

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

CRIMINAL APPEAL NO. 1240 OF 2018

Sachin Suresh Patole

Age 22 years, residing at Kundal,

Ramoshi Vasti, Tal. - Palus,

District – Sangli.

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

Ms. Jayshree Tripathi for Appellant.

Smt. J. S. Lohokare, APP for State/Respondent No.1.

Mr. Veerdhawal Deshmukh, (Appointed Advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 14th SEPTEMBER 2022

ORAL JUDGMENT :

1. The Appellant has challenged the Judgment and order dated 03/09/2018 passed by learned Additional Sessions Judge, Sangli in Special Case (POCSO) No.56 of 2016. The Appellant was convicted and sentenced as follows:

- i) The Appellant was convicted for commission of offence punishable U/s.377 of I.P.C. but no separate sentence was imposed on him in view of rider of Section 42 of the Protection of Children from Sexual Offences Act (for short 'POCSO').
- ii) He was convicted for commission of offence punishable U/s.6 of POCSO and was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.25000/- and in default of payment of fine to suffer S.I. for one month.
- iii) He was convicted for commission of offence punishable U/s.506 of I.P.C. and was sentenced to suffer R.I. for 6 months.

Substantive sentences were directed to run concurrently. The Appellant was granted set off U/s.428 of Cr.p.c.

2. Heard Ms. Jayshree Tripathi, learned counsel for the Appellant, Smt. J. S. Lohokare, learned APP for State/Respondent No.1 and Mr. Veerdhawal Deshmukh, learned Appointed Advocate

for the Respondent No.2.

3. The prosecution case is that the incident took place on 09/09/2016. On that day the victim boy was 9 years of age. His date of birth was 13/04/2007. The appellant took him to sugarcane crop field and committed the offence which would fall within the meaning of Section 377 of I.P.C. and Section 3 of POCSO defining penetrative sexual assault. The boy was below 12 years of age, therefore, the offence was of aggravated penetrative sexual assault as defined U/s.5 of POCSO. The F.I.R. was lodged by the victim's mother on 12/09/2016 at 2.05p.m. at Kundal police station vide C.R.No.20 of 2016. The Appellant was arrested on 13/09/2016. The victim, as well as, the Appellant were subject to medical examination. The victim was examined at Kundal, as well as, at Sangli Civil Hospital. The injuries were found near anus region. The statements of the witnesses were recorded. The spot of incident was shown by the victim. The investigation was carried out and at the conclusion of investigation, charge-sheet was filed and the case was committed to the Special Court.

4. During trial, the prosecution examined 7 witnesses

including the victim, his mother, the Medical Officers, a pancha and the Investigating Officer. The defence of the Appellant was of total denial. Learned trial Judge, after hearing the parties, believed the story of the prosecution projected through the evidence of PW-1 and PW-2 and supported by Medical Officers. Based on this evidence, he recorded his order of conviction and sentence.

5. PW-1 was mother of the victim. In the initial part of the deposition, she only accepted the fact that on 11/09/2016, at about 5.00p.m. the victim had informed her that his anus was paining. She inquired with him as to what had happened. He told her that, he had gone to S.T. stand and then to the field of sugarcane crop. His two friends went away and he came back home after collecting *Durva* for pooja. Initially, PW-1 refused to state what the victim had told her. She resiled from her F.I.R., therefore, the trial Court permitted learned APP to cross-examine her. During her cross-examination, she admitted that, she had lodged the F.I.R. mentioning the incident as narrated by her son. In her cross-examination she fully supported the prosecution case. She deposed that the Appellant belonged to a different community

and her village had more number of people belonging to that community. They had committed riot in the village and, therefore, she was afraid of them. This admission is important and this explains why she had resiled from her F.I.R. After this admission, she deposed that her son had told her what the Appellant did with him on 09/09/2016. She then narrated the incident in detail as told to her by her son. The victim also told her that the Appellant had threatened to kill him if the incident was disclosed to anybody. It was only because of that act the victim was suffering from pains and there was bleeding from that part. After some discussion with her husband they decided to lodge the F.I.R. She admitted the contents of the F.I.R. as true and correct. The F.I.R. is produced on record at Exhibit 25. After that, she along with the victim went to the spot and showed the spot to the police. The photographs were taken when the victim was showing the spot. After that the victim was sent for medical examination, initially to Kundal Government hospital and then to the Civil Hospital, Sangli. However, after deposing this, she did not identify the Appellant in the Court, but she mentioned that there was riot in the village by way of agitation

for arrest of the Appellant. There was tense situation in the village and the village was under fear for about 2 to 3 days. She was asked whether the matter was settled at Gram Panchayat by the local politician. To this question the witness kept quite and did not answer. She denied the suggestion that, she was under pressure and, therefore, she had not identified the accused.

