

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 264 OF 2016

Ramesh s/o Mariba Landge,
age: 32 years, Occ: Nil,
R/o Pisegaon, Tq. Kaij,
District Beed.

Appellant

Versus

01 The State of Maharashtra

02 X. Y. Z., minor, through
grandmother

Respondents

Mr. Anand V. Patil (Indrale), advocate for the Appellant
Mr. R. B. Bagul, APP for Respondent No.1.
Mr. Saisagar A. Ambilwade, advocate for Respondent No.2.

CORAM : SANDIPKUMAR C. MORE, J.

**Reserved on : 01st September, 2023.
Pronounced on : 06th September, 2023.**

JUDGMENT :

1 The appellant-accused has preferred this appeal for challenging his conviction recorded by the Additional Sessions Judge, Ambajogai, (herein after referred to as the “learned trial Court”) in Special Case (POCSO) No. 05 of 2013, under the judgment and order dated 17.03.2016.

2 The appellant-accused has been convicted for the offences punishable under Sections 376 (2) (i) of the Indian Penal Code and also for the offences punishable under Sections 4, 6, 8 and 10 of the Protection of Children From Sexual Offences Act, 2012 (herein after referred to as “the POCSO Act”). The appellant-accused is sentenced to suffer rigorous imprisonment for 14 years and to pay fine of Rs.5000/-, in default, to suffer rigorous imprisonment for three months in respect of offence under Section 376 (2) (i) of the Indian Penal Code. The accused is also sentenced to suffer rigorous imprisonment for 07 years and to pay fine of Rs.3000/-, in default, to suffer rigorous imprisonment for two months in respect of offence punishable under Section 4 of the POCSO Act. He is also sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.3000/-, in default, to suffer rigorous imprisonment for two months for the offence punishable under Section 6 of the POCSO Act. He is further sentenced to suffer rigorous imprisonment for 03 years and to pay fine of Rs.1000/-, in default, to suffer

rigorous imprisonment for 15 days in respect of offence punishable under Section 8 of the POCSO Act. He is also sentenced to suffer rigorous imprisonment for 05 years and to pay fine of Rs.2000/-, in default, to suffer rigorous imprisonment for one month in respect of the offence punishable under Section 10 of the POCSO Act.

3 The background facts, leading to this appeal, are as under:

The victim and Supriya i.e. daughter of the accused were students of 1st standard in Zilla Parishad School, Pisegaon and they were good friends. The victim was residing with her grand mother at Pisegaon. On 16.08.2013, the victim came home from the school and after taking meal went for playing in her courtyard with Supriya. At that time, the accused came there and took the victim and Supriya for giving biscuits. The accused purchased biscuit packet from the shop of Rama and after eating some biscuits, the accused sent his daughter Supriya to home and took the victim with

him behind the school and committed forcible sexual intercourse with her which caused bleeding injury to the private part of the victim. The accused also tried to kill the victim by pressing her neck.

4 In the meantime, grand mother of victim – Chandrabhagabai was searching for the victim as she was not found her in the courtyard. She then learnt from the mother of the accused that the victim was taken by the accused towards Zilla Parishad School. As such, Chandrabhagabai started going towards said school. She had also asked one Rambhau to search the victim. Ramu found the accused coming from the school side along with the victim. In the light of torch, he found blood stains on the shirt of the accused. The accused then handed over the victim to Chandrabhagabai, who brought the victim to home. Chandrabhagabai then learnt from the victim that the accused had committed forcible sexual intercourse with her and also tried to kill her. Chandrabhagabai, therefore, called Ramu Neharkar and they went to Police Station where

Chandrabhagabai lodged complaint against the accused on the very day. On completion of investigation and doing all the necessary formalities, the Investigating Officer filed charge sheet against the accused. The learned Trial Court, after framing charge against the accused, conducted the trial and convicted him, as aforesaid. Hence, this appeal.

5 The learned Counsel for the appellant-accused submits that the trial Court erred in appreciating the evidence on record and relied too much on the evidence of the victim, which was completely unreliable. According to him, the complainant belongs to OBC caste and since the accused belongs to SC caste, he has been falsely involved in the offence. The learned Counsel relied upon the following judgment of the Hon'ble Supreme Court in support of his contention:

In the case of **Mustkeem @ Sirajudeen Vs. State of Rajasthan**, reported in 2011 DGLS SC 546 = (2011 AIR (SC) 2769).

