

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 115 OF 2021

Prakash Babarao Wankhade,
Aged about 58 years, Occu. Labour,
Ghat, District : Amravati

.... **APPELLANT**

// **VERSUS** //

The State of Maharashtra,
Through Police Station Officer,
Shendurjana Ghat, District Amravati

.... **RESPONDENT**

Shri C.A. Babrekar, Advocate for appellant
Shri I.J. Damle, A.P.P. for respondent-State.

CORAM : SMT. M.S. JAWALKAR, J.
DATE OF RESERVING THE JUDGMENT : 22th SEPTEMBER, 2022.
DATE OF PRONOUNCING THE JUDGMENT : 26th SEPTEMBER, 2022.

JUDGMENT:

Heard learned Advocate for the appellant and the
learned Assistant Public Prosecutor for the respondent-State.

2. The present appeal is filed by the convicted accused
challenging the judgment and order dated 29/01/2020, passed
by Sessions Judge, Amravati in Special POCSO Case No.

112/2016. The appellant is convicted for the offence under Section 376 of the Indian Penal Code and Section 4 of the Protection of Children From Sexual Offences Act. For the offence punishable under Section 376 of the Indian Penal Code, he is sentenced to suffer imprisonment for ten years and to pay fine of Rs.5000/-, in default of payment of fine amount to suffer rigorous imprisonment for six months and for the offence punishable under Section 10 of the POCSO Act he is sentenced to suffer rigorous imprisonment of five years and fine of Rs.5000/- in default suffer rigorous imprisonment of three months.

3. It is submitted by learned Counsel that order passed convicting the appellant is based on assumption and presumption and without there being any cogent and sufficient evidence. The prosecution has miserably failed to prove beyond reasonable doubt that the appellant- accused has committed offence of rape u/s 376 of Indian Penal Code and section 4 of POCSO Act. It is contended that absolutely there is no evidence on record to convict the appellant. It is further submitted that incident occurred at about 2.00 p.m. and medical examination was carried at next day at 11.00 p.m. This fact is not considered by the trial

Court. It is also further submitted that the spot of incident i.e. varanda is having height of 4 to 5 feet and considering the age of victim, 2 years it is not possible to climb the said varanda without the help of elder person. The story of prosecution cannot be believed. It is also contention of the counsel for appellant that the place of incident is crowded place however no independent witness is examined. Medical evidence is also not inspiring a confidence. As such, the conviction is liable to be set aside.

4. The learned A.P.P. Shri Damle vehemently opposed the appeal and submitted that even evidence of one witness is sufficient to convict accused, if there is no reason to disbelieve the testimony of such a witness. Admittedly, the victim is minor, aged of two years.

5. I have heard both the parties at length and now rival contentions fall for my determination.

6. As per the prosecution on 23/02/2016 informant mother of the victim girl has lodged the report at Shendurjanaghat Police Station. She is having two children. Victim girl is younger daughter aged about two years. Her

husband is doing the labour work and used to leave house in the morning and returned back in the evening. She used to remain at home as she is having small daughter. Her daughter was playing in front of the house on the varanda of Malamchawni Darga. At around 2.00 p.m., she heard the noise of cries of her daughter. Therefore, she went outside to see her. She witnessed that accused Prakash Wankhade was sitting behind the pillar of Darga by taking her daughter on lap. He was inserting the finger into the urine place of the victim girl and her daughter was weeping. She immediately snatched her daughter from the accused. The accused ran away from the said place. Her daughter was crying loudly. She witnessed that there was swelling in the urine place of the victim girl. Victim girl was weeping by the touch on the said place. After her husband came in the evening, she narrated the incident thereafter, she approached to Police Station and lodged the report.

7. On the basis of the said report police have registered the offence against the accused. The victim was referred to medical examination. The birth certificate is placed on record. Age of the victim is not challenged by the defence. The

prosecution examined in all six witnesses. PW.1 informant – mother of victim has personally witnessed the incident. Her evidence is corroborated by PW.2, her sister-in-law, who had also approached to the spot of incidence by following the informant and witnessed accused at the said place. The version of PW.1 and PW.2 is corroborated by Medical Officer who observed abrasion on right side, redness over labia majora of the victim girl and abrasion on the right side of her private part.

8. Age of the injury was 68 hours. The victim was examined at about 11.00 p.m. on the same day. What is contended that she was examined on the next day is having no substance. She opined that the said injury is possible by fingering by a male person. As such there is no substance in the contention of appellant that there was a delay in examination.

9. The learned Counsel for the applicant mainly relied upon admission of Doctor that she cannot said definitely whether it is due to male fingering or female. However, this suggestion itself shows that the injury is caused due to fingering. So far as the panch witness is concerned, only because he has signed

panchanama in the Police Station may not affect the other evidence on record. Moreover, this witness denies that he has not visited the place of incident.

10. Though it is the case of the appellant that due to previous enmity, he was falsely implicated. However, on perusal of evidence of PW.1, she has denied those suggestions. Moreover, the appellant while recording his statement under Section 313 of the Code of Criminal Procedure, has not raised such a specific defence. He answers to the question that why witness deposed against you, he replied he cannot assign any reason. Whereas he further stated that he does not know the reason why the complaint was filed against him and why witnesses are deposing against him.

11. The learned Sessions Judge appreciated the evidence on record and passed order based on sound reasoning. I do not see any reason to interfere in the findings recorded by the learned Sessions Judge. At this stage, learned Counsel for the appellant raises a ground that even if prosecution has proved the

alleged offence against accused, still he be awarded minimum punishment of seven years.

12. The learned Sessions Judge while considering the quantum of the punishment considered aggravating and mitigating circumstances and awarded sentence of ten years rigorous imprisonment. There is no circumstance put forth by the Counsel for appellant to reduce the sentence to seven years. As such, the appeal is devoid of any merit and it is accordingly stands dismissed.

[SMT. M.S. JAWALKAR, J.]

Jayashree..