

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

CRIMINAL APPEAL NO.321 OF 2017

Jitendra Rajmohan Mazi,
aged 31 years, R/o. Chiroli,
Tal-Maharajganj,
Dist. Shivang, State of Bihar
(Was residing at Sindhudurgnagari
Railway Station, prior to his arrest)

C/6623 (Presently lodged at
Kolhapur Central Prison,
Kalamba, Kolhapur - 7)

...Appellant

Versus

The State of Maharashtra
(At the instance of Kudal Police Station,
in respect of C.R. No. 33/2015)

...Respondent

Ms. Nasreen Sajid Khalique Ayubi for the Appellant

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent– State

***CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 3rd MARCH 2021***

JUDGMENT :

1 By this appeal, the appellant has impugned the judgment and order dated 21st November 2016, passed by the learned Special Judge,

Sindhudurg at Oros in Special Case No.44 of 2015, convicting and sentencing him as under:

- for the offence punishable under Section 376(2)(i) of the Indian Penal Code r/w Sections 4, 6 and 8 of Protection of Children from Sexual Offences Act, to suffer rigorous imprisonment for 12 years and to pay a fine of Rs.10,000/-, in default of payment of fine, to suffer further rigorous imprisonment for 1 year;
- for the offence punishable under Sections 363 and 366 of the Indian Penal Code, to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.500/-, in default of payment of fine, to suffer further rigorous imprisonment for 50 days.
- for the offence punishable under Section 506(2) of the Indian Penal Code, to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.500/-, in default of payment of fine, to suffer further rigorous imprisonment for 50 days.

All the aforesaid sentences were directed to run concurrently.

2 In the intervening night of 30th September 2015 and 1st October 2015, PW 1-`X' (minor girl aged 7 years) was kidnapped from the lawful guardianship of her parents from the Sindhudurnagari Railway Station, where they were sleeping and taken by the appellant towards a close-by

forest area, where she was sexually assaulted by the appellant. After the sexual assault on `X`, she returned to the platform and informed her parents about the same. PW 7-Arun Shetye, Senior Station Master, on learning of the incident of sexual assault on `X`, immediately informed the police of Sindhudurgnagari Police Station. When the police reached, the appellant fled from the place where he was residing with others. PW 2 – mother of `X` lodged a complaint/FIR on 1st October 2015 at 4:00 p.m. The appellant was arrested from Oros on 1st October 2015. Thereafter, statements of witnesses came to be recorded under Sections 161 and 164 of the Criminal Procedure Code. After investigation, charge-sheet was filed as against the appellant in the Court of the learned Special Judge (POCSO).

Charge was framed as against the appellant, to which, the appellant pleaded not guilty and claimed to be tried.

The prosecution, in support of its case, examined 18 witnesses i.e. PW 1-`X` (minor aged 7 years); PW 2-mother of `X` and complainant; PW 3-Satyawan Malave, panch to the (i) spot panchanama dated 1st October 2015 (Exhibit 20), (ii) arrest panchanama dated 1st October 2015 (Exhibit 21) and (iii) recovery of clothes worn by the appellant at the time of the incident, under Section 27 of the Evidence Act dated 2nd October 2015

(Exhibit 24); PW 4-Ajit Angsali, who had seen one girl weeping and running towards the railway platform on 1st October 2015 at 12:15 a.m; PW 5-Rohidas Munde, Assistant Chemical Analyser, who proved the DNA report (Exhibit 180); PW 6-Chetan Mhadgut, Medical Officer, Civil Hospital, Oros, who examined the appellant on 1st October 2015 (the medical report of the appellant is at Exhibit 34); PW 7-Arun Shetye, Senior Station Master, who had informed the Sindhudurnagari Police Station and identified the appellant as being the person sleeping on the bench on the railway platform, where 'X' was sleeping with her parents on 30th September 2015; PW 8-Mandar Dhuri, panch to the test identification parade carried out on 3rd October 2015 at the Tahsil Office, Kudal; PW 9-Balasaheb Joshi, Medical Officer at Civil Hospital, Sindhudurg, who examined victim-'X' on 1st October 2015 at 2:00 a.m (the medical certificate is at Exhibit 43); PW 10-Gama Jankar, who was working as a Site Supervisor with Ajit Kajve; PW 11-Shashikant Sawant, Police Head Constable, Oros, who carried the sealed articles for depositing the same to the Forensic Science Laboratory on 2nd October 2015; PW 12-Minakshi Rathod, Ladies Police Naik, Oros, who recorded the complaint/FIR of PW 2 (mother of 'X'); PW 13-Mahesh Paste, who arrested the appellant from Oros; PW 14-Gourav Nagzarkar, who handed over the OPD case-papers of the appellant; PW 15-Anirudha Gavade, PSI, Sindhudurnagari

