

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

**CRIMINAL APPEAL NO.42 OF 2022
WITH
INTERIM APPLICATION NO.393 OF 2022
IN
CRIMINAL APPEAL NO.42 OF 2022**

Mohan Rambhau Shengal
Age – 30 years, Occu – service,
R/o Rase, Tq – Khed,
Dist – Pune, And Padalani
Tq. Akole Dist. Ahmednagar
At present Yerwada Central Prison

.... Appellant/
Applicant

versus

1. The State of Maharashtra
Through Police Station Officer
Police Station Chakan, Tq. Khed,
Dist – Pune
2. Madhuri Nagesh Ashtikar
At : Maharshi Karve Stri Shikshan
Sanstha, Karvenagar, Pune
3. XYZ
Age – 22, Occ.: Nil
R/o Rase, Tal – Khed
Dist – Pune

.... Respondents

.....

- Mr. Anup Lahoti a/w Chetan Alai i/b. Satyjeet S. Dixit,
Advocate for Appellant/Applicant.
- Mr. Yogesh Y. Dabke, APP for the State/Respondent.
- Mr. Sandeep R. Waghmare, Advocate for Respondent No.2.
- Mr. Surel S. Shah, appointed advocate, for Respondent No.3.

Digitally
signed by
MANUSHREE
V NESARIKAR
Date:
2022.09.30
15:17:31
+0530

**CORAM : SARANG V. KOTWAL, J.
DATE : 22nd SEPTEMBER, 2022**

JUDGMENT :

1. The Appellant has challenged the Judgment and Order dated 05/08/2019 passed by the Additional Sessions Judge, Khed-Rajgurunagar, Dist-Pune, in Special Case (POCSO) No.30 of 2016. By the impugned judgment and order the Appellant was convicted for commission of offences as under

- (i) The Appellant was convicted for commission of offence punishable u/s 376(2)(i) of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.500/- and in default of payment of fine to suffer rigorous imprisonment for three months.
- (ii) He was convicted for commission of offence punishable u/s 4 of the Protection of Children from Sexual Offences Act and was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.500/- and in default of payment of fine to suffer rigorous imprisonment for three months.

- (iii) He was convicted for commission of offence punishable u/s 6 of the Protection of Children from Sexual Offences Act and was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.500/- and in default of payment of fine to suffer rigorous imprisonment for three months.
- (iv) He was convicted for commission of offence punishable u/s 10 of the Protection of Children from Sexual Offences Act and was sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.500/- and in default of payment of fine to suffer rigorous imprisonment for three months.
- (v) The substantive sentences were directed to run concurrently.
- (vi) The Appellant was given set off u/s 428 of Cr.P.C. for the period he had undergone in jail as under trial prisoner.

2. The prosecution case is that the victim who was 14

years of age at the time of lodging of FIR, was staying in a hostel. Her father was not staying with the family. He was missing for some years. It is her case that when she was studying in 6th standard and when she visited her mother's house in Diwali, the Appellant, who was staying with her mother, committed rape on her. This was repeated on two more successive years in Diwali vacations. Ultimately, in March 2016 she narrated this incident to the caretaker of the hostel, where she was staying. That person then informed the police officers and then she lodged the FIR. On the same day the Appellant was arrested. The victim and the Appellant were sent for medical examination. The investigation was carried out. Spot Panchanama was conducted. Statement of witnesses were recorded and at the conclusion of the investigation charge-sheet was filed. The case was committed to the Special Court.

3. During trial, the prosecution examined six witnesses including the victim, the first informant, the medical officer, the victim's mother, Pancha for spot panchnama and the

Investigating Officer. The victim's birth certificate was produced on record at Ex.25. The date of birth in it was 09/04/2002. Her School Leaving Certificate was produced on record at Ex.24 and the date of birth mentioned in it was 09/02/2022. Thus there was slight discrepancy of two months in both the certificates. The defence had given no objection to exhibit those documents.

4. After recording of the evidence, the statement of the Appellant was recorded u/s 313 of Cr.P.C. in which he has stated that the victim did not like his affair with the victim's mother and therefore to drive him out of their house, this false FIR was lodged.
5. After considering the evidence and statement of the Appellant u/s 313 of Cr.P.C. as well as after hearing the parties, learned trial Judge convicted and sentenced the Appellant as mentioned earlier.
6. The prosecution case is based on the evidence of the

victim. She is examined as P.W.1. She has deposed that her date of birth is 09/02/2022. She was studying in a School at Pune. At the time of deposition, she was studying in 9th standard. She was residing in Mahilashram Wastigraha. Her native place was in Taluka Khed. At that place her mother, brother and the Appellant were residing together. In Diwali and Summer vacations she used to visit her native place. She has deposed that when she had gone to her house for Diwali vacations, in 6th standard, at that time when she was alone in the house, the Appellant removed her clothes. He removed his clothes. He used force on her and he slept on her. She beat the Appellant by fist blows. She started shouting. Then he released her. That incident occurred on three more occasions. When she came to her house in Diwali vacations and Summer vacations in 7th and 8th standard. According to her, the Appellant forced on her and committed penetrative sexual assault because of which she suffered pains. She did not disclose this incident to her mother as she felt that her mother would not believe her. The last incident had occurred in the Diwali vacation of 2015. In January

