

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

CRIMINAL APPEAL NO. 655 OF 2017

Mr. Shrikantsing Sukhdeosing

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Rameshkumar N. Gite for Appellant.

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

Ms. Farhana Shah (Appointed Advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 5th AUGUST 2022

JUDGMENT:

1. The Appellant has challenged the Judgment and order dated 18/07/2017 passed by the learned Additional Sessions Judge, Niphad, District Nasik in Sessions Case No.26 of 2016. By the impugned Judgment and order the Appellant was convicted for commission of offences punishable U/s.376(2)(f) and 506 of IPC, as well as, U/s.5(n) r/w. Section 6 of the Protection of Children from Sexual Offence Act (for short 'POCSO'). He is sentenced to suffer R.I. for 10 years and to pay a fine of Rs.2500/- and in default to suffer S.I. for four months for the offence punishable U/s.5(n) r/w. S.6 of POCSO. The appellant is sentenced to suffer R.I. for one year for the offence punishable U/s.506 of IPC. He is

acquitted from commission of offence U/s.323 of IPC. The sentences were directed to run concurrently. The appellant was given set off for the period he has undergone as under trial prisoner.

2. Heard Shri. Rameshkumar Gite, learned counsel for the Appellant, Smt. Lohokare, learned APP for the State and Ms. Farhana Shah, learned appointed advocate for the Respondent No.2.

3. The prosecution story is that the Appellant was husband of the victim's Aunt. At the relevant time, the victim was 12 years of age. She was residing with the Appellant and his wife in his room at Industrial estate, Pimplegaon Baswant, Nasik. During that period, she was sexually assaulted and threatened. The victim had lost her father in her childhood. Her mother had remarried. She went back to her mother. There was some quarrel with her mother in Bihar. Then she ran away from there to Delhi. She was rescued by a social worker at Delhi and she was kept in a shelter home. After a few months, she narrated the incident of rape to the person

in-charge of the shelter home, who in turn, informed the police. The information was transferred to Pimpalgaon police station. There, C.R.No.176 of 2015 was registered on 21/12/2015. The Appellant was arrested. The investigation was carried out and trial was conducted before the Additional Sessions Judge, Niphad as mentioned earlier.

4. The prosecution examined in all eight witnesses. The most important witness was the victim herself. She was examined as PW-3. There were two panchas; PW-1 Rama Baban Rasal and PW-2 Ramdas Ramchandra Karate. PW-1 was the pancha of spot panchanama and PW-2 was the pancha in whose presence the SIM cards were seized. PW-4 Pramodkumar Singh was a social worker who had found the victim at railway station at Delhi. PW-5 Jesantha Albert Raj Albert was looking after inmates of shelter home in New Delhi where the victim was kept after her rescue. PW-6 Ranjana Govind More was a social worker in whose presence the F.I.R. statement was recorded. PW-7 Shobha Madhukar Zagale was working in remand home at Nasik. PW-8 Sachind Shaligram Salunkhe, API was the Investigating Officer.

5. PW-4 Pramodkumar Singh has deposed that, he found the victim at New Delhi railway station on 09/02/2015. He took her at G.R.P police, Delhi. A lady constable of that police station made an inquiry with the victim and took her for medical examination.

In the cross-examination he stated that, he himself did not make inquiry with the victim. The victim had told him that her parents were not alive. He denied the suggestion that, he took the victim straight to the shelter home.

6. PW-5 Jesantha Albert has deposed that, on 09/02/2015 the victim was admitted in shelter home in New Delhi. The victim used to remain silent, but used to get angry frequently. In October 2015, the victim told this witness that the appellant had kept sexual relations with her at Nasik. PW-5 then produced the victim before the Child Welfare Committee at Mayur Villa, Delhi. The victim's statement was recorded in her presence. She produced it at Exhibit 27. On 03/11/2015, this witness informed the police about the incident. They came to the shelter home and recorded

statement of the victim. Then the victim was sent for medical examination. After that, the police officer of Pimpalgaon police station recorded this witness's statement. A suggestion was given to this witness that, to maintain the shelter home, she had to maintain a register to show how many children were admitted. Perhaps the defence wanted to show that there were many more children admitted and helped than the real number. Specific suggestion was given that, a false story was prepared with the help of the victim. The real work going on in the shelter home was of conversion of inmates by changing their religion. These suggestions were denied.

7. PW-7 Shobha Zagale was working in Nasik Remand home. The victim was kept in their remand home in the year 2015. On 21/12/2015, API of Pimpalgaon police station gave a letter to produce the victim before the J.M.F.C. for recording her statement. This witness issued a certificate that the victim was kept present in the court for recording her statement on 31/12/2015. This witness had put her signature on the statement recorded U/s.164 of Cr.p.c. It is produced on record at Exhibit 28.

