

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

CRIMINAL APPEAL NO. 1744 OF 2019

Saipan Gani Lalsangi
Age 32 years, Occ: Business.
R/at. Shirke Building No.W-8A,
Room No.12, Ota Scheme, Nigdi
Pune.

..Appellant

Versus

The State of Maharashtra & Anr.
(Through Nigdi police station)

..Respondents

Mr. Satyavrat Joshi a/w. _____
Nitesh Mohite i/b. Sunil S. Kamble for
Appellant.
Smt. Veera Shinde, APP for State/Respondent No.1.
Mr. Samarth Moray for Respondent No.2 (Appointed Advocate).

CORAM : SARANG V. KOTWAL, J.
DATE : 29th JULY 2022

JUDGMENT :

1. This is an Appeal challenging the Judgment and order dated 06/12/2017 passed by the learned Additional Sessions Judge, Pune in Sessions Case No.176 of 2015. By the impugned Judgment and order the Appellant was convicted and was sentenced as under:

i) The Appellant was convicted for commission of offence U/s.5(m) r/w. Section 6 of The Protection of Children from Sexual Offences Act (for short 'POCSO) r/w. Section 377 of I.P.C.

ii) The Appellant was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.15000/- for the offence punishable U/s.6 of POCSO r/w. Section 377 of IPC and in default to suffer S.I. for six months. Out of the fine amount, Rs.10000/- was directed to be paid to the victim as compensation.

The Appellant was granted benefit of set off under the provisions of Section 428 of Cr.p.c.

2. The prosecution case is that the Appellant had committed unnatural penetrative sexual assault on the victim on 15/02/2015 in the Appellant's house. The Appellant was neighbour of the victim and hence, the victim was knowing him. The victim was 7 years of age at the time of incident. The F.I.R. was lodged by father of the victim at Nigdi police station vide C.R.No.92 of 2015. The Appellant was arrested on the same day. The investigation was conducted. Statements of various witnesses

were recorded. Spot panchanama was conducted. The victim was sent for medical examination. The clothes of the victim, as well as, of the appellant were sent for chemical analysis. After completion of the investigation the charge-sheet was filed and the appellant faced the trial as the sole accused before the trial court.

3. During trial, the prosecution examined eight witnesses as follows:

PW-1 was father of the victim.

PW-2 was the victim himself.

PW-3 was the mother of the victim.

PW-4 Ganesh Rambhau Ghode was a pancha for spot panchanama.

PW-5 Dr. Smita Vikram Kakade had initially examined the victim.

PW-6 Madan Ananta Kamble, P.S.I. was the Investigating officer.

PW-7 Dr. Vijay Tarachand Jadhav had also examined the victim.

PW-8 A.S.I. Dilip Pandharinath Jadhav was a

muddemal clerk who had deposited the muddemal articles under proper documentation. Besides this, C.A. reports were produced on record. The important C.A. report is at Exhibit 51.

4. After recording of the evidence, the statement of the appellant was recorded U/s.313 of Cr.p.c. The defence of the appellant was of total denial. His specific case was that, he was in a habit of consuming liquor. There was dispute between himself, victim's father and Mohd. Bagwan. On 15/02/2015 they quarreled with the appellant. He went away. After that he was caught. He was beaten. He sustained injury on his left leg and waist. He was taken to police chowky. In the police station, victim's father and Mohd. Bagwan were present along with the victim. They pointed towards him and implicated him. According to him, a false case is registered against him.

5. The evidence of victim in this case is important. He was examined as PW-2. At the time of deposition, he was 8 years of age. He has stated that the Appellant was residing in his neighbourhood. On the day of incident, PW-2 was playing with his brother. At that time, the appellant came there and told him that

he would give him some biscuits and chocolates. He then took PW-2 to his house. He closed the door from inside. The PW-2 has then described the act where appellant had unnatural penetrative sexual intercourse with the victim. After that, PW-2 went home and started crying. He told the incident to his mother. The blood was oozing from his anus. His mother saw that. This fact was told to his father. PW-2 was taken to hospital by his father. The police recorded his statement. After that, his statement was also recorded in the Court.

In the cross-examination he was asked about Bagwan Chacha. He admitted that, he was on friendly terms with Bagwan Chacha as he often used to come to their house. PW-2 was then asked about the past incident when he had fallen down and had sustained injury below his waist. He deposed that, when he went to the police station he was wearing the same clothes which he was wearing at the time of incident. He admitted that subsequently Bagwan Chacha also came to the police station. He denied the suggestion that his parents tutored him how to depose in the Court. He admitted that the Appellant's brother used to visit

victim's house even after the incident. He has admitted that the victim himself and his mother used to go to the appellant's house.

6. PW-3 is mother of the victim. She has stated that, the victim was about 7 years of age and was studying in a school. On 15/02/2015 she was doing her household work in the house and the victim was playing outside. At about 1.30p.m. victim came home crying and narrated the incident. She observed that there was blood on the anus of the victim. After some time, her husband came home. She narrated the incident to him. All of them went to the police station and lodged the F.I.R. After that, victim was taken to the hospital.

In the cross-examination, she admitted that the Appellant's brother used to visit their house frequently. She admitted that they had come to the court with Bagwan. She admitted that, even Appellant used to visit their house and she used to visit his house. She was not aware about any bad antecedents, so far as, the appellant is concerned. She admitted that, Bagwan had also came to the police station and he had also

disclosed the incident to the police. People from the locality had beaten the accused and had brought him to the police station. She denied the suggestion that the appellant did not like this witness talking with Bagwan and, therefore, the Appellant was involved falsely in this case.

