, their evidence is not worthy of placing reliance. The learned Senior Counsel has relied on the following authorities :-

- (1) Navin Dhaniram Baraiye Vs. State of Maharashtra
[2018 Cri.L.J. 3393]
- (2) Nivrutti Ganpati Sadekar Vs. State of Maharashtra
[2018(4) Bom.C.R. (Cri.) 737]
- (3) Suresh Purushottam Ashtankar Vs. State of Maharashtra
& anr. [2015 ALL MR (Cri.) 4243]

The learned Senior Counsel ultimately urged for allowing the appeal in toto. In the alternative, he urged for

reducing the quantum of sentence to the period already undergone since it has been four years the appellant is behind the bars.

14. The learned A.P.P. took me through the evidence of the victim girls to submit that they have deposed what happened with them. According to him, considering the victim girls being around 10 years of age, there bound to be some inconsistencies in their evidence. It was but natural for them not to immediately come out against their teacher. Learned A.P.P. supports the impugned judgment.

15. The relationship between the appellant and the victim girls is that of teacher and students/ pupils. The victim girls are all in the age group of 9 – 10 years. It was therefore, but natural for them not to immediately disclose what had happened with them. It is only after X (P.W.4) gathered courage to share her ordeal with her mother Sunita (P.W.1). Her mother testified that, on 20/2/2017, X came home crying. It was 5.30 p.m. On enquiry with X, she told her that the appellant sneaked his hand in her knicker and touched private part. P.W.1 Sunita thereafter related the same to her husband, informant (P.W.12). He then lodged the F.I.R. It was but natural reaction on the part of P.W.1 and

P.W.12 to first approach other girl students, friends of X to find whether the appellant behaved with them the same way. On registration of the crime, a lady police officer has recorded statements of the victim girls under Section 161 of the Criminal procedure Code. The investigating officer (P.W.13) was categorical to state that, none of such statement has been videographed or recorded in a cell phone. True, two of the victim girls have testified that their statements were recorded simultaneously on cell phone and videographed as well. The said testimony appears to be a result of their age of understanding. The lady J.M.F.C. has recorded the statements of the victim girls under Section 164 of the Cr.P.C. All such statements have been on record and marked exhibits. In view of Section 80 of the Evidence Act, it has to be presumed that, the statements are genuine, that the statements, as to circumstances under which those have been taken, purporting to be made by the person signing it, are true, and that such statement was duly taken.

16. The learned J.M.F.C. has recorded the statements of the victim girls in question-answer form after having found the victim girls to have been free from any kind of external influence. The evidence of the victim girls before the Court has been reinforced/ corroborated by their statements

recorded under Section 164 of the Cr.P.C. It is true that, the evidence of two of the victim girls is in the nature of some improvements over their statements recorded by the learned J.M.F.C.. P.W.4- X testified before the Court that the appellant used to kiss her. He inserted his hand under her frock. Made her hold his private part. He asked her not to disclose the same to anyone else. While in her statement before the learned Magistrate she had stated that the appellant would kiss her. He fondled her breast. Touched her private part. The appellant used to embraced her. The evidence of this witness is very much consistent with her statement before the learned J.M.F.C. True, she testified that she had come to the Court along with other victim girls and their parents. It was her father who told her to give a statement to the lady Judge. She had gone through her statement before she gave her evidence in the Court.

17. X-2 P.W.5 has stated in her statement under Section 164 of the Cr.P.C. that, the appellant would kiss her and ask to rub his fingers. True, her evidence before the Court is somewhat in the nature of improvement over her statement before the learned J.M.F.C. There is, however, no similar omission in her police statement (under Section 161 of the Cr.P.C.). She was, however, categorical to deny to have

given her evidence at the instance of her parents.

18. P.W.6 X-1's evidence is very much consistent with the statement recorded by the learned J.M.F.C. The record of all the statements recorded by the learned J.M.F.C. indicates that, those have been recorded separately after following the statutory requirements. She was categorical to deny the discussion took place between the victim girls and their parents as to what should be deposed before the Court.