Police Station. The said witness seized the clothes of `X' from PW 2 (mother of `X'); PW 16-Pravin Lokare, Executive Magistrate, Kudal, who conducted the test identification parade on 3rd October 2015 at about 4:30 p.m. and PW 17-Padmaja Chavan, Deputy Superintendent of Police and the Investigating Officer.

After the prosecution examined its witnesses, the statement of the appellant was recorded under Section 313 of the Criminal Procedure Code. The defence of the appellant was that of denial and false implication. According to the appellant, as Ajit Kajve, his employer had not paid him for three months, there was a quarrel between him and Kajve, as a result of which, he was removed from work. According to the appellant, he was falsely implicated in the said case at the instance of his employer-Ajit Kajve.

After hearing the parties and after considering the evidence on record – both, oral and documentary, the learned Special Judge, Sindhudurg at Oros, convicted and sentenced the appellant as stated in para 1 above.

3 Learned counsel for the appellant submitted that the prosecution has not established the identity of the appellant as being the

very person, who was sleeping on the platform of the railway station, where 'X' was sleeping with her family, on the intervening night of 30th September 2015 and 1st October 2015. She further submits that the identification of the appellant by witnesses i.e. PW 1-'X' , PW 2-mother of 'X' (complainant) and PW 7-Arun Shetye, Senior Station Master, cannot be relied upon, inasmuch as, the incident had taken place at midnight, and as such there was no opportunity for anyone to see the appellant. She also assailed the DNA report, which shows that the blood found on the appellant's clothes was that of 'X'. She further submits that the prosecution ought to have examined Sandesh Samant, Suresh Sharma, Ajit Kajve and Naresh, to show the complicity of the appellant in the alleged crime. She submits that non-examination of the said witnesses was fatal to the prosecution case.

4 Learned A.P.P submitted that no interference was warranted in the impugned judgment and order. He submitted that the prosecution, by leading cogent evidence, had proved beyond reasonable doubt, that it was the appellant who kidnapped 'X' and thereafter sexually assaulted her. He submitted that the appellant has been identified by PW 2- mother of 'X' and PW 7- Arun Shetye, Senior Station Master, in the test identification parade held on 3rd October 2015. He submitted that even PW 1-'X' has identified

the appellant in Court. According to the learned A.P.P, the evidence of PW 1-`X`, PW 2-mother of `X` and PW 7-Arun Shetye, Senior Station Master, is duly corroborated by the medical evidence on record as well as the DNA report.

5 Perused the papers with the assistance of the learned counsel for the appellant and the learned A.P.P. Having gone through the evidence and the documents on record and having heard the submissions advanced by the respective parties, I am of the opinion that no interference is warranted in the impugned judgment and order of conviction and sentence passed by the learned Special Judge, for the reasons set-out hereinunder.

6 PW 1-`X` (minor aged 7 years), has, in her evidence, stated that she was studying in the 4th standard, at her native place and had come to Oros, 3 to 4 months prior to the date of incident. She has stated that her father was ill and that they were taking him to Kudal from Oros and hence, had come to the railway station; that as they missed the train i.e. Diva Passenger Railway, they were sitting in front of the railway booking office; that one person was sitting on the platform and was looking towards them; that they slept on the railway platform; that the said person also slept on one of the benches at the railway platform; that at about 12 midnight, the said

