

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

CRIMINAL APPEAL NO. 3 OF 2021

Raju @ Pintu Baiju Kawade,
Aged 30 years, Occ. Labour,
R/o Boti Ambada, Tq. Bhaisdahi,
District : Baitul (M.P.)

At present : R/o Raj Gupta Cement,
Brick-Klin Karkhana, Parsada Road,
Amravati, Dist. Amravati

... Appellant

// VERSUS //

State of Maharashtra through Police
Station Officer, Police Station
Frezarpura, Amravati, Dist. Amravati

... Respondent

Shri Tushar Tathod, Advocate for appellant
Shri V.A.Thakare, APP for the State / Respondent.

**CORAM : ANIL S. KILOR, J.
DATED : 9th DECEMBER, 2022.**

ORAL JUDGMENT :

This appeal takes exception to the judgment and order dated 31st October, 2020 passed by the Sessions Judge, Amravati in Special POCSO Case No. 221 of 2017 convicting the appellant for the offences punishable under Section 6 of the Protection of Children from Sexual Offences Act (in short referred as “POCSO Act”) and Sections 182, 203 and 506 of the Indian Penal Code (in short referred as “IPC Act”),

whereby the appellant-who shall be referred to as the 'accused' is convicted as follows:

Offence	Sentence
Section 6 of the Protection of Children from Sexual Offences Act.	Rigorous Imprisonment for ten years and to payment of fine of Rs.5000/- in default to suffer simple imprisonment for one year
Section 182 of the Indian Penal Code	Rigorous Imprisonment for three months and to payment of fine of Rs.1000/- in default to suffer simple imprisonment for 15 days.
Section 203 of the Indian Penal Code	Rigorous Imprisonment for one year and to payment of fine of Rs.1000/- in default to suffer simple imprisonment for two months.
Section 506 of the Indian Penal Code	Rigorous Imprisonment for six months and to payment of fine of Rs.1000/- in default to suffer simple imprisonment for 15 days.

2. Brief facts of the prosecution case as emerged from the police papers and record and evidence, are as under :

On 14th August, 2017 the accused lodged the report alleging therein that he works at the brick kiln and near to it there is agricultural field of one Shivdas Rathod. Therefore Shivdas Rathod requested him to bring Ayurvedic Medicines from the forest to bring his wife back from his parents house. Thereupon the accused said that the said medicine is to be brought on Sunday and to pluck the said medicated leaves it requires one unmarried girl.

3. It is further prosecution case that to pluck meditated leave he took along with the victim girl in the forest about 7.30 pm. After entering into forest he asked victim girl to Bhedadi (thorny bush). There was darkness in the forest area as it was already 8 pm. At the relevant time two unknown persons came there holding knives in their hands. Thereafter these unknown persons assaulted him by fist and kick blows and tied the girl by the dupatta of the victim girl. They took the victim in the bushes, removed her clothes and subjected her for sexual assault. Victim girl was shouting for help. Then he rescued himself and run towards his house. Victim girl has also run away towards her house. On the basis of the said report, the crime was registered.

4. During the spot panchanama victim girl broke down in presence of panchas and disclosed that though First Information Report was lodged by the accused against two unknown persons, but the accused is the person who has subjected her for sexual assault. Accused was then arrested on the spot by drawing arrest panchanama and he was referred for medical examination. After completion of the investigation, the chargesheet was filed.

5. The trial Court framed the charge vide Exh.16. The contents of the charge were read over and explained to the accused in vernacular and he pleaded not guilty and claimed to be tried.

6. In support of the prosecution case, the prosecution has examined in all five witnesses. P.W-1 Victim, P.W-2 panch witness, P.W-3

Head Mistress, P.W-4 Investigating Officer and P.W-5 who has taken First Information Report.

7. The learned trial Court after marshelling oral as well as documentary evidence passed the impugned judgment and order and thereby convicted the appellant accused for the offence punishable under Section 6 of the POCSO Act, under Sections 182, 203 and 506 of Indian Penal Code.

8. I have heard Shri Tathod, learned counsel for the appellant and Shri Sirpurkar, learned Additional Public Prosecutor for the State.

9. Shri Tathod, learned counsel for the appellant submits that, the conviction is based on sole testimony of the victim and considering the omission and contradiction, particularly when there is no corroborative evidence, it is not safe to rest conviction solely on the testimony of the victim.

10. It is submitted that it is a settled law that unless the testimony of the victim is trustworthy, corroboration requires. It is submitted that the sterling witness should be of a very high quality and caliber whose version of such witness should, therefore be unassailable. For this purpose he has placed reliance upon the judgment of coordinate Bench of this Court in the case of Gautam Chandrakant Khairnar Vs. State of Maharashtra and another¹.