2016, her menstruation cycle started and there was discussion amongst students about that. The victim got scared and then she narrated the incident to the person in charge of the hostel. She narrated that incident to that person in March 2016. Then they went to Warje Malwadi police station. The care taker lodged FIR on the next day when they went to Chakan police station. The victim's statement was recorded there. Her statement was also recorded before the Magistrate's Court u/s 164 of Cr.PC. It is produced on record at Ex.9.

In the cross-examination, she admitted that her mother and the Appellant were having close relations and therefore the Appellant was residing in their house. After that, only suggestions were put to her that it was her desire that the Appellant should not stay in their house and therefore this false case was lodged. She denied those suggestions. She also denied that she had expressed her wish to the caretaker and with her assistance, false case was lodged. She denied the suggestion that, at the instance of police and the caretaker she was

deposing falsely before the Court.

In the cross-examination, she has stated that her grandparents were staying in different village and she used to meet them in the vacation. She also had real maternal uncles. But she had not informed this fact to them. After that, she denied the suggestion that the incidents of rape had not taken place.

7. Her statement u/s 164 of Cr.PC. substantially corroborates her version except for one omission. She had not mentioned in her statement u/s 164 of Cr.PC. that in one summer vacation this incident had taken place.

8. P.W.2 was the Senior incharge of the hostel, where the victim was staying. She has deposed that, on 15/03/2016 at about 02.00 p.m., the victim approached her and she was in a frightened condition. She told her about the incidents of rape which had taken place in Diwali vacations of 2014 and 2015.

P.W.2 then informed this fact to the Superintendent of the hostel. She sent P.W.2 to Child Welfare Committee and then they went to Warje-Malwadi, Police Station and lodged the F.I.R. The F.I.R is produced on record at Ex.13, which substantially corroborates her deposition.

In the cross-examination she denied the suggestion that she had told the victim's mother that the victim did not want the Appellant to stay with them, but the victim's mother ignored her and therefore this false complaint was lodged. She had not mentioned about her visit to the child welfare committee in the FIR. She denied the suggestion that it was a false case.

9. P.W.4 Dagadu Maruti Lonari was a Pancha in whose presence spot Panchanama was in the victim's house conducted. In the cross-examination he admitted that if any sound is made in the victim's mother's house, it could be easily heard by the neighbors.

10. PW.5 was the victim's mother. She did not support the prosecution case and therefore she was cross-examined by the learned APP. The portion of her police statement was put to her, wherein she had stated that the victim had described the incident to her in the police station. PW.5 denied having made that statement. That contrary portion was brought on record from the evidence of the Investigating Officer. Apart from that, she was cross-examined on behalf of the Appellant and that at that time she gave answers favourable to the defence. She admitted that PW.1 had told her if the Appellant was not removed from the house, then they would lodge a false case at the police station and would remove the Appellant from the house. She also admitted the question put by the defence that the PW.2 herself had threatened the victim that she should give the statement as per PW.2's say, otherwise the victim would be removed from the school. PW.5 admitted that the victim had told her that she had no complaint against the Appellant.

11. School Leaving Certificate of the victim is produced on record at Ex.24, wherein her date of birth was mentioned as 09/02/2022. However in her birth certificate, at Exh.25, the date of birth was mentioned as 09/04/2002.
12. P.W.6 API Maruti Bhivasen Khedkar conducted the investigation. He had recorded the statements of witnesses and arrested the Appellant and had sent the Appellant as well as the victim for medical examination. She had arranged for recording of the victim's statement u/s 164 of Cr.P.C. The articles were sent to C.A. However, C.A. report is not on record and the prosecution has not relied on that particular evidence. In her cross-examination she denied the suggestion that it was a false case.
13. The other important witness was P.W.3 Dr. Sampat Kedare. He was working as Medical Officer at Rural Hospital, Chakan, Tal-Khed, Dist-Pune. He had examined the victim on 17/03/2016. As per his examination, the victim had undergone

sexual intercourse. Her hymen was torn. He opined that the history of repeated sexual intercourse revealed that she was habituated to the incident. He had given a clear opinion that the victim was subjected to sexual assault about 3 months before the date of examination. His clear opinion was that victim was subjected to sexual assault. Accordingly he had issued medical certificate, which is produced on record at Ex.16. He had also examined the Appellant and had opined that he was capable of performing sexual intercourse.

