

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

CRIMINAL APPEAL NO. 198 OF 2022

Praful S/o. Maroti Bagde,
Aged about 25 years, Occ. Labour,
R/o. Kalamgaon Tukum,
Tah. Sindewahi, Distt. Chandrapur

... Appellant

.. Versus ..

State of Maharashtra,
Through Police Station Officer,
Police Station Sindewahi,
Tah. Sindewahi, Distt. Chandrapur

...Respondent

Shri D.A.Sonwane, Advocate (Appointed) for appellant.
Shri I.J.Damle, APP for respondent sole.

CORAM : SMT. M.S. JAWALKAR, J.

RESERVED ON : 21/09/2022

PRONOUNCED ON : 23/09/2022

JUDGMENT

The present appeal is filed by convicted accused being aggrieved by the judgment and order in Special (POCSO) Case No. 92/2018. The accused is prosecuted for the offences punishable under Sections 376 (2) (i) (j) and 450 of Indian Penal Code (in short, IPC) and Sections 4 and 6 of the Protection of

Children from the Sexual Offences Act, 2012 (in short, POCSO Act).

2] The case of prosecution is that the mother of victim i.e. complainant lodged the report in Police Station Sindewahi that, on 07/10/2018 at about 9.00 a.m., she had gone for washing the clothes at lake. Her husband had gone to Wardha District for agricultural work. Her son namely Bhushan had gone for playing. At that time, victim was present alone in the house. At about 11.00 a.m., when the complainant came back from the lake, her son named Bhushan informed her that the main door of the house was locked from inside, when he reached to the house after playing. So, he peeped from the window of the house and saw one bothari was lying on the cot and two feet were uncovered from the bothari, it was visible. So, he knocked the door. After some time, it was opened from inside, and victim and accused came out from the house. After enquired by the complainant to victim, victim told her that she was alone in her house and was lying on the cot. That time, accused came inside the house. He locked the main door from inside and slept by the side of victim on the cot. He covered himself and the victim under the bothari. Thereafter, he opened his pant chain and got down the slacks of

the victim and inserted his penis into the vagina of victim. Thereafter, she heard the noise of knocking. So, accused and victim opened the door. Thereafter, the complainant took the victim and went to Police Station, Sindewahi on the same day and lodged the report.

3] The offence came to be registered on the basis of report. Then, the Medical examination of the victim came to be conducted. Spot panchanama was prepared. The clothes of victim were seized. The blood sample and medical samples of victim collected. Police recorded the statements of witnesses and arrested the accused and also his clothes were seized. The medical examination of the accused was also conducted. After completion of investigation, the police filed the charge-sheet.

4] The charge came to be framed by the learned Additional Sessions Judge, Chandrapur against the accused for having committed offences punishable under Sections 376 (2) (i) (j) and 450 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. The learned Additional Sessions Judge after recording the evidence of the witnesses and statement of the accused, passed the judgment

on 25/02/2021 and convicted the accused for the offences punishable under Section 6 of the Protection of Children from Sexual Offences Act read with Section 376 (2) (i) (j) of the Indian Penal Code and awarded the rigorous imprisonment for 10 years and fine of Rs. 5,000/-, in default, rigorous imprisonment for 6 months.

5] The appellant is represented by Panel Advocate Shri D.A.Sonwane. It is submission of learned counsel for the appellant that C.A. report is not supporting to the prosecution. There was no injury on the private part of the accused when the child was of 7 years. When the forcible sexual intercourse was carried out, then there would have been some injuries to the accused also, however, there was no any injury to the accused. The witnesses examined are interested witnesses. The learned counsel for the appellant relied on judgment in the case of *Mohan Ambadas Meshram V/s. State of Maharashtra* reported in **2018(6) Mh.L.J.(Cri.)296**, wherein it is held that,

“Eye witness not specifically stated about actual commission of sexual intercourse by accused. It was merely stated that accused was sleeping on person of victim. Medical evidence not showing any sign of injury on person of victim. Prosecution has not been able to place on record convincing evidence to prove its case

beyond reasonable doubt against appellant. Consequently, conviction order was quashed and set aside”.

6] The learned Asst. Public Prosecutor vehemently opposed the appeal. It is submitted that there is no ground whatsoever to set aside the judgment. The judgment is well reasoned and well founded. There is cogent evidence and material on record to convict the accused. He drawn my attention to the paragraphs 11, 12 and 13 of the judgment passed by Special Court.

7] I have heard both the parties at length. Perused the evidence and documents on record. The statement of victim came to be recorded by learned Judicial Magistrate First Class, Sindewahi. So also statement of her brother and mother also came to be recorded. The accused is in relation of victim. If evidence of these three witnesses is perused, there is no material discrepancy in the statement recorded by learned J.M.F.C. under Section 164 of the Code of Criminal Procedure and in the deposition of complainant and brother of victim, before the Court. There is no reason put forth by the accused for implicating him falsely. Being relative of the victim, his entry in the house was not objected by anybody. On perusal of medical evidence,

Dr. Monika K. Kotpalliwar who had conducted medical examination of the victim opined that no sexual intercourse had occurred with the victim prior to the incident. She also stated that the victim's hymen was ruptured and that it admitted the tip of a finger. Though there is no semen detected, the version of victim and medical report are corroborated with each other. Section 375 of the Indian Penal Code is quite clear as well as Section 3 of the Protection of Children from Sexual Offences Act is clear. Section 3 (a) of POCSO Act defines penetrative sexual assault which reads as under:-

“3. Penetrative Sexual Assault:- A person is said to commit “penetrative sexual assault” if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b).....

(c).....

(d)..... ”

So also Section 375 (a) of IPC reads as under:-

“375.Rape – A man is said to commit “rape” if he –

(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or

(b).....

(c).....

(d)..... ”

8] As such, I do not see any infirmity in the judgment and order of conviction passed by Special Court in Special POCSO Case No. 92 of 2018. The facts involved in the citation relied by the learned counsel for the appellant are different than the facts in the present appeal. There is sufficient and cogent evidence which has proved the prosecution case beyond reasonable doubt. As such, the appeal stands dismissed.

9] I appreciate the efforts taken by learned Adv. Shri Sonwane, Panel Advocate for the appellant for pleading for accused.

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

B.T.Khapekar