¹ 2022 ALL MR (Cri.) 2585

11. It is submitted that prosecution has not examined the father, mother and other relatives, which is fatal because as the sole testimony of the victim is not trustworthy.

12. It is further submitted that there is a delay in lodgment of the First Information Report as the fact of rape by the appellant was not disclosed immediately by the victim to her parents.

13. It is submitted that it is unbelievable that when the panchas were called in the police station, they were informed about the name of the accused, particularly when the victim disclosed the name of the accused i.e. the present appellant first time during drawing panchnama. It is therefore, submitted that the prosecution case is doubtful.

14. On the other hand, Shri Sirpurkar, learned Additional Public Prosecutor supports the impugned judgment and order and submits that the accused admitted all the documents including medical reports, spot panchanama and other documents on which the prosecution has placed reliance to bring the guilt at home against the accused.

15. Learned Additional Public Prosecutor further submits that if the spot panchanama and the medical report of the victim are considered coupled with the fact that the injuries namely abrasion were found on the body of the victim, the spot panchanama and the medical report are in harmony with the case of the prosecution.

16. He further points out that if the story of the accused is accepted that he was assaulted by two unknown persons and his hands were tied by the scarf (duppatta) of the victim, no corresponding injuries were found on his body.

17. It is further submitted that it is a settled law that in a sexual assault case the testimony of the victim is sufficient and no corroborative evidence is necessary and therefore non-examination of parents or relatives of the victim is not fatal.

18. In the backdrop of rival submissions, I have perused the record and proceeding and also impugned judgment and order.

19. In this case, the accused himself went to the police station and lodged a complaint, stating therein that on a request of his friend Shivdas Rathod, he agreed to go into the forest and bring medicated leaves for him. However, to pluck the said medicated leaves, the requirement was of unmarried girl. He therefore, in the complaint states that on the date of incident, along with the maternal uncle and the father of the victim, consumed liquor and thereafter, he along with the victim girl, went to the forest at 7.30 p.m. to bring the said medicine. He then states that there was darkness in the forest, as it was 8.00 p.m. and at that time two unknown persons came there, holding knives at their hands. They threatened the accused and assaulted him by fist and kick blows. Thereafter, they took the victim girl in the bushes and removed her clothes and subjected her for sexual assault.

20. Considering the complaint of the accused and the contents of First Information Report, it can be safely said that there is no dispute about the fact that on the date of the incident, the accused took the victim in the forest and in the forest a rape was committed on the victim.

21. In the circumstances, the only fact remained to be examined, whether the rape was committed by the appellant as per the version of the victim, or it was committed by two unknown persons, as per the case of the accused. For this purpose, the oral evidence of the victim is relevant.

22. The victim (PW 1) in her oral testimony, has stated that on 13th August, 2017 at about 7.00 to 7.30 pm, her father called her and asked her to bring one glass of water. She gave one glass of water. At the relevant time, accused Shivdas Rathod and sister of accused namely Sakshi and her father were present there. She further deposed in her oral testimony that Pintu asked her to accompany him to bring medicine from the forest. She declined for the same. Shivdas Mama told her that he has brought his sister for the said work but she is afraid, whether she was able to bring the medicine for Mami.

23. She further deposed in her oral testimony that she went along with accused in the forest on motor-cycle. Her father also asked her to go along with accused. Accused took her by Kaccha road. Accused parked his vehicle on the Kaccha road and they entered in the forest to pluck the medicine. Accused took the victim in the forest behind the trees. He forced her to sit on the ground. He removed her Salwar. He removed his

clothes also. He lied down on her person. He subjected her for forceful sexual assault. At the relevant time two unknown person came in front of them. The said two unknown persons asked the appellant what was he doing. Then, they started assaulting Pintu. She got scared and came to home. After some time Pintu also came to home and fell down in front of the house. She got scared.

24. She further deposed in his oral testimony that her parents Mamta, wife of Pintu all gathered there. After seeing Pintu, her parents asked to Pintu what happened. Pintu disclosed that he along with her went in the forest to pluck medicine, two unknown person assaulted him. Her father gave a telephonic call to Mahendra Rathod. Her father called him to bring auto to move her and Pintu in the hospital. She herself, her parents, Pintu, wife of Pintu, Mahendra Rathod, his wife and one Balabai came to hospital i.e. Irwin Hospital, Amravati. Pintu has disclosed to Medical Officer that he was assaulted by two unknown person. Medical Officer asked them to lodge a report in the police station. When they were proceeding to police station in auto rickshaw towards police station accused Pintu whispered in her ear that she has to state according to him, otherwise, he will kill her family members.