In the cross-examination, she expressed her inability to tell the exact contents of the statement of the victim. She denied the suggestion that, she had merely put her signature on the statement and that she was deposing falsely.

8. PW-8 Sachin Salunkhe, API was the investigating officer. He has carried out the investigation in this offence which was registered vide C.R.No.176 of 2015 at Pimpalgaon Baswant police station. The F.I.R. was initially registered at Delhi and it was transferred to Pimpalgaon Baswant police station. He went to Delhi for investigation. The victim was residing in a shelter home at Delhi. PW-8 took her custody. He recorded statement of PW-5. The victim was brought to Pimpalgaon. The appellant was arrested. Spot panchanama was drawn. The victim had shown the spot. Licence of the appellant was lying on the spot. It was seized. The spot panchanama is at Exhibit 22. The victim's statement U/s.164 of Cr.p.c. was recorded. She was sent for medical examination at Civil hospital, Nasik.

In the cross-examination, he admitted that, he had not

recorded statement of the person by whom the victim was found. He had not recorded the statement of I.O. who was investigating the offence at Delhi.

9. PW-6 Ranjana More was a social worker in whose presence police recorded the statement of the victim on 27/12/2015. At that time, the victim had told her age as 11 years. This witness also expressed her inability to tell the contents of the statement made by the victim before the police officer.

10. PW-2 Ramdas Ramchandra Karate was a pancha in whose presence two SIM cards were seized on 27/12/2015. The panchanama is produced on record at Exhibit 24.

11. The main evidence in this case, of course, is that of the victim herself. Her deposition was recorded on 03/03/2017. She has deposed as under:

The incident took place two years ago at Pimpalgaon in Modi M.I.D.C. PW-3 was residing with the appellant. Her Aunt was also residing there. PW-3 resided with them for four years. According to her, the appellant committed rape on her and had

sexually abused her. He had threatened to kill her if she disclosed that incident to anybody else. Even then she was residing with the appellant. Subsequently, she went to Bihar with her aunt and the appellant. She went to her mother's house. Her mother got angry and slapped her. Therefore, the victim went to Delhi alone. From there, police took her to a shelter home. She narrated the incident to police after some days. The complaint given by her to the police is produced on record at Exhibit 27. She identified the appellant before the Court. Even Pimpalgaon police officer recorded her statement. At Pimpalgaon, she was sent for medical examination at Civil Hospital, Nasik. Her statement was recorded by the learned J.M.F.C., Pimpalgaon.

In the cross-examination, the Advocate for appellant asked her about her birth date, to which, she replied that her date of birth was 31/12/2003. She fairly admitted that, because of her habit of committing theft, the appellant and her aunt used to scold her. She was also assaulted by the appellant. She had stolen a mobile phone of her neighbour. The mobile phone was found with the victim. She denied the suggestion that, after this, the appellant

called her mother and sent her back. She admitted that, she had told the Welfare Officer that, she was friendly with a boy and that boy had sexually abused her. She could not give further details about those instances. At Bihar, the victim was residing in the house of the appellant. She studied in school up to 3rd standard in Bihar. On many occasions, she used to go to Nasik with the appellant and his wife. In the cross-examination, she refused to divulge any further information about the boy with whom she was friendly. Her mother had come to Nasik to take her at Bihar. She went to Bihar by train. The victim did not narrate the incident of rape to her mother or to any other person. She stayed with her mother for 15 days. Before giving her evidence in the Court during trial, she was staying in the shelter home at Delhi for two years. She was unable to give details of the period when she was residing at Nasik. She admitted that, since her mother assaulted her, she preferred to reside in a shelter home at Delhi. She further admitted that, she told the officer of the shelter home about the incident for the first time. She denied the suggestion that, the office bearers of the shelter home were compelling her to depose against the

appellant. She had not stated anything about the incident to any other person and police. She admitted that, she had not told about the act of her friend to anybody else. She added that, she had not told about the act of the appellant to any other person or to the police.

12. Apart from this oral evidence, there is documentary evidence about the medical examination of the victim. The Radiological Estimation of Age Certificate produced at Exhibit 33 shows that, after ossification test, her Radiological age was found to be 12 to 14 years on 31/12/2015. That means on the date of incident, which was at least a year ago, she was below 14 years of age. The medical examination conducted at Civil Hospital, Nasik shows that, hymen was torn. There were no fresh injuries. That medical certificate is produced on record at Exhibit 34.

