

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

CRIMINAL APPEAL NO. 195 OF 2018

Krishna Shahadev Karke
Age: 21 years, Occu. Agril.,
R/o. Jategaon, Tq. Gevrai,
Dist. Beed

... **Appellant**
(Ori. Accused)

Versus

The State of Maharashtra and another

... **Respondents**

....

Mr. S. J. Salunke, Advocate for appellant
Mr. S. P. Sonpawale, APP for respondent No.1
Mr. D. R. Irale Patil, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 18th FEBRUARY, 2022

PRONOUNCED ON : 22nd FEBRUARY, 2022

J U D G M E N T :-

. This is an appeal against conviction. The appellant has been convicted for the offence punishable under Sections 4, 8 and 10 of the Protection of Children from Sexual Offence (POCSO) Act, 2012 and sentenced to suffer rigorous imprisonment for ten years, three years and five years respectively and to pay fine of Rs.500/-, in default, rigorous imprisonment for one month, respectively. All the substantive sentences are to run concurrently.

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

PW1 - 'A' was the resident of a village in taluka Georai, District Beed. She would reside along with her parents and siblings. PW3-'B' is the mother of prosecutrix . On the day of the incident i.e. 06.07.2017, the father of the prosecutrix had been away at his workplace. It was the weekly Bazar day. Both the PW3 and her mother-in-law would reside separately in two different house, but in the same locality. PW3 (mother) went to the Bazar for purchases keeping all her three minor children with her mother-in-law. It was about 3.00 p.m. The mother of the prosecutrix (PW3) returned from the village to find only two of her children were with the mother-in-law. The prosecutrix was not around. The mother came her own home to find the entrance door was simply closed. She opened the door to find the prosecutrix was lying on the cot. No clothes were on her person. The appellant had taken his pant and underwear down the knee. The appellant was seen sexually assaulting the prosecutrix. After having seen the mother of the prosecutrix, he started running away. The hands of the prosecutrix were tied. Her mouth was covered with a towel. The mother shouted. Neighbours rushed to her residence. The appellant was overpowered. The father of the

prosecutrix was informed on phone. He returned home. All of them, then took the appellant to the police station. The mother lodged the First Information Report (FIR) Exh.44.

3. The crime vide C.R. No.127 of 2017 came to be registered. Both, the prosecutrix and the appellant were medically examined. The blood samples were obtained. Scene of offence panchanama was drawn. The statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of the investigation, the appellant was proceeded against by filing the chargesheet.

4. The trial Court framed the charge (Exh.06/C). The appellant pleaded not guilty. The prosecution examined ten witnesses and produced in evidence certain documents. The appellant examined one witness in his defence. On appreciation of the evidence in the case, the appellant came to be convicted and sentenced as stated above.

5. The learned Advocate for the appellant took me through the FIR and statement under Section 164 Cr. P.C. of the mother of the prosecutrix to submit that it was an offence of outrage of modesty of a girl/woman and nothing more. He also took me through the

medical examination report of the prosecutrix to submit that no offence of rape or aggravated penetrative sexual intercourse was made out. According to him, the appellant at the relevant time was just little over 20 years of age. He has been behind the bars for little over 1½ (One and half) years. The learned Advocate, therefore, urged for acquittal of the appellant. He, ultimately, urged for reducing the sentence to the period already undergone.

6. The learned APP and the learned Advocate for the prosecutrix would, on the other hand, submit that no leniency could be shown to the appellant. He deflowered a girl of six years old. The testimony of the prosecutrix coupled with the medical evidence and the evidence of her mother undoubtedly made out the offence.

7. Considered the submissions advanced. Perused the entire evidence in the case. Gone through the documents relied on. Let us appreciate the same.

8. The prosecutrix (PW1) was in 2nd standard in July 2017. The trial Court did not administer her oath considering her age. She was found competent to be examined as witness. The house of the grandmother was in the neighbourhood. It is in her evidence that

she was with her grandmother. Her mother had gone to weekly Bazar. A small girl from the vicinity had passed away due to snake bite. She had therefore been there. The appellant came and told that her father had come and she was called by him. She, therefore, went along with the appellant. He took her to her residence. He tied her hands and legs. Removed clothes on her person. He, then, slept on her and did sexual intercourse. The victim has used Marathi term for such act. She also pointed out her private part to explain what the appellant did with her. It is further in her evidence that her mother came. She rescued her from the appellant. The mother contacted her father on phone.

9. To almost all the suggestions put in her cross examination on behalf of the defence Advocate, she did not give in.

10. PW2 - Asaram was the Headmaster of the school with which the prosecutrix was studying. He placed on record an extract of school admission register of the prosecutrix (Exh-42). The date of birth of the prosecutrix recorded therein is 25.03.2010. As such, the prosecutrix was not more than 6-7 years when the incident did take place. The learned Advocate for the appellant also did not dispute the prosecutrix to have been a child at the relevant time. Even her

birth certificate (Exh.42/5) issued by the local authority, was placed on record to prove that the prosecutrix was born on 25.03.2010.

