

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 116 OF 2020

Premchand s/o Shitalprasad Gupta
Aged about 81 years, Occ. Grocery Shop,
R/o Aradhana Nagar, Plot No. 37, Bidgaon,
Nagpur.

.... **APPELLANT**

// VERSUS //

The State of Maharashtra, through
Police Station Officer, Nandanvan,
Nagpur.

.... **RESPONDENT**

Shri Ajay D. Tote, Advocate for appellant (Appointed).
Shri S.D. Sirpurkar, A.P.P. for respondent-State.

CORAM : **VINAY JOSHI, J.**
RESERVED FOR JUDGMENT : **22/12/2020.**
DATE OF PRONOUNCEMENT : **06.01.2021**

JUDGMENT :

Heard.

2. The challenge in this appeal is to the judgment and order of conviction passed in Special Child (POCSO) Case No. 80 of 2014 whereby the Trial Court has convicted the appellant (accused) for the offence punishable under Section 6 of the Protection of Children from

Sexual Offences Act, 2012 (for short “the POCSO Act”) and imposed sentence to suffer rigorous imprisonment for 10 years alongwith fine of Rs.2,000/- with stipulation of default.

3. On the basis of report dated 07.03.2014 lodged by the mother of victim girl aged 8 years, the investigation has commenced. P.W.1 Informant Dashodabai was living with her family including school going daughter aged 8 years. The accused was living in the same vicinity. The informant lady and her husband used to attend labour work whilst in the morning victim was attending school. It was practice that informant while leaving for her job used to keep keys of her house with the accused for handing over to the victim on her return from school.

4. As usual, On 03.02.2014,, informant lady and her husband left for labour work. The victim had already left for her school. The informant after locking the door, had kept the keys with the accused who was running a grocery shop in adjacent premises. In the evening, when informant returned to the house, she learnt from victim about the incident. The victim girl discloses that on her return from school in the afternoon, she went to the accused for collecting keys. At that time,

the accused took her inside the house, removed her under garments and inserted his fingers into her vagina. The victim started to cry, hence she was set free. After realizing the things, the informant and her husband gave thoughtful consideration and lodged report at Exhibit 20. On completion of investigation, final report has been filed in Special Court. The accused denied the guilt. His defense was of total denial. The prosecution has examined as many as 7 witnesses to bring home the guilt of accused. The prosecution evidence mainly consists of the evidence of informant and her daughter i.e. minor victim. The Trial Court on appreciation of evidence, held that the accused has committed alleged offence and accordingly passed the aforesaid mentioned sentenced.

5. Learned Appointed Counsel for the appellant has challenged the reasoning and finding recorded by Trial Court while holding accused guilty. It is his submission that the evidence of child witness was not reliable and trustworthy. There was no independent corroboration to the evidence of victim minor girl. Medical evidence does not support the prosecution case. Moreover, there was inordinate delay in lodgement of First Information Report. On that basis, he would submit that, the Trial Courts verdict is unsustainable in law, hence, urged for acquittal. As against this, learned A.P.P strongly supported the

judgment of the trial Court. He would submit that the evidence of minor victim is reliable and trust-worthy. The defence failed to bring material to show the inimical terms between the parties. Moreover, he relied on the statutory presumption under Section 29 of the POCSO Act, and ultimately prayed for confirmation of sentence.

6. The incident as stands is quite disturbing since the accused was 81 years of age at the time of occurrence. It is not disputed that informant was 8 to 9 years of age meaning thereby she was 'child] within the meaning of Section 2-(d) of the POCSO Act. The defence has not disputed that accused was residing nearby and was running a small time grocery shop at his residence itself. It was prosecution case that informant and her husband used to go for labour work and while leaving the house they were keeping keys of their house in the shop run by the accused. The said aspect has not been denied by the defence. On perusal of answers given by accused to question numbers 4 and 5 in statement under Section 313 of the Code of Criminal Procedure, the accused has admitted said aspect.

7. This being case of penetrative sexual assault on a minor victim, it would be advantage to directly go through the evidence of minor victim. It is her evidence that during the period of incident, she

was studying in 3rd standard. The accused was residing adjacent to her house to whom she was calling as grandfather of her friend Shreya. On the day of incident she returned from school around 1.00 pm and went to the house of accused to collect the keys. At that time accused called her inside, removed her chaddi and panty. The accused inserted his finger into her vagina and moved it around. Then she stated that, in the evening she had disclosed the things to her mother. She was subjected to cross-examination, but nothing emerges to create entertainable doubt.

8. The prosecution has examined PW.1 informant, who is the mother of victim. She stated that on the day of incident, victim was left at her school, thereafter she alongwith her husband left on their work by keeping keys in nearby shop with accused. In the evening, she returned on which noted that victim was frightened. On inquiry, she learnt the incident of fingering through the victim. She deposed that she sought help from nearby people, however finally she has lodged the report. During cross-examination, the defence has brought on record that both the houses are located in thickly populated area, there happen to be a road in front of the house of the accused. Besides that no other material has come on record to disturb core issue.

9. The prosecution has examined Medical Officer PW.4 Dr. Mansi, however, during examination, no signs of injury were found. Pertinent to note that allegedly incident of fingering occurred on 03.03.2014 whilst after four days the victim was medically examined. Having regard to the said fact, it is not possible to expect medical evidence on the point of occurrence.

10. The defence contended that due to inimical terms the accused has been falsely implicated. According to defence, there was handloan transaction due to which he has been falsely implicated. However no such case was put-up to either of the witnesses, but in the statement under Section 313 of the Code of Criminal Procedure, first time the story of handloan emerges. In absence of any material it is difficult to accept after-thought defence of handloan theory. It requires to be noted that as per undisputed prosecution case, the informant used to keep keys of her house with accused by trust. Had it been the fact that there were inimical terms, then there was no reason for informant to keep keys with the accused. Thus, it falsifies the defence of inimical terms in between the parties.

11. The victim's evidence is cogent, reliable and trust-worthy. There was no material to create any doubt about her version. The

victim's mother has corroborated, the victim's evidence on peripheral issues. In such type of cases, it is hard to expect corroboration from any independent witnesses. There is no difficulty in basing conviction, if the evidence of victim inspires full confidence. The evidence of informant and victim withstood the prosecution case. There is no element of doubt nor any material to discard the testimony of child witness.

12. True, there is delay of four days in lodgement of F.I.R. One has to understand that the informant and her husband were restrict laborers. It is their case that, after occurrence, they sought help from villagers but as they did not, the matter was reported to the Police. In such scenario four days time gap cannot be considered as inordinate delay. Generally, parents are reluctant to stretch the matter to the Police since it relates to the chastity of their minor child. There is sufficient explanation for delay in lodgment of F.I.R. Moreover that cannot be a sole reason for jettisoning prosecution case which is otherwise trustworthy.

13. The entire prosecution case is reliable and trust-worthy. There is no reason to suspect the evidence of prosecution witness on core issue. Learned Trial Court has rightly appreciated the entire

evidence in proper perspective while arriving on the finding of guilt.

14. On re-appreciation of entire material, I am totally in confirmity with the view expressed by the trial Court. In view of that, appeal carries no merit, hence, Criminal Appeal stands dismissed. The fees of appointed Counsel be paid as per rules.

JUDGE

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