In the cross-examination he denied the suggestion that there was possibility of tearing of hymen because of sports like Kabaddi, Kho-Kho, long jump, high jump etc.

14. Heard Mr. Anup Lahoti, learned counsel for the Appellant, Mr. Sandeep R. Waghmare, learned counsel for Respondent No.2, Mr. Surel S. Shah, learned counsel for Respondent No.3 and Mr. Yogesh Y. Dabke, learned APP for the State.

15. Learned advocate for the Appellant submitted that there is an important omission in her statement recorded u/s 164 of Cr.P.C. She has not stated anything about the incident in summer vacation. According to him, the victim's conduct does not inspire confidence. There was delay of atleast 3 years in lodging of the FIR. The age of the victim is not proved. According to him, the birth certificate was not proved by the prosecution properly. Learned counsel further submitted that no one from the victim's hostel or school was examined to establish that she had made any complaint or that her conduct showed that she was under pressure. The neighbours were not examined. The evidence shows that the sound made in the victim's mother's house, could be heard by the neighbours. In that context, the neighbour's evidence would have been important. The details of dates and timing of those incidents are not mentioned by the victim. He relied on the judgment of the Division Bench of this Court dated 04/01/2017 passed in Criminal Appeal No.74 of 2015 to contend that since

prosecution has not proved the birth certificate, the fact was not proved that the victim was below 18 years of age. The basic necessary ingredients attracting provision of POCSO are not proved.

16. Learned counsel for the victim, the first informant as well as learned APP submitted that since the evidence of the victim sufficiently inspires confidence, there was no scope to argue that the incidents were not true. There was no further necessity of any corroboration. The medical evidence in this case corroborates her evidence. They submitted that looking at the tender age of the victim, it was quite natural that she could not disclose about the incident to anybody else, till she could approach her caretaker in the hostel. Only after discussing with the caretaker, she could narrate the incident. There is nothing unnatural about it. Therefore there is no force in the submissions that there was delay in lodging the FIR. They further submitted that the caretaker on her part had immediately informed the higher officers from their institute

and they had then immediately approached the police.

17. I have considered these submissions. As far as age of the victim is concerned, it is nowhere disputed by the defence by putting any suggestion to any witness that the girl was not below 18 years of age. A copy of school leaving certificate and the birth certificate are produced on record. The defence has not not objected exhibiting those documents. Learned counsel for the Applicant tried to contend that no objection was given only for exhibiting the document. That does not prove the contents. However, when the victim deposed about the date of birth there was not even a suggestion that she was not born in the year 2002. No such suggestion was put to the Investigating Officer or any other witness or even to her mother, who had practically supported the defence. Therefore in this case, it cannot be held that the prosecution has failed to prove that the victim was a minor. Therefore in these facts, the ratio of the judgment of the Division Bench referred to by learned counsel will not be applicable.

18. As far as the evidence of P.W.1 is concerned, as rightly submitted by learned counsel for the Respondent Nos.2 and 3 there was nothing unnatural in her evidence. She could have told this incident only to her mother. But in this case, mother of the victim was not supporting her at all. The basic apprehension of the Applicant was that the mother was having close relations with the Appellant and therefore the mother was not likely to take her side. Her apprehension is absolutely natural. There was no other elder in the family or in the house. Though she had visited her grandparents' house, again there she was alone. She could not have narrated the incident informing about the mother's relations with the Appellant. The victim was put in a very difficult situation. Ultimately when she got really scared, she approached the caretaker of the hostel and narrated the incident. This also is natural and therefore it cannot be said that the victim had disclosed about the incidents after three years. When the incident had taken place for the first time, she was even younger. The incidents started at least three years prior to

lodging of the FIR. That time she was of very young age. Her evidence is supported by the medical evidence. The doctor i.e. P.W.3 has opined that the victim was subjected to sexual assault. His cross-examination does not shatter his evidence.

19. As far as non-examination of the neighbours is concerned, that is not making any difference in this particular case. The Appellant had taken advantage of the situation when no one was in the house. Therefore, it is also understandable in this case that there are no other witnesses including the neighbours. The defence has not brought on record anything to even remotely suggest what possible animosity P.W.2-the caretaker would have against the appellant so that she would force the P.W.1 to depose falsely against him or would herself lodge a false F.I.R.

20. Considering all these aspects, learned Judge has rightly recorded the conviction and sentence. I do not see any reason to take a different view. With the result the Appeal is dismissed.

21. With the dismissal of the Appeal, nothing survives in the companion application. Even that is dismissed.

(SARANG V. KOTWAL, J.)