person picked her up and took her at a distance of about 5 to 10 minutes, in a jungle, removed her nicker and slept on her person; that blood started oozing from her private part; that the said person threatened her that if she disclosed the incident to her parents, he would kill her by throwing a stone on her; that she told him that she would not disclose it to her parents and that if her parents asked her, she would tell them that she went to answer the nature's call; that the said person left her in the jungle and went away; that she walked towards the railway station from the said spot, seeing the light of the railway station; that on reaching the railway station, she disclosed the incident of sexual assault to her mother, by the person sleeping on the bench; that her mother disclosed the incident to the railway station master; and that she was taken to the hospital, where she was treated. PW 1-`X' has further stated that her statement was recorded by the police and thereafter, before the Court. She has stated that the said person was wearing a black coloured pant and a shirt having squares, when he was at the railway station and has given his description. She has also deposed with respect to the clothes worn by her and has identified the said clothes i.e. blue skirt having blood stains (Article 11), nicker having blood stains (Article 13) and blue shirt (Article 12). She has further stated that her statement was recorded by the Chief Judicial Magistrate, Oros (Exhibit 12). She has identified her thumb impression on the said statement. The witness has also identified the

appellant as being the same person, who kidnapped her and thereafter, sexually assaulted her.

A perusal of the cross-examination shows that the said witness has withstood the cross-examination. Nothing material has been brought on record in the cross-examination of the said witness to disbelieve or discredit her testimony. The suggestion given to the said witness that she was deposing falsely at the instance of her mother, has been denied by her. It is pertinent to note that certain questions were put to the said witness before her evidence commenced, to ascertain whether she understood the questions put to her and to ascertain whether she understood the sanctity of oath. The learned Judge, after confirming that the witness understood the sanctity and importance of oath, administered oath to the said witness-`X`.

7 The evidence of PW 1-`X` with respect to her kidnapping and of sexual assault on her, is duly corroborated by PW 2 (mother of `X`). PW 2 (mother of `X`) has deposed that `X` was 7 years of age at the relevant time; that as her husband was unwell, they were taking him to a dispensary at Kudal; that her husband, son and `X` were with her; that they went to the railway station at Oros at about 7/7:30 p.m, as they were to take the Diva Passenger train; that as they missed the train, they stayed at the

railway station; that one person was sitting on a bench by their side for some time; that after some time, the children fell asleep and hence, they too went to sleep near the office of ticket booking; that at about 00:30 hours, 'X' came crying and disclosed that the person sitting on the bench had gagged her mouth, lifted her and taken her towards the jungle, where he removed her nicker and slept on her; that he put his private part in hers, due to which, there was oozing of blood; that she saw 'X' and they all started weeping; that the Railway Master came and asked them why they were weeping, pursuant to which, she disclosed the said incident. PW 2 has further stated that the Railway Officials went in search of the said person and that the Railway Officials also called the police. She has further stated that 'X' was taken to the hospital. PW 2-mother of 'X', has identified the complaint given by her. The same is at Exhibit 14. The same was recorded at about 4:00 a.m. on 1st October 2015. According to PW 2, her statement was also recorded before the Chief Judicial Magistrate. She has identified her thumb impression on the said statement which is at Exhibit 15. PW 2 has further stated that she was called to the jail at Sawantwadi for identifying the accused. She has stated how she identified the appellant, who was standing at serial No. 5 in the row by touching him. PW 2 has also identified the clothes worn by 'X' at the time of the incident i.e. Articles 11, 12 and 13.

In the cross-examination, PW 2 has admitted that the unknown person who had taken her daughter-`X`, had worn black pant and shirt having checks and that there were no other passengers there. She has also admitted that her son and daughter were sleeping together. Several suggestions were put to the said witness, however, the said suggestions have been denied by her. She has also denied the suggestion that she had identified the appellant by mistake in the identification parade. She has denied the suggestion that she had falsely filed the complaint/FIR, as against the appellant. The evidence of PW 2 inspires confidence and there is nothing on record to disbelieve the said witness or discredit her testimony. It is pertinent to note that the incident is alleged to have taken place on the intervening night of 30th September 2015 and 1st October 2015 and the identification parade was held promptly, within two days thereafter i.e. on 3rd October 2015 and as such, PW 2, having seen the appellant at the railway station, where they were sitting and later sleeping, could well identify the appellant. Therefore, the question of making a mistake in identifying the appellant is completely ruled out.