6 On the contrary, learned A. P. P. strongly opposed the submissions made on behalf of the appellant-accused. According to the learned A. P. P., minority of victim is not at all in dispute. Moreover, the Medical Officer, who had examined the victim, had proved that the age of the victim was of 7 to 8 years at the time of incident. Further, he pointed out that the evidence of the victim is clear so far as incident is concerned, which is supported by the evidence of Chandrabhagabai and one Ramu Neharkar i.e. P. W. 6. According to him, the medical evidence on record also supports the case of the prosecution and there was no denial on the part of the accused that he had taken the victim with him at the time of the incident. He also pointed out that the blood of the victim was found on the clothes of the accused for which there is no satisfactory explanation from the side of the accused. Thus, the learned A. P. P. submits that each and every fact is pointing towards the guilt of the accused and the prosecution has established the case against the accused beyond all reasonable doubts. According to him, the defence taken by the accused is not at all probable. With

these submissions, he prayed for dismissal of the appeal.

7 On the other hand, learned Counsel for Respondent No.2 – victim has also adopted the arguments advanced by the learned A. P. P. Additionally, he submits that since the accused was neighbour and father of the friend of victim, she had gone with him at the time of incident. According to him, the accused, despite knowing the victim being the friend of his daughter, performed serious crime in respect of tender-aged victim and, therefore, no leniency can be shown to him. He, as such, also prayed for dismissal of the appeal.

8 Heard rival submissions and also perused the entire documentary and oral evidence on record along with the impugned judgment.

9 It is significant to note that the appellant-accused has challenged his conviction mainly on two grounds, that he was framed by the grand mother of the victim only because

he alone is belonging to SC caste in the village, whereas, rest of the villagers are of OBC caste and that the trial Court has relied too much on the evidence of victim, which did not inspire any confidence.

10 So far as framing the appellant-accused on account of caste difference is concerned, the defence of the accused, on this count, appears totally improbable since the allegations and nature of evidence against him, are serious and it is highly impossible that merely on the basis of caste difference, he has been framed in such a case falsely. So far as second ground of challenge raised by the accused-appellant is concerned, it is in respect of evidence of victim, being untrustworthy and unreliable. On this count, the evidence of prosecution needs to be revisited to ascertain, whether the learned trial Court has rightly appreciated the same.

11 The prosecution has examined in all 14 witnesses, out of which, witnesses P.W.1 to P. W. 4 are *pancha* witnesses,

P. W. 5 – Radhika is mother of victim, P. W. 6 – Ramu @ Rambhau is nephew of the complainant, P. W. 7 is complainant Chandrabhagabai, who is grand mother of the victim, whereas, P. W. 8 Jayashree Kulkarni is teacher of the victim. P. W. 9 is Dr. Seema Mahadevappa Banale, the Medical Officer, who had examined accused. P. W. 10 is the police officer, who recorded the First Information Report and registered the crime. P. W. 11 is the victim and P. W. 12 is Smt. Monali Shankarrao Gharte, who is the police officer, who recorded statement of the victim. P. W. 13 – Dr. Sangita Baburao Chinchole is the Medical Officer, who had examined the victim and P. W. 14 – Abhay Dongre is the Investigating Officer. In addition to the oral evidence of these witnesses, the prosecution had also relied upon so many documents which are exhibited during the course of trial.

12 On perusal of the evidence of P. W. 7 – Chandrabhagabai, who is grand mother of the victim, it is evident that on the day of the incident, she was cooking something and victim was playing in the courtyard of their

house along with daughter of accused. Her evidence further indicates that the accused had taken the victim for providing biscuit packet and as the victim did not return for long time, she went to search her. She then learnt from the mother of the accused that accused went towards the school and, therefore, when she went towards the school, she saw the accused coming along with victim and the accused, without uttering a word, handed over the victim to her and went away. When she took the victim to her house and inquired, the victim told her about the incident i.e. as to how the accused removed her nicker and inserted his penis in her vagina. The victim also told her as to how the accused pressed her neck. The complainant also found bleeding from vagina of the victim and, therefore, she went to the police station and lodged complaint and thereafter police referred the victim for medical examination. The version of complainant Chandrabhagabai is also corroborated by P. W. 6 – Ramu @ Rambhau Neharkar to whom the complainant asked to search the victim. In his evidence, it has specifically come on record that he found the accused coming from the side of the school in the light of the

torch and there were blood stains on the shirt of the accused and the victim was with the accused. Moreover, P. W. 3 – Jeevan Suryawanshi also established contents of the spot *panchanama* and recovery of six pieces of bangles, half biscuit packet and blood stained earth from the spot. The spot panchanama is at Exhibit-30.