13. In the statement recorded U/s.313 of Cr.p.c., the Appellant took a defence of total denial. He gave his statement in writing. His stand was that, he was a resident of Bihar. He used to visit Pimpalgaon for work. The victim was daughter of his wife's

brother. For some period she resided with the appellant and his wife. At that time, he was residing in Bihar. She was admitted to a school and they looked after her properly. The victim was adamant, quarrelsome and short tempered. She was not listening to anybody. She used to commit theft in the neighbour's house and, therefore, there used to be frequent disputes. The victim thereafter was handed over to her mother because they found it extremely difficult to look after her. After that, there was no contact with the victim at all. He has further added that, when he was residing at Nasik, the victim did not reside with them after the year 2013 and, therefore, there was no question of appellant committing any offence against her. The victim was deposing falsely against her. His case was also that the victim was deposing at the behest of the office bearers of the shelter home who wanted to convert her religion.

14. Learned counsel for the Appellant submitted that, there is inordinate delay in lodging the F.I.R. The victim had kept silent admittedly for more than a year and even when she was rescued, she did not disclose this incident to anybody. This makes her

version doubtful. She did not tell this incident even to her mother or to the police when she was rescued. Admittedly, the victim was in habit of committing theft. The appellant had scolded her and because of that grudge, she had implicated the appellant falsely. There is no medical evidence supporting the allegation of commission of rape. The age of the victim is not proved by the prosecution.

15. Learned counsel for the Respondent No.2 victim, as well as, learned APP submitted that, looking at the helpless condition of the victim, it was quite understandable that, she could not disclose the incident to anybody else. She was at the mercy of appellant and his family and, therefore, for her survival she could not narrate the incident to anybody else. The ossification test shows that she was below 14 years of age at the time of incident and thus, she was below that age one year prior when the incident had taken place. The evidence shows that, it was not an isolated incident, the act was repeated by the appellant many times. There was no reason to disbelieve her version.

16. I have considered these submissions in the backdrop of evidence in this case. Undoubtedly, the victim has not disclosed this incident to anybody immediately, however, her narration shows that she was completely under the control of the appellant and his family. She was at their mercy. Her survival depended upon them. Her mother was not looking after her. When her mother took her back, even then her mother had slapped her. The relation between them was not cordial, therefore, she left her mother's house and went to Delhi. She was found by a social worker at New Delhi railway station in helpless condition. She was taken to the police station and then to a shelter home. In such situation, it was not expected that, she would immediately narrate the incident of rape to the strangers at Delhi. After she was admitted to the shelter home and after she developed sufficient rapport with the supervisors in the shelter home, she narrated the incident to them and then the law was set in motion. There is nothing wrong in this delayed disclosure of the incident by the victim considering the circumstances in which she was. The victim appears to be a truthful witness. She had candidly admitted in her cross-

examination that the appellant had scolded her for stealing mobile phone from a neighbour. She had shown the place where the appellant used to reside and his identity card was found in that particular room. This also shows that the victim was taken to Pimpalgaon Baswant by the appellant and they used to reside with the appellant's family. The appellant has not spoken about it in his statement given in his defence. He has only mentioned about schooling of the victim in Bihar. He has not spoken a word about the victim's stay at Nasik. There is a reference in his statement in paragraph 5 that, when he was residing at Pimpalgaon, Nasik, the victim has not stayed with them after the year 2013. From the allegations made by the victim, it is her case that the incident had taken place much earlier from recording of her statement and that period comes very close to the year 2013. Therefore, the prosecution has established that, prior to one year of lodging of F.I.R. the victim was residing with the appellant at Pimpalgaon, Nasik and the incident had taken place there. The medical evidence in the form of ossification test has remained unchallenged. Therefore, the prosecution has also proved that, she

was minor at that time. The appellant was a relative, therefore, provisions of Section 5(n) of POCSO are attracted. The medical certificate about examination in Nasik Civil Hospital to a certain extent supports the prosecution case as hymen was torn. Though, there was no other injuries were found, but medical examination was carried out much later after a few months. Before that, she was staying in a shelter home at New Delhi and, therefore, there was no reason to find fresh injury when medical examination was conducted. The appellant has not rebutted the presumption U/s.29 of POCSO in the backdrop of the evidence led by the prosecution in this case. Considering all these aspects, it can safely be held that the prosecution has proved its case beyond reasonable doubt. Learned trial Judge has considered all these aspects properly and, therefore, there is no necessity to interfere with the impugned Judgment and order.

17. The Appeal is, therefore, dismissed.

(SARANG V. KOTWAL, J.)