11. The mother (PW3) of the prosecutrix testified that on the given day, her husband had left the house early in the morning. It was a weekly Bazar day. She went to Bazar by 02.00 p.m. leaving her all the three minor children with her mother-in-law, residing in the neighbourhood. After her purchasing was over, she returned to the house of her mother-in-law to take the children back home. She found the prosecutrix was not there. The mother-in-law told her that she might have been playing around. She therefore returned her home to find the entrance door was simply closed (not bolted). She opened the door to find the appellant to have been sexually assaulting the prosecutrix. The hands of the prosecutrix were tied. No clothes were on her person. The trouser and underwear of the appellant were down the knees. After having seen her, the appellant started running away. She shouted. The neighbours came. The appellant was overpowered. The father of the prosecutrix was contacted. He came. All of them went to the police station taking the appellant along. She lodged the FIR (Exh.44). Her statement (Exh.45) was also recorded under Section 164 Cr.P.C.

She was subjected to search in cross examination. She did not give any answer that would be useful to the appellant. She denied that the appellant had suffered injuries and therefore had gone to the Rural Hospital, Talwada. She denied that the appellant was admitted to hospital by 4.00 p.m. She further denied to have no good relations between the two families. The omissions in her FIR and statement under Section 164 Cr.P.C. have also been brought on record to the effect that in both these documents it has not been recorded that the hands and legs of the prosecutrix were tied. She also stated to have had informed to the police while recording the FIR that the appellant was about to sexually assault the prosecutrix, but for her timely arrival. She gave explanation that she had consciously stated so as she did not want to disclose her daughter to have been deflowered as it would have been a stigma for the prosecutrix and difficult to give her in marriage when time come.

12. Dr. Prakash (PW6) was a Gynecologist, serving with the Civil Hospital, Beed. On the given day he was on duty. He medically screen the prosecutrix. On her examination, he found annular are opening in hymen suggestive of partial penile penetration. He noticed small abrasion on left leg. He found hymen shows annular

are opening in hymen at 12 O' clock position. The vaginal swab and blood of victim was obtained. In his opinion, the victim was subjected to sexual violation. In his cross examination, he has explained that the medical examination report indicates the date of incidence as 7th July. It was a mistake. He examined the prosecutrix on the intervening night of 6th and 7th July. The medico-legal examination report (Exh.53/c) thus came to be admitted in evidence. True, no semen was detected on the vaginal swab.

13. PW10 - Pravinkumar did the investigation of the crime. He gave evidence consistent with his role as an Investigating Officer. The appellant had examined a defense witness, Dr. Varsha. It is in her evidence that the appellant was admitted to Primary Health Centre, Talwada on the day of the incidence. There were six injuries on his person. She gave details of those injuries. His injury certificate is at Exh.79, wherein all the six injuries were in the nature of abrasion.

14. The evidence undoubtedly indicates that the appellant was overpowered within minutes of the incidence. He was medically examined before he was formally arrested. On such medical examination, the injuries on his person were noticed. The same

suggest that he was thrashed by the villagers while he was being overpowered. It is also true that in a request letter Exh.67, issued for medical examination of the appellant, the police had noted therein that he had teased the minor girl. The said document had come into being either before or at the time of recording of the FIR and therefore, would be of no avail to the appellant.

15. The prosecutrix, a girl of little over six years, has categorically stated the appellant to have had taken her under the pretext of having been called by her father. He took her to her residence. The mother had been away in weekly Bazar. The father was engaged in agricultural operation. Her siblings were in the custody of her grandmother, residing in the neighborhood. As such, no one was at home when the appellant took the prosecutrix there. He made her lie on the cot. He too downed his pant and underwear below knees. Forced him on her person. The victim has categorically stated what the appellant did with her. She meant to say that there was penetration. Meanwhile, the mother of the prosecutrix arrived. She saw the appellant laid himself on the person of the prosecutrix. There were no clothes on the person of the prosecutrix. The appellant was sexually exploiting her. She raised shouts. The

neighbors gathered. The appellant was overpowered and taken to the police station. The Medical examination report of the prosecutrix suggests that there was partial penetration. The injuries on the person of the appellant were as he was subjected to beating by the villagers. On appreciation of this entire evidence an inescapable conclusion is that the trial Court has rightly convicted the appellant. This Court has no reason to interfere with the order of conviction and consequential sentence as well. The quantum of sentence imposed is minimum one.

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

[R. G. AVACHAT, J.]

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