

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

CRIMINAL APPEAL NO. 588 OF 2016

Ashok Vetel Hake

Age: 41 years, Occu.: Labour,
R/o Rupnarwadi, Mohoj Deodhe,
Tq. Pathardi, Dist. Ahmednagar

..APPELLANT

VERSUS

1. State of Maharashtra

2. XYZ

..RESPONDENTS

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Mr. Joydeep Chatterjee, Advocate for appellant

Mrs. G.L. Deshpande, A.P.P. for respondent no.1 – State

Mr. U.B. Bilolikar, Advocate for respondent no.2 (appointed)

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CORAM : R.G. AVACHAT, J.

DATE : 25th APRIL, 2022

JUDGMENT :

1. Heard.

2. The challenge in this appeal is to the judgment and order dated 16th August, 2016 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No. 296 of 2015, whereby the appellant herein has been convicted for various offences punishable under the Indian Penal Code ('I.P.C.') and Protection of Children from Sexual Offences Act, 2012 ('POCSO'). Since the substantive sentences of imprisonment have been

directed to be run concurrently, the maximum sentence the appellant has to undergo is of twelve years. He has been convicted for having committed aggravated penetrative sexual assault on his own daughter below twelve years of age.

3. Learned counsel for the appellant would submit that relationship between the appellant and his wife had not been good. The appellant was alleged to have been addicted to alcohol. There used to be frequent quarrels between the couple. With a view to avoid such harassment, a false First Information Report ('F.I.R.') was lodged by the wife of the appellant at the instance of their daughter. According to him, there is delay of little over one month in reporting the alleged offence to the concerned police station. He, therefore, urged for allowing the appeal granting the appellant acquittal.

4. Learned A.P.P. and learned counsel for Respondent No.2 – victim would, on the other hand, submit that the appellant, instead of protecting his minor daughter, became perpetrator of sexual offence against her. A twelve years old daughter cannot have a reason to falsely implicate his natural father. Learned A.P.P. would further submit that the trial Court had observed that the victim was shy to narrate her woes. They, therefore, urged for dismissal of the appeal.

5. Considered the submissions advanced. Perused the evidence relied on. The appellant is a natural father of the victim. The victim was admittedly just below twelve years of age at the relevant time. It was in her evidence that her mother and grand-parents had been to Pandharpur on the event of *Ekadashi*. The victim was at home with the accused. She cooked food for both of them and had dinner together. She had been to the house of neighbor for completing her homework. By 09.30 p.m. she went to sleep. After sometime the appellant fondled her breast. She resisted. He did not listen. Even on the next day on her return from school, the appellant embraced her and fondled her breast. On the next day her mother and grand-parents returned home from Pandharpur. It is further in her evidence that on 30th July, 2015 her mother and grand-parents had been to the agricultural field for starting motor pump. The appellant had also accompanied them. He however, returned home immediately. The mother and grand-parents remained in the field during night. The appellant undressed himself. He did unknot the string of her dress. He then inserted his finger in her private part. She put up resistance. He did not listen. He forced himself on her person. He even asked her to shake his private part. He also threatened her with dire consequences if she went public with the incident. It is further in her evidence that on the return of her mother and grand-parents from the field, she related everything to her mother. The

mother, therefore, took her to her parental home at Malegaon. After a few days F.I.R. was lodged at Pathardi Police Station.

6. On the same lines is the evidence of mother of the victim. Her evidence is in relation to what had been informed to her by the victim about the appellant's behavior with her.

7. As, the defence of the appellant is that a false F.I.R. has been lodged in view of there being frequent quarrels between him and his wife. The victim is none other than his real daughter. She was just below twelve years of age while the appellant misbehaved with her. A twelve years old daughter will not falsely implicate her real father at the cost of her chastity. The trial Court has observed that the victim was shy of narrating her woes. She was, therefore, taken into confidence.

8. This Court finds that the victim did not have any reason to falsely implicate her natural father. The trial Court has rightly convicted the appellant. This Court is in agreement with the findings recorded by the trial Court. Although the appellant has been convicted for one and the same offence/s under both the I.P.C. and POCSO, since all the sentences have to run concurrently, he has to undergo maximum sentence of twelve years only.

9. Criminal appeal fails. Same stands dismissed. Fees of Mr. U.B. Bilolikar, learned counsel appointed for Respondent No.2 is quantified to Rs.6,000/-.

(R.G. AVACHAT, J.)

SSD