

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

CRIMINAL APPEAL NO.880 OF 2022

Prashant Maruti Gurav Appellant
Versus
The State of Maharashtra & Anr. Respondent

....
**WITH
INTERIM APPLICATION NO.2623 OF 2022
IN
CRIMINAL APPEAL NO.880 OF 2022**

.....
Mr. Amit Mane, Advocate (appointed) for the Appellant.
Smt. M.R. Tidke, APP, for the Respondent No.1-State.
Mr. Sushan Mhatre, Advocate (appointed) for Respondent No.2.

.....

CORAM : SARANG V. KOTWAL, J.

DATE : 11th OCTOBER, 2022

ORAL JUDGMENT :

1. The appellant has challenged the judgment and order dated 29.11.2021 passed by the Extra Joint District Judge & Additional Sessions Judge, Ratnagiri in Special Case No.21/2021. There were five accused in all. The appellant was the accused No.1. At the conclusion of the trial, learned Judge vide judgment and order dated 29.11.2021 passed in the said case, convicted the appellant for commission of offences punishable under Section

376 of the Indian Penal Code and sentenced him to suffer RI for ten years and to pay fine of Rs.5,000/- and in default to suffer SI for six months. He was also convicted for the offence punishable under Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and was sentenced to suffer RI for ten years and to pay fine of Rs.5,000/- and in default to suffer SI for six months. He was also convicted for the offence punishable under Section 7 read with 8 of the POCSO Act and was sentenced to suffer RI for three years and to pay fine of Rs.500/- and in default to suffer SI for three months. All those sentences were directed to run concurrently. The appellant was granted set off under Section 428 of Cr.P.C. All the accused, including the appellant, were acquitted from the charges of commission of offence punishable under Sections 9 and 11 of the Prohibition of Child Marriage Act, 2006.

2. Heard Shri Amit Mane, learned appointed Advocate for the appellant, Smt. M.R. Tidke, learned APP for the respondent No.1-State and Shri Sushan Mhatre, appointed Advocate for the respondent No.2.

3. The prosecution case is that the victim in this case was born on 28.12.2004. She delivered a baby girl on 30.4.2021. Thus, on the date of delivery she was a minor. Thus, there was physical intercourse amounting to the alleged offence which resulted in birth of a child. When the child was delivered, she was admitted to a hospital. She was a minor and, therefore, the police were informed. The investigation was carried out and according to the prosecution, the appellant was the father of her child. The accused Nos.2 to 5 were respective parents of the victim and the appellant. Both the families got together and marriage between the appellant and the victim was performed.

4. The investigation was carried out. The appellant was arrested on 28.6.2021. The victim and the appellant were sent for medical examination. Samples were sent for DNA analysis however, the DNA report is not on record. At the conclusion of the investigation, the charge-sheet was filed and the case was tried before the Special Court.

5. During trial, the prosecution examined four witnesses. PW-1 was the victim, PW-2 was her uncle, PW-3 was the

investigating officer and PW-4 was the police officer who had recorded the FIR.

6. The prosecution case depended on the evidence of the victim herself, who was examined as PW-1. However, she has not supported the prosecution case at all. She has deposed that she did not know her date of birth. She knew the appellant. However, she deposed that she could not state what had happened in October, 2020. She denied that the appellant had come and told her that he would marry her. She also denied that though he knew that she was a minor he had established physical relations with her making her pregnant. PW-1 then was declared hostile and was cross-examined by learned APP. She denied all the suggestions put to her that she was residing with the appellant and that he was her husband. She was read over portion marked 'A' from her statement. But she denied that statement. That particular portion was ultimately got proved by the prosecution through the evidence of PW-4 PSI Mukta Bhosale, who had recorded that statement.

In the cross-examination conducted on behalf of the

appellant, she specifically stated that she had not complained against the appellant.

The portion mark 'A' from the FIR was proved by PW-4 and it was given Exhibit No.67. In that portion, she had described that she had developed friendly relationship with the appellant. He had promised marriage with her and then because of the physical relations she became pregnant and delivered her child. In April, 2021 both the families got them married in the house of a priest.

7. PW-2 was the victim's uncle. He has deposed that he did not know her date of birth. He denied that he was acquainted with the appellant. He deposed that he did not know anything. He was declared hostile. The portion from his police statement was proved through PW-3 API Aabaso Patil and was exhibited at Exhibit-59 because PW-3 had recorded his statement. In that particular portion, PW-2 had stated that the victim had developed love relationship with the appellant. Both the families were waiting for the victim to cross the age of 18 years. In the meantime, she became pregnant because of the appellant. Then

both the families got them married on 1.4.2021. In the last paragraph of that particular portion, the statement mentions that the victim and the appellant were happily married. The appellant himself and his parents were looking after her very well and the victim had no trouble at all.

8. The prosecution produced the medical certificates on record. Those medical certificates were admitted. Even the birth certificate of the victim was produced on record at Exhibit-51. It was also admitted on behalf of the defence. That birth certificate showed the date of birth of the victim as 28.12.2004.