7. PW-1 was father of the victim. He has narrated the incident in the same manner as is narrated by PW-3. In his cross-examination he admitted that, on the day of incident there was a quarrel between the appellant and Bagwan. He admitted that, Bagwan was having good relations with the police and he often used to go to police station. He also admitted that, before approaching the police station he had not taken the victim to hospital. He denied the suggestion that, he has lodged the F.I.R. falsely at the instance of Bagwan. The F.I.R. is produced at Exhibit 12. There is hardly any contradictions between the F.I.R. and his deposition.

8. Apart from this witness, other important witnesses are PW-5 Dr. Smita Kakade and PW-7 Dr. Vijay Jadhav. Their evidence

is similar. They have stated that, they had examined the victim and they had found injuries as follows:

- i) Abrasion of 1cm x 0.8cm over perianal region at 12' O Clock.
- ii) Abrasion of 0.5cm x 0.5cm over perianal region 4' O clock, swelling and tenderness present.
- iii) evidence of Fissure of posterior perianal area.

The history was recorded as sexual assault by neighbour on 15/02/2015 at about 1.00p.m. The incident, in a nutshell, was mentioned in the history. The victim was discharged on 18/02/2015.

The medical certificate is produced on record at Exhibit 29. In the cross-examination of these doctors, hardly anything favourable was brought out on behalf of the appellant.

9. PW-7 has, in-fact stated that, from clinical examination and history it was found that there was evidence of penetrative sexual assault. The age of injury was consistent with the history. PW-7 has produced entries on record at Exhibit 40. He has stated that, injuries sustained by the victim were possible due to forceful

penetrative sexual assault.

10. PW-4 Ganesh Ghode was a pancha for spot panchanama. He is not an important witness as nothing incriminating was recovered from the spot. PW-8 Dilip Jadhav is also of formal nature and his evidence is also not seriously challenged.

11. PW-6 Madan Kamble, P.S.I. was the I.O. He has deposed that, P.S.I. Dhere had already recorded the statement of complainant. PW-6 then registered the offence. He conducted the investigation. The victim was sent to hospital for medical examination. PW-6 went to the spot alongwith two panchas. After that the Appellant was arrested on the same day. The clothes of the Appellant that he was wearing were seized. The first informant produced the clothes of the victim. They were seized under panchanama. The statements of witnesses were recorded. On 27/02/2015, a requisition was sent to the Chief Judicial Magistrate for recording statement of the victim U/s.164 of Cr.p.c. His statement was recorded. On 16/03/2015 the muddemal was sent to the Chemical Analyser under the requisition letter. After the

investigation was over, charge-sheet was filed.

In the cross-examination he stated that Bagwan was not with the informant at the time of lodging of F.I.R. The statement of victim was recorded by Yamunanagar police chowky. He denied the suggestion that, prior to that incident a quarrel took place between the appellant and residents of the locality. After the incident, people assaulted the appellant and apprehended him. At the time of arrest, the appellant was having injuries on his person. He denied the suggestion that, at the instance of Bagwan he had filed this false case.

12. Apart from this oral evidence, the C.A. report is important which shows that there was human blood on the underwear of the victim and on the full pant and half shirt of the appellant. Blood grouping was inconclusive. On the basis of this evidence, learned trial Judge convicted and sentenced the appellant.

13. Learned counsel for the Appellant submitted that, from the evidence, it is quite clear that the F.I.R. is lodged at the

instance of Bagwan and the Appellant is falsely implicated. The deposition of victim and his parents indicate that Bagwan was present at the time of lodging of F.I.R. and the I.O. has falsely denied his role in lodging of F.I.R. He submitted that the case is a result of instigation and active part played by Bagwan in implicating the Appellant. Learned counsel submitted that the medical evidence does not support the prosecution case. He further submitted that, considering the age of Appellant some leniency be shown to him.

14. Learned counsel for Respondent No.2, as well as, learned APP submitted that the prosecution has proved its case beyond reasonable doubt. The evidence of victim is corroborated by his parents, as well as, by medical evidence and C.A. reports. There was no scope even to argue that some doubt could be raised against the prosecution story. The role of said Bagwan does not travel beyond mere suggestions.

15. I have considered these submissions. There is hardly any dispute that the victim was 7 years of age at the time of incident.

The victim has narrated the incident in detail. Nothing was elicited in his cross-examination on behalf of the Appellant. His conduct of rushing to his house and immediately telling the incident to his mother also shows that, it was a natural conduct and immediately the incident was disclosed to his mother. The mother had seen the bleeding injury. The father then came home. He had also heard the incident from the victim and all of them had immediately gone to the police station. The role of Bagwan does not travel beyond some suggestion. Even assuming that Bagwan was present at the time of lodging of F.I.R. that does not wipe out the truthfulness of the depositions of the victim and his parents. Most significantly, the medical evidence has fully corroborated the evidence of the victim. There are injuries which were the result of the act committed by the appellant. They fully corroborated the victim's version and there is no plausible explanation about such injuries that could be offered by the appellant.

16. Apart from that, the C.A. report also supports the prosecution theory. Though the blood grouping is inconclusive, the underwear of the victim did show presence of human blood.

Similarly, the clothes of the Appellant also showed presence of human blood. Though, there is a possibility that it could be a result of beating which he had received from the residents, however, blood on the underwear of the victim supports not only the victim's own version but also the deposition of mother of the victim, who had seen the blood oozing from the anus.

17. In this view of the matter, the prosecution has proved its case beyond reasonable doubt against the Appellant. Learned trial Judge has imposed minimum sentence and there is no scope for reducing it. Considering the serious nature of the incident, the conviction and sentence are justified. Hence, there is no merit in the Appeal.

18. The Appeal is dismissed.

(SARANG V. KOTWAL, J.)