13 Further, the evidence of victim i.e. P. W. 11 also indicates that she has narrated the incident before the Court with minute details. She has stated that she was studying in the 1st standard at the time of incident and daughter of accused i.e. Supriya and one Dhanashree were her friends. She has specifically stated as to how the accused had taken her and Supriya for giving biscuits and thereafter the accused took her to the backside of the school and removed her ‘*chaddi*’ (nicker) and inserted his limb into her place of urine. On perusal of her cross examination, it is evident that her version remained unshattered despite lengthy cross examination. Thus the evidence of the aforesaid witnesses, namely – complainant Chandrabhagabai, P. W. 6 – Ramu @

Rambhau and the victim, on the aspect of sexual assault on the victim at the hands of accused, does inspire confidence since they all corroborated each other on material facts.

14 The evidence of victim is also well supported by the medical evidence on record. P. W. 13 – Dr. Sangita Baburao Chinchole, who examined the victim after the incident, has clearly deposed in her evidence that she examined the victim at about 12.00 in the midnight on 16.08.2013 and she found scratch marks on the neck of the victim. She found that hymen was ruptured at 12 O' clock position. According to her, she had also obtained opinion of Gynecologist, Pathologist and E. N. T. experts. She also collected vaginal swab, samples of hair, nails, clothes of the victim and sent the same to the Forensic Lab. She also referred the victim for X-Ray examination to determine her age and collected opinion of the said expert. Thus, it appears that the evidence of P. W. 13 Dr. Sangita Baburao Chinchole, also supports the story of victim as well as prosecution wherein she has opined that the victim was subjected sexual

assault with violence prior to six hours of her medical examination.

15 Further, the scientific evidence, in the form of C. A. reports, also supports the case of the prosecution. The C. A. reports are at Exhibits-24 to 27. The C. A. report at Exhibit-24 is in respect of glass bangles and pieces of bangles found on the spot, which are tallied with each other. Those bangles were in the hands of victim at the time of incident. Further, the C. A. report at Exhibit-25 indicates that the blood of victim, which was of group “O” was found on the clothes of the victim as well as on the clothes of the accused. The C. A. report at Exhibit-26 has established that the blood of victim was of “O” group. Moreover, C. A. report at Exhibit-27 also indicates that blood of victim was found on the nicker of the accused. All these facts clearly indicates that the accused had committed forcible sexual intercourse with the victim, as narrated by her.

16 Learned Counsel for the appellant-accused heavily

relied on the judgment of the Hon'ble Apex Court in the case of **Mustkeem @ Sirajudeen Vs. State of Rajasthan** (*supra*), wherein it is observed that the blood group, which was found on the clothes of deceased, does not by itself, establish the guilt of the appellants unless the same was connected with the murder of the deceased by the appellants. It is further held that none of the witnesses examined by the prosecution could establish this fact. By relying on the aforesaid observation, learned Counsel for the appellant-accused submits that blood of group "O" found on the clothes of the appellant-accused cannot be relied upon for convicting him. However, the aforesaid observation of the Hon'ble Apex Court had come in the case which was purely based on circumstantial evidence. But here in this case, there is ocular evidence against the accused and the victim herself has narrated the incident and, therefore, the fact of finding blood having blood group of the victim on the clothes of the accused clearly establishes the case of the prosecution. As such, aforesaid observation is not at all helpful to the appellant-accused.

17 Therefore, on going through the entire evidence on record, it transpires that the victim was minor at the time of incident and her age was around 7 to 8 years. Further, the ocular evidence is well corroborated by the medical evidence as well as scientific evidence. Therefore, considering all these aspects, it appears that each and every fact brought on record by the prosecution in support of its story, is pointing towards the guilt of the accused. The accused has failed to submit any plausible explanation as regards his false implication on the aspect of caste difference. Moreover, there is no denial by him on the point that he had taken the victim with him at the time of alleged incident.

18 Considering the evidence on record, it appears that the prosecution has established guilt of the accused beyond all reasonable doubts. Moreover, the accused has committed such serious crime with the victim of tender age who was, in fact, friend of his daughter. On going through the impugned judgment, it appears that the learned trial

Court has appreciated the evidence in proper perspective and considered each and every aspect of the matter and rightly convicted the accused.

19 I, therefore, do not find any reason to interfere with the impugned judgment and order. There is no merit in the appeal.

20 In the result, appeal stands dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

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