25. She further deposed that accused-Pintu has lodged the report. Then, she was inquired by the police. She also narrated the same as told by accused Pintu. Again accused Pintu was taken in Irwin Hospital. She herself and her parents were in the police station. Again she was called by the police on 15th August, 2017. Her parents were also present along

with her. She has visited alongwith the police at the spot wherein the incident happened with her. Police inquired with her when she was alone and asked her to narrate the true facts. When police madam was inquiring with her, she started weeping and therefore, Lady Police Officer asked her to narrate true facts. She has narrated the true facts that accused has subjected her for sexual assault, at the relevant time two unknown persons came there and they assaulted Pintu. She informed to the police that two unknown persons have not committed any act with her. From the spot of incident they returned to the police station. Again police inquired with her and her statement was recorded. Thereafter, she was referred for the medical examination. She was medically examined by the Medical Officer. She has narrated about the incident to the Medical Officer. Her clothes were seized by the police.

26. In the cross-examination, she denied that yesterday till 3.00 pm her father was attempted to communicate with the accused through Manohar Rathod. She denied that her father was communicating with accused through Manohar Rathod and was demanding money for settling dispute. She admitted that Pintu lodged the report on that day only inquiry was conducted with her by police. She further denied that there was quarrel between Pintu and Raj Gupta prior to eight days of incident. She denied that the accused was removed from the work by Raj Gupta due to quarrel. She admits that on the next day Raj Gupta came to her house to inquire about the incident. She denied that Raj Gupta told her father what statement is to be given, accordingly her father asked to give such statement and accordingly, she has given statement. She further

admits that when she went along with Pintu in the forest two unknown person came there and they tied legs of Pintu by cloth piece. She denied that two unknown person have subjected her for sexual assault. She denied that she was deposing false that accused has subjected her for sexual assault in the month of May when she went to graze she-goats. She denied that accused used to sexually harass her whenever he used to come to her house. She denied Pintu never subjected her for sexual assault in the forest area and she was deposing false. She denied that she was deposing false the birth date was 11th April, 2003. She denied that at the time of incident she was more than 18 years.

27. Thus, it has come in the oral testimony of the Victim that the accused took her in the forest, he forced her to seat on the ground, he removed her salwar, he removed his clothes and he lied down on the person of the victim and subjected her to forcible sexual assault.

28. In the circumstances, I proceed to consider the evidence led by the prosecution in corroboration. As far as the documentary evidence is concerned, including the medical report, the accused has admitted all the documents.

29. Medical report is at Exh. 26 which discloses that general behaviour normal, gait normal, injuries over body abrasion approximately 2 cm x 2 cm over back middle. Four line abrasion also found on her person. These injuries do not suggest forcible sexual intercourse, but supports the version of the victim.

30. Furthermore, the hymen was found torn at 3 O'clock. The opinion states that the exact opinion regarding forcible sexual intercourse cannot be given.

31. Medico Legal Certificate (Exh.27) of the victim shows that the age of the hymen injury and the age of the abrasion is same i.e. 12 to 24 hours. On the basis of Exh. 27, thus, it can be said that the injury namely, abrasion was caused to the victim at the time of sexual assault. Thus, from Exhs. 26 and 27 i.e. the Medical Reports, it is clear that the sexual activity was there.

32. Exh.26 supports the case of the prosecution and not the case of the accused that two unknown persons committed rape. As the opinion says that the exact opinion regarding forcible sexual intercourse, cannot be given. Moreover, the injuries found on the persons of the victim also do not support the case of the accused.

33. Thus, it can be said that the medical evidence is in total harmony with the oral testimony of the victim.

34. As the oral testimony of the victim is trustworthy and inspires confidence, the conviction will not vitiate only because the parents or relatives have not been examined by the prosecution. It is a settled law that if the victims evidence is trustworthy, it does not require corroboration as there is no such requirement under law.

35. As far as delay is concerned, the victim has explained the delay in disclosing the alleged offence and as such, the submission of the learned counsel for the appellant that there was a delay and it was not explained properly, cannot be accepted and accordingly, it is rejected.

36. Further the argument of the learned counsel for the appellant that the foundational facts are not established, that cannot also be accepted for the reason that the prosecution has brought on record the sufficient evidence by way of oral as well as documentary evidence to establish the foundational facts that on the date of the incident, the accused and the victim went to the forest and in the forest a rape was committed on the victim.

37. As far as the person who committed the rape on the victim is concerned, the prosecution has successfully established the said fact by bringing on record the sufficient evidence.

38. In this case, the accused was also medically examined and on his person two injuries were found. As per the medical report (Exh.31), both the injuries were caused by blunt weapon. Thus, Exh.31 corroborates the oral testimony of the victim that two unknown persons came on the spot and assaulted the accused.

39. In the circumstances, I do not find any error committed by the learned trial Court in convicting the accused/appellant for the offence punishable under Section 6 of the POCSO Act and Sections 182, 203 and 506 of the IPC. Accordingly, I pass the following order:

The appeal is **dismissed**, accordingly.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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