19. The statement of X-3 (P.W.6) recorded by learned J.M.F.C. is consistent with her evidence before the Court. Same is the case of X-4 and X-5.

20. There is nothing in the evidence to indicate the appellant was at logger-head with the village Sarpanch. True, the village Sarpanch runs an English Medium school. The victim girls are in Zilla Parishad Primary School. There is nothing to indicate the appellant to have ever participated in village politics, inviting wrath of the village Sarpanch. It was not difficult for the village Sarpanch to have the appellant transferred out of the village had he really entertained any animus against him.

21. There can be no two views over the proposition

that the evidence of a child witness may be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and, thus, a child witness is an easy prey to tutoring. It is also true that, every accused is presumed to be innocent unless the guilt is proved. In case of **Lallu Manjhi and another Vs. State of Jharkhand [AIR 2003 SC 854]**, the Hon'ble Supreme Court observed in paragraph No.10 as follows :-

“10. The Law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the Court may classify the oral testimony into three categories, namely (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness. (See – *Vadivelu Thevan etc. v. State of Madras*, AIR 1957 SC 614).”

22. There was nothing wrong of the parents of the victim girls having been their around while their statements were recorded by the learned Magistrate or the police officer. Section 26(1) of the POCSO Act reads :-

“26(1) Additional provisions regarding statement to be recorded:- The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.”

23. In view of Section 26(4) of the POCSO Act, recording of statement of child by audio-video electronic means is not mandatory. It is reiterated that, the learned J.M.F.C. has recorded the statements of the victim girls after having ensured that all of them were free from external influence. The lady police officer has also recorded the statements in question-answer form. It is true that, two of the victim girls have testified to have had perused their police statements before entering the witness box. The Division Bench of this Court in case of Suresh Ashtankar (supra), discarded the evidence of witness who had referred to his previous police statement immediately before entering the witness box. The Division Bench has approved the observations of the learned Single Judge in case of **Sharad s/o Namdeorao Shirbhate V. State of Maharashtra [2006(2) Mh.L.J. (Cri.) 1210]**. The observations of the learned Single Judge were :-

“35. Insofar as the evidence of Pranjali (P.W.3) is concerned, she has corroborated the version of Sharyu on all material aspects. Not only that, she has also in clinching words stated that kerosene was poured on her mother near TV in the hall. Pranjali was present in the hospital. She has seen the police first time in the hospital. She has admitted that, on the day of incident, she did not disclose to the police that she has seen that her father has set her mother on fire. Belated disclosure to police though opportunity was there, coupled with the fact that the claim of this witness about pouring of kerosene in the hall near TV belied by contemporaneous document (Exh.19), creates serious doubt about her testimony.”

24. In my view, the evidence of all the victim girls is very much consistent with each other. Their statements recorded by the learned J.M.F.C. reinforce their testimony before the Court. These girls had no reason to speak against their teacher (appellant). A few and minor omissions or improvement here and there are bound to occur in view of tender age of the victims. Although two of the victim girls had referred to their previous statements before they gave evidence in the Court, in my view, the same would not materially detract their probative value. From the entire evidence in the case, I am satisfied that the learned trial Judge has rightly convicted the appellant. There is no reason for this Court to interfere therewith.

25. In case of **Devilal and others Vs. State of Madhya Pradesh [(2021) 5 SCC 292]**, the Apex Court observed :-

“Criminal trial – Witnesses – tutored/
Pressurised witness – Eyewitnesses –
Probability of tutoring – Held, mere assertion
on the part of the witness that her earlier
statement recorded during investigation was
read over to her does not mean that she was
tutored to follow the line of prosecution.”

26. So far as regards alternate submission as regards reducing the quantum of sentence, it is stated to be denied at once. The appellant was the teacher of all the victim girls. He had a special duty to play their a guardian next to their parents. Each and every independent act of sexual abuse of the victim constitutes a separate offence. The sentence of imprisonment of seven years may, in the facts and circumstances of the case, be found to be inadequate.

27. In the result, the appeal fails. The same is, therefore, dismissed.

(R. G. AVACHAT)
JUDGE

fmp/-