In the cross-examination conducted on behalf of the Appellant, she deposed that there were only 8 to 10 families of the Appellant's community and there was no dispute between her community and the community of the Appellant. In this cross-examination, again she gave answers helping the accused. She deposed that, her son did not show the spot to the police. She deposed that the police had instructed her to give statement in the Court as per something written on a paper which was given to her before recording her statement. Then she deposed that the victim had suffered the injury while playing and no incident as alleged against the Appellant had taken place. The F.I.R. which is produced at Exhibit 25 mentions the incident in detail specifying the Appellant's role in committing this offence. In the cross-

examination conducted by learned APP she had admitted the contents of that F.I.R.

6. Same was the case of PW-2 victim. In the first part of his examination in chief, he deposed that, he did not remember as to what happened when they went to S.T. stand on 09/09/2016. But he admitted that the Appellant had taken him towards sugarcane crop field. He did not narrate the relevant part of the incident. But when he was declared hostile and when learned APP cross-examined him, at that time, he narrated the the entire incident showing the involvement of the appellant. Again he initially deposed that he did not remember whether the Appellant had carnal intercourse with him. Then he deposed that he told his mother the correct facts and that he had told his mother that the Appellant had committed penetrative sexual assault which would attract Section 377 of IPC. He admitted that, because of that act, his pant was stained with blood; because of bleeding from that part. The victim-PW-2 also identified the Appellant in the Court. He deposed that, he told about the incident in the Court of Palus in his deposition before the trial court in the trial. After the PW-2 had

given all the answers supporting the case of the prosecution, he was cross-examined on behalf of the Appellant and at that time, he gave some answers in support of the defence. He deposed that he had never seen the Appellant before and for the first time he had seen him in the court. He deposed that the Appellant had not done any bad thing to him. He then admitted that he did not tell his mother that something bad had happened in the sugarcane field.

7. PW-3 Walmik Koli was the Circle Officer and he was a pancha for spot panchanama, as well as, for seizure of clothes of the victim. He has narrated that the spot was shown by the victim himself.

8. PW-4 Dr. Priya Gupta, PW-5 Dr. Chhaya Patil and PW-6 Dr. Akash Dolase are the Medical Officers.

9. PW-4 Dr. Gupta was attached to Sangli Civil Hospital. She had examined the victim. The history was given by the victim about sexual assault by unknown person by unnatural method on 09/09/2016 at 9.00a.m. He complained of pain over anal region. On examination it was found that there was tenderness present.

There was evidence of skin excoriation abrasion at 2 O'clock and 11 O'clock position. She opined that the injury was caused because of anal penetration by unnatural method. The case papers are produced on record at Exhibit 51 and 52.

10. On 14/09/2016, she examined the Appellant. His private parts were normal and in her opinion the patient was not incapable of performing sexual intercourse.

In the cross-examination, she deposed that sphincter of the victim was intact. She deposed that for full penetration opening of sphincter, anal canal was necessary. She deposed that, in case of forceful anal sex, grievous injuries were possible and profuse bleeding was also possible.

11. PW-6 Dr. Akash Dolase was attached to Sangli Civil Hospital as C.M.O. He has given the deposition in the same manner as is deposed by PW-4 Dr. Gupta. He admitted in the cross-examination that, name of the accused was not mentioned in the history.

12. PW-5 Dr. Chhaya Patil was attached to Primary Health

Center, Kundal. The victim was brought there at about 2.30p.m. on 12/09/2016. The victim and his mother refused for internal examination, therefore, she carried out only local examination in the region where there was tenderness. She found redness all over anal region at 12 O'Clock and 3 O'Clock position. She prepared the case papers. They are produced on record at Exhibit 61. The victim was referred to Sangli Civil Hospital by her. In her opinion the victim had suffered sexual intercourse by unnatural method. The victim had injury over anal region at 2 O'Clock and 11 O'Clock position. Though, she had not opined about the age of injury, however, according to her tenderness could persist from 2 to 3 days.

In the cross-examination, she deposed that the medical history was silent about the name of the culprit. She also deposed that the mother had told the name but this witness had not mentioned it in the history.