9. The medical papers show that the name of the appellant was mentioned as the offender and she herself was described with the appellant's name as her middle name and the appellant's surname as her surname. Thus, the prosecution tried to show that she was married with the appellant. The history mentions that the victim had got married with the same person. The medical papers show that she was pregnant and had subsequently delivered the child.

10. PW-3 API Aabaso Patil had conducted the

investigation. He had carried out spot panchnama. He had referred the victim and the appellant for medical examination. He had sent the samples for DNA testing. However, no DNA report is produced on record.

11. PW-4 PSI Mukta Bhosale had recorded the FIR statement of the victim. The portion mark 'A' from the FIR was given Exhibit-67.

12. The defence of the appellant was of total denial.

13. Learned Judge considered the evidence and convicted and sentenced the appellant, as mentioned earlier. There was no discussion regarding the effect of PW-1 and PW-2 not supporting the prosecution during their depositions. Learned Judge relied on the portion from their FIR and police statement which were brought on record by learned APP in the cross-examination.

14. Learned counsel for the appellant submitted that there is no evidence to connect the appellant with the child. There is no DNA report on record connecting him to the child. The victim herself i.e. PW-1 has not supported the prosecution case and she has not deposed that the appellant was responsible for her

pregnancy, or that he had committed the offence for which he was charged.

15. He submitted that all the accused, including the present appellant, were acquitted from the charges of commission of offence punishable under the Prohibition of Child Marriage Act. Therefore, the prosecution has failed to prove one of the major charges against all the accused. There is no evidence against the appellant showing that he had committed any sexual assault on the victim.

16. He submitted that though the medical papers are on record, they are silent on the point as to who had given this medical history to the doctor. He submitted that the medical papers at the most can be used as a corroborative piece of evidence but the depositions itself, which was a substantive piece of evidence, did not support the prosecution case. Thus, the medical papers could not be used against the appellant. He submitted that, though the birth certificate of the victim is on record, that does not connect the appellant with the offence.

17. Learned APP submitted that the birth certificate is

admitted by the defence and, therefore, it is proved beyond doubt that the victim was around 16 years of age at the time of offence and even at the time of delivery of her child she was a minor. She submitted that the medical papers which are admitted on record show that the appellant had married the victim and he was mentioned as the offender. According to her these are two important circumstances against the appellant. She also submitted that the portions from the police statements of PWs-1 & 2 are brought on record and there is no reason to disbelieve the police officers who had recorded their statements. Learned counsel for the respondent No.2 submitted that her interest should be protected and adverse observations may not be made against her for not supporting the prosecution case.

18. I have considered these submissions. In this case, there is no DNA report on record. Therefore, there is no medical evidence connecting the appellant with the child who was delivered by the victim. As far as the victim's own version is concerned, she was examined as PW-1 and she has categorically stated that the appellant has not committed the offence which is

alleged against him. She has in fact stated that it was not true that the appellant had established physical relations with her and that because of that she became pregnant. This is her substantive evidence. She has not supported the prosecution case. Though, in the cross-examination the portion from her FIR is brought on record, her substantive evidence cannot be ignored. This has to be seen in the light of the fact that the accused was acquitted from the charges of commission of offences under the Prohibition of Child Marriage Act. Therefore, to that effect even that portion from her FIR is disbelieved by the learned Judge and, therefore, it was not proper to rely on some part of that portion to convict the appellant.

19. The evidence of the victim in this case is the most important piece of evidence and the victim not supporting the prosecution is certainly an important factor. Therefore, it cannot be said that the prosecution has proved its case beyond reasonable doubt.

20. Same is the case with the evidence of PW-2. He was uncle of the victim and he has not deposed against the appellant

at all. Though some portion from his statement is brought on record at Exhibit-59, the last paragraph of that portion mentions that the appellant and the victim were living happily and the victim was looked after by the appellant and his parents. Therefore, in the police statement also only to some extent he has supported the prosecution case and it would not be proper to rely on rest of his police statement to convict the appellant in the facts of this particular case. In any case his evidence is not as important as the evidence of PW-1.

21. As far as the medical papers are concerned, as rightly submitted by learned counsel for the appellant, there is nothing to show as to who had given this particular history to the doctor. The Medical Officer is not examined and, therefore, this information has remained vague. The source of information has remained vague. In any case it would corroborate the main evidence only if the main evidence was against the appellant. But in this case even the substantive evidence in the form of evidence of PW-1 is against the prosecution. It would not be possible to base the conviction on some notings made in the medical papers.

Though the birth certificate of the victim was produced on record that by itself will not connect the appellant with this particular crime. Learned Judge has not discussed all these aspects and, therefore, conviction and sentence recorded against the appellant cannot be sustained.

22. Hence, the following order :

:: O R D E R ::

- i. The appeal is allowed.
- ii. The judgment and order dated 29.11.2021 passed by the Extra Joint District Judge & Additional Sessions Judge, Ratnagiri in Special Case No.21/2021, is set aside.
- iii. The appellant is acquitted from all the charges. He be released forthwith, if not required, in any other case.
- iv. Criminal Appeal is disposed of accordingly. With disposal of the appeal, nothing survives in the Interim Application No.2623/2022 and it is also disposed of.

(SARANG V. KOTWAL, J.)