8 Infact, the evidence of PW 1-`X` and PW 2-mother of `X`, is corroborated by PW 7-Arun Shetye. PW 7 has stated that he was serving as a Senior Station Master at Sindhudurgnagari, at the relevant time. He

has stated that he came to the railway station on 30th September 2015 at 10:45 p.m, and saw one couple sleeping along with two children in front of the ticket booking office. He has stated that he saw one more person sleeping on a cement platform before them; that the said person was dark in colour and was aged between 30 to 35 years. He has stated that at around 12:20 a.m, when he was at the counter, one small girl came weeping and was disclosing something to her mother; seeing the girl weeping, he asked his colleague-Sandesh Sawant to make inquiry as to why the said girl was weeping; that Sandesh Sawant went and asked PW 2 (mother of `X`) and on return, disclosed that the person sitting on the platform had raped her daughter. PW 7-Arun Shetye has further stated that on learning of the same, he went outside and verified; that he found that `X` was bleeding from her mouth and that there was blood at the spot where she was sitting; that the parents of `X` informed him about the incident, pursuant to which, he asked his employees to take search of the said person; that they learnt that the said person was working at the railway site; that the employees went to the site and inquired as to who had gone to sleep at the railway station; that the employees learnt that a person by the name Jitendra (appellant) had fled; that they learnt that the appellant was working as a driver on the vehicle of Ajit Kajve, pursuant to which, he was called, after which, `X` was taken to the hospital. PW 7-Arun Shetye has identified the

appellant as being the same person, who was sleeping on the platform. He has also stated that he informed the police about the said incident. The said witness has also stated that he was called to Sawantwadi jail for identifying the accused; that he identified the appellant, who was standing at No. 3 in the row, by touching him, before the Tahsildar. He has also admitted that on 8th October 2015, his statement was recorded before the Chief Judicial Magistrate under Section 164 of the Criminal Procedure Code. PW 7-Arun Shetye has admitted his signature as it appears on the said statement (Exhibit 38).

In the cross-examination, certain minor omissions were brought on record i.e. there is no mention of the name of Sandesh Sawant in his statement before the Chief Judicial Magistrate. However, the said omission is not a material omission, which goes to the root of the case. PW 7-Arun Shetye, in his cross-examination, has denied that on the date of the incident, he had left the railway station premises and that he was deposing falsely that he had seen the appellant sleeping on a cement platform opposite to where PW 2-mother of 'X', was sleeping with her family.

PW 7-Arun Shetye was present on duty at the relevant time. There is no reason to disbelieve his presence at the railway station at the

relevant time, nor there is any reason to disbelieve his evidence that he had seen the appellant sleeping on the cement platform, opposite to where PW 2-mother of `X`, was sleeping with her family. Nothing is brought on record in the cross-examination to show why PW 7 – Arun would falsely depose against the appellant, more particularly, when the appellant was not even known to the said witness.

9 Merely because Ajit Kajve (employer of the appellant), who took PW 1-`X` to the hospital, was not examined, does not, in any way, cast a shadow of doubt on the prosecution case, more particularly, when prosecution had examined all the relevant witnesses.

10 It is pertinent to note that the prosecution has also proved the 164 statements of witnesses i.e. PW 1-`X`, PW 2-mother of `X` and PW 7-Arun Shetye, recorded before the Chief Judicial Magistrate. There is nothing to disbelieve the recording of the said statements before the Chief Judicial Magistrate. All the three witnesses have stood by their statements and there is no material omission/contradiction brought in the evidence of the said witnesses.

11 In this context, it would also be apposite to note, that the test identification parade was conducted by PW 16-Pravin Lokare, Executive Magistrate, on 3rd October 2015. In order to prove the test identification parade, the prosecution has examined PW 16- Pravin Lokare, Executive Magistrate as well as PW 8-Mandar Dhuri, panch to the test identification parade, which was conducted at the Tahsil Office at Kudal. A perusal of the evidence of both, PW 8-Mandar Dhuri and PW 16-Pravin Lokare with respect to the test identification parade conducted on 3rd October 2015, inspires confidence. In the said test identification parade which was conducted, both PW 2-mother of `X` and PW 7-Arun Shetye, Senior Station Master, have identified the appellant as being the person, who was sitting on the platform. Thus, the identity of the appellant is clearly established by the prosecution.