13. PW-7 Shivshankar Bondar, P.I. was the investigating officer. He has deposed about the investigation carried out by him

after registration of F.I.R. On 12/09/2016 he was present at Kundal police station when PW-1 and 2 came there and gave intimation of the incident. He registered the F.I.R. vide C.R.No.20 of 2016. He conducted the spot panchanama. The statements of the victim and his mother were recorded U/s.164 of Cr.p.c. The victim was sent for medical examination. The articles were sent for chemical analysis. The statements of the witnesses were recorded and at the conclusion of the investigation, the charge-sheet was filed by him.

In the cross-examination nothing much was elicited of any significance. However, he deposed that, in respect of this offence some persons had tried to set the house of the appellant on fire. Those persons also set on fire some vehicles belonging to appellant's community and pelted stones on the Appellant's house. He denied the suggestion that he had prepared false statements of the victim and his mother under pressure and no such incident had taken place.

14. Learned counsel for the Appellant submitted that the

medical officers did not give their own opinion. They depended on the examination conducted by the other medical officers. The medical history given at both places i.e. at Kundal and Sangli did not name the appellant. The friends who were with the victim were not examined. There is delay in lodging of F.I.R. The incident had taken place on 09/09/2016, the mother was told on 11/09/2016 and yet the F.I.R. was lodged on 12/09/2016. There is no explanation for that. She further submitted that, both the victim and his mother are not reliable witnesses because they had not supported the prosecution case in their examination in chief.

15. Learned APP, as well as, learned counsel for the Respondent No.2 submitted that, in the cross-examination, PW-1 and PW-2 have stuck to the true story. Their examination in chief shows that both of them were under pressure from the Appellant and local politician and for the said reason the name of the Appellant was not mentioned in the medical history. The victim had identified the Appellant in the Court.

16. I have considered these submissions in the light of

evidence led by the prosecution. So far as age of the victim is concerned, the prosecution has produced his birth certificate issued by Kundal Gram Panchayat. It is produced on record at Exhibit 40. His date of birth is written as 13/04/2007. It was registered on 30/04/2007. Thus, there is no serious dispute about the age of the victim, who on the date of incident i.e. on 09/09/2016 was 9 years of age. Therefore, if the incident is held to be true, the offences, for which the appellant is convicted, are made out. To consider whether the prosecution has proved its case, the evidence of the victim, his mother and the medical officers is important. Though it is true that PW-1 and PW-2 in their examination in chief had refused to give answers supporting the prosecution case, but in the cross-examination conducted by learned APP they have narrated the incident in detail. The victim's case was told by the victim in the cross-examination. He has described the incident as to how he was taken by the Appellant to the sugarcane crop field and how he had committed the offence. He had told this fact to his mother. He was suffering from pain. The mother of the victim-PW-1 has admitted in her cross-

examination that PW-2-victim had narrated the entire incident to her. Their cross-examination also shows that they were under pressure. The cross-examination of the victim's mother mentions that there was some local pressure. Even a meeting was held in the village and even some riot had taken place. She has deposed that the people from Appellant's community had caused riot in the village and, therefore, she was afraid of him. This deposition explains why she was reluctant to depose against the appellant. This particular deposition is not dislodged by the Appellant through cross-examination of PW-1.

17. Though, PW-1 had not identified the appellant in the Court, the PW-2-victim himself had identified the Appellant in the Court. He was merely 9 years of age at the time of incident. It is important to note that, PW-1 had accepted the contents of the F.I.R. lodged by her. The F.I.R. describes the incident in detail as told by the victim to her mother. The victim, in the cross-examination conducted by learned APP has narrated the incident, as well. He also accepted that, he had told these correct facts to his mother. His evidence is supported by the medical evidence. The

victim had no reason to name the appellant before his own mother as the offender who had committed that offence. The name of the appellant is immediately disclosed in the F.I.R. Though, the F.I.R. was lodged on 12/09/2016, the mother was told about the incident only on 11/09/2016 after the pain became unbearable to the victim. The medical evidence in this case is very important. Three doctors have unanimously supported the prosecution case and the victim's version that he was subjected to penetrative sexual assault. The injuries matched with the description of the incident given by the victim which is reflected in the F.I.R. Therefore, subsequent reluctance to depose in Court on the part of victim and his mother does not really help the appellant in this case. The reason for reluctance to depose against the appellant has also come in their own depositions. As mentioned earlier, both of them have stuck to the prosecution story in the cross-examination conducted on behalf of the State. Thus, there is sufficient material against the Appellant justifying finding of conviction and recording of sentence. Learned Sessions Judge has rightly appreciated all these aspects. I do not find any reason in this case to interfere with

the trial Court's Judgment and order.

18. With these observations, the Appeal is dismissed.

(SARANG V. KOTWAL, J.)