12 The aforesaid evidence is duly corroborated by the medical evidence. PW 9-Dr. Balasaheb Joshi examined PW 1-`X` on 1st October 2015 at 2:00 a.m. Dr. Joshi, in his evidence, has stated that he was attached to the Civil Hospital as Casualty Medical Officer on 1st October 2015. He has stated that at about 2:00 a.m, `X` was brought to the Civil Hospital; that her parents were with her; that he inquired with the prosecutrix, who

disclosed the history of sexual assault on her; on physical examination, he found that PW 1-`X`, aged 7 years old, was bleeding from her vagina, had swollen lacerations, labia minora bilateral laceration 1 cm in length, lateral vaginal wall laceration 1 cm, small tear on right side of hymen. On gynecological examination by gynecologist, following injuries were found :

1. One degree perennial tear with bleeding with edema of edges.
2. Lateral vaginal wall tear measuring 1 cm x 0.5 x 0.5 cm.
Bilateral bleeding plus swelling present.
3. Paraurethral tear measuring 1 cm in length.
4. Hymen small tear on right side with bleeding present.

PW 9-Dr. Balasaheb Joshi also found an abrasion on either side of X's cheek 0.25 x 0.25 cms. According to PW 9, the injuries found on `X` were due to forceful sexual act, as a result of which, there was bleeding. The said witness produced the medical certificate (Exhibit 43). He also collected the sample of blood, nails, swab from labia minora, vaginal swab, survival swab and handed over the same to the police for medical analysis. Nothing substantial has been elicited in the cross-examination of the said witness to disbelieve his testimony with respect to the sexual assault on `X`.

13 Thus, the evidence on record shows that PW 1-`X' was a victim of sexual assault and that the appellant was the perpetrator of the same.

14 PW 3-Satyawan Malave, is the panch to the spot panchanama, arrest panchanama and seizure of appellant's clothes under Section 27. He has identified the clothes of the appellant recovered at the instance of the appellant under Section 27 of the Evidence Act i.e. half pant (Article 14) and seized towel (Article 15). The appellant was wearing the said clothes at the time of sexual assault. PW 10-Gama Jankar working as a Site Supervisor with Ajit Kajve has identified the clothes i.e. Articles 14 and 15, worn by the appellant at the time of the incident. PW 10-Gama Jankar has stated that he was serving as a Site Supervisor with Contractor-Ajit Kajve and that in October 2015, work was going on at the Sindhudurgnagari Railway Station; that at the site of work, one tin shed was erected and that he along with Maruti Shelke, Raju Kate, Jitendra Mazi (appellant), Suresh Sharma and other workers were residing in the said tin shed. He has further stated that on 30th September 2015, at about 6/6-30 p.m, work was over; that at about 9:00 p.m, when they had dinner, the appellant was not in the shed; that at about 10:00 p.m, when the appellant came to the shed, he was

wearing a check shirt and black pant; that after dinner, when he went to the station to sleep, he was wearing bermuda and a green coloured towel. PW 10-Gama has identified both, the half pant (Article 14) and towel (Article 15). According to PW 10-Gama, the appellant returned to the tin shed to sleep at 12:30 midnight. He has stated that when the police came soon thereafter and started enquiring as to who had gone to the station, the appellant fled from the spot; that they went to the railway station and saw one girl at the station, with blood oozing from her mouth and private part. PW 10-Gama, has further stated that his master Ajit Kajve came and took the girl and her parents to the hospital in his vehicle. He has stated that his statement was recorded before the Chief Judicial Magistrate as per his say and has identified his signature on the same. Although, it was suggested to the said witness in the cross-examination, that there was a dispute between Ajit Kajve and the appellant, on account of payment of money, the same has been denied by the witness.

15 Thus, the evidence of PW 10-Gama shows that the appellant had changed his clothes at around 10:00 p.m, from check shirt and black pant to half pant (bermuda) and towel. PW 1-`X' and PW 2-`X's mother have stated that the appellant had worn check shirt and black pant, when they saw him on the railway platform before they slept. The half pant and

towel were recovered at the instance of the appellant. They were blood stained. PW 3-Satyawan has proved the said recovery and panchanama (Exhibit 24).

16 Coupled with the aforesaid evidence on record, the complicity of the appellant in the crime is also seen from the DNA report (Exhibit 180). The DNA report shows that the DNA profiles obtained from blood-stain cuttings of Exhibit 1-Skirt, Exhibit 2-Half Shirt, Exhibit 3-Small Pant (Exhibits 1 to 3 of `X`), Exhibit 4-Half Pant (bermuda) and Exhibit 5-Towel (of the appellant) are identical and from one and the same source of female origin and match with the DNA profile of `X`.

17 Considering the overwhelming material on record, no interference is warranted in the impugned judgment and order of conviction. Appeal is accordingly dismissed.

18 The victim girl was 7 years of age, when she was kidnapped by the appellant from the railway station, when she was sleeping with her family and taken to a nearby place and sexually assaulted. The victim girl ought to be awarded compensation under Section 357-A(2) Cr.P.C. Accordingly, the matter be sent to the District Legal Services Authority

(`DLSA'), Sindhudurg, Oras, for awarding compensation. DLSA to complete necessary formalities and award compensation to the victim girl, if not already done. DLSA shall do the needful at the earliest, and preferably within 6 months from the date of receipt of this order.

19 Before parting with the judgment, it is heartening to note the efforts taken by the police (Sindhudurnagari) in the prompt collection of evidence. Their efforts need to be acknowledged and lauded. The promptness with which the investigation has been done is evident from the following. The incident of sexual assault took place on the intervening night of 30th September 2015 and 1st October 2015 between 10 – 10:30 p.m. to 12:30 a.m; the police of Oros Police Station, on receipt of information immediately reached the spot; the girl `X', aged 7 years was medically examined at 2:00 a.m on 1st October 2015; FIR was registered on 1st October 2015 at 4:00 a.m; the clothes of the victim girl were seized under a panchanama at 10:30 a.m. (Exhibit 16) on 1st October 2015; the spot panchanama was also drawn on the same day i.e. 1st October 2015 at around 11:30 a.m; the appellant was also arrested on 1st October 2015 at around 2:30 p.m; letters were sent to the Forensic Science Laboratory on 1st and 2nd October 2015 i.e. clothes of `X' with other articles and clothes of appellant respectively; test identification parade was held on 3rd October 2015 at

4:30 p.m, promptly; the statements of the witnesses were recorded under Section 164 of the Criminal Procedure Code on 8th October 2015 and 27th October 2015; and all MLC/CA reports were received on 29th October 2015. Thus, practically in one month, the entire investigation was complete with CA reports in hand. Indeed, a feat and a rarity.

20 In the present case, the police of Sindhdurnagari have done a remarkable job and so has the prosecutor of the trial Court. Needless to say, it could not have been possible without the cooperation of the prosecutor and defence lawyer. The efforts of the citizenry, in assisting the police, apprehend the appellant, at the earliest, coming forward to depose before the Court as responsible citizens and by standing by their statements, also needs to be acknowledged and appreciated. The Judge completed the trial by 21st November 2016. The mandate of POCSO Act, to complete trial within 1 year, duly complied with. Indeed, commendable. Speedy justice is a component of social justice, since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and if the criminal is innocent, he/she being absolved from the inordinate ordeal of criminal proceedings. Courts must strive to ensure that cases, do not fall prey to the slow motion syndrome, which is lethal to the administration of justice, whatever the ultimate outcome.

21 If cases are investigated with diligence, alacrity and promptness, in the manner as aforesaid and trial conducted in the manner, in which it has, the perpetrators of crime can be brought to book at the earliest. Probably, this case can be used as an `ideal case', by the police, on how an investigation can be done.

22 Registry to forward a copy of this judgment to the District Legal Services Authority, Sindhudurg as well as Director General of Police, Maharashtra, forthwith.

REVATI MOHITE DERE, J.