

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

CRIMINAL APPEAL NO. 115 OF 2023

Sagar Ramesh Jadhav

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

Ms. Hema Mahesh Whaval (Appointed Advocate) for Appellant.

Mr. S. R. Agarkar, APP for State/Respondent No.1.

Mr. Swapnil Ovalekar (Appointed Advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 1 MARCH 2023

ORAL JUDGMENT:

1. The Appellant has challenged the Judgment and order dated 17/01/2022, passed by learned Extra Joint Additional Sessions Judge, Karad, in Special Case No.65 of 2018. The Appellant was convicted for commission of offence punishable U/s.354-A of the I.P.C. and was sentenced to suffer R.I. for one year and to pay a fine of Rs.10000/- and in default of payment of fine to suffer R.I. for three months. He was also convicted for commission of offence punishable U/s.7 r/w. Section 8 of the

Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act') and was sentenced to suffer R.I. for three years and to pay a fine of Rs.10000/- and in default of payment of fine to suffer R.I. for six months.

Both the substantive sentences were directed to run concurrently. The appellant was acquitted from the charges of commission of offence punishable U/s.11 r/w. Section 12 of the POCSO Act.

2. The prosecution case is that the victim in this case was about 12 years of age. Her date of birth was 10/06/2006. The incident had occurred on 29/09/2018. On that day, at around 12.00p.m. the victim had gone to a sugarcane field. It is alleged that the appellant came from behind, took her in his arms and was trying to make her fall on the ground. She rescued herself and ran away. She met one woman from the village. Both of them came back. The victim's father was informed. On the next day, he went to the police station and lodged the F.I.R. vide C.R.No.440 of 2018 at Karad Taluka police station. The investigation was carried out.

The spot panchanama was conducted. The statements of the witnesses were recorded. The statement of the victim and her father were recorded U/s.164 of the Cr.p.c. by learned J.M.F.C., Karad and at the conclusion of the investigation the charge-sheet was filed.

3. Heard Ms. Hema Whaval, learned appointed advocate for the Appellant, Shri. Agarkar, learned APP for the State/Respondent No.1 and Shri. Swapnil Ovalekar, learned appointed advocate for the Respondent No.2.

4. During trial, the prosecution examined five witnesses including the victim, her father, the panchas for the spot panchanama and two police officers.

5. The defence of the appellant was of total denial. During trial, the victim and her father did not support the prosecution case. They were declared hostile. However, learned Trial Judge relied on their statements given before the Magistrate and before the police and relying on those statements, convicted and sentenced the appellant.

6. The victim is examined as PW-2. She has deposed that, her date of birth was 10/06/2006. She had gone to the police station on 30/09/2018. She had told the police that, on the previous day the appellant had taken her in his arms in an agriculture field. Her statement was recorded by J.M.F.C. at Karad. She accepted that her statement was read-over to her and explained to her and after that, she had put her signature on it. That statement recorded U/s.164 of the Cr.p.c. was produced on record at Exhibit 22. She accepted that, she had shown the spot of incident and the police had taken photographs of the spot. She identified the appellant in the court. However, having said this, she further deposed that the incident on the previous day of going to the agricultural field was not true. She also denied that the appellant had taken her in his arms in the agricultural field. The victim did not support the prosecution case, therefore, she was declared hostile and was cross-examined by learned APP.

In the cross-examination conducted by the prosecution, she stated that her father had lodged the complaint about the incident before the police. She volunteered that her father had told

her that they were on inimical terms with the appellant and that she should depose against the appellant before the police and before the J.M.F.C. She further answered that her father had told that the matter was settled with the appellant. She denied the incident which was put to her in the form of suggestion. She denied that, on the previous day of lodging of the F.I.R., she was watching T.V. and her friend's brother told her to go to the agricultural field as her friend had called her. She denied that, she went to that field. She denied that, after going to the field the appellant came from behind and took her in his arms and tried to make her fall on the ground. She denied that, she pushed him and came out of the sugarcane field and saw a neighbour. She further denied that, she had disclosed this incident to that neighbour who brought her home. She accepted that she had stated before the J.M.F.C. that the appellant had taken her in his arms in the field.

She was also cross-examined on behalf of the appellant. That time she accepted that, there was a quarrel in the evening on 29/09/2018. At that time, the appellant had threatened her father that he would harass the victim and her

siblings and that he would kill the victim's uncle. She accepted that, because of those threats her father had lodged the complaint against the appellant. She further accepted that, she had not gone to an agricultural field and that there was no question of the appellant coming from behind and taking her in his arms. She further accepted that her father had brought her to the Court of the J.M.F.C. She admitted that her father had told her to depose before the J.M.F.C. that the appellant had committed this offence.

Thus, it can be seen that the victim had not supported the prosecution case. Her evidence is full of contradictions and is not reliable at all.

7. PW-3 was the victim's father. He has produced the victim's birth certificate at Exhibit 24 showing her date of birth as 10/06/2006. He denied that, on 29/09/2018 when the victim was watching T.V., her friend's brother told her to go to the agricultural field as her friend was waiting there. He denied that the victim had gone to the field and that the appellant had committed that offence. He was obviously not supporting the prosecution case,

therefore, he was declared hostile. Learned APP was permitted to cross-examine him.

In the cross-examination, he stated that, he had gone to the police station as the appellant had threatened him that he would harm his children and had abused his brother. This witness denied the suggestion that, on his enquiries, his daughter i.e. the victim told him that the appellant had caught her and had taken her in his arms. He denied the suggestion that, to save the appellant he was deposing falsely. But he accepted that, on 10/10/2018 the J.M.F.C. had recorded his statement and he had put his signature on his statement after it was read over to him. He accepted that, he had described the incident in that statement and had also stated that, in the evening on the date of incident the appellant had come to his house and had threatened and abused him. The statement of this witness recorded U/s.164 of the Cr.p.c. is produced on record at Exhibit 25. He was asked about his contrary statement in the F.I.R. lodged by him. Those portions were marked as portion 'A' and 'B'. He denied having stated those portions before the police.

This witness was also cross-examined by the defence. In that cross-examination, he stated that the appellant had abused him on 29/09/2018 and that there was a quarrel between him and the appellant. He further stated that, before going to the Court of J.M.F.C. the police had told him as to how to depose before the J.M.F.C. Court. At that time, the police had told him that his daughter was caught by the appellant and he was trying to make her fall down. He accepted the suggestion that the incident had not taken place.

Thus, it can be seen that, even this witness is not reliable and he is giving contrary answers. He has denied the occurrence of the incident when he had deposed before the Trial Court.

8. PW-1 Sambhaji Jagtap was a pancha for the spot panchanama. He deposed that, on 01/10/2018 the panchanama was conducted at 9.30a.m. in a field in that village. The spot panchanama is produced on record at Exhibit 20.

In the cross-examination, he accepted that the

panchanama was already written before he had gone to the field. He did not know who were the persons present at that time. He accepted that, only photos were taken when he had put his signature on the panchanama.

9. PW-4 Police constable Sunanda Kamble was on duty at the police station when PW-3 had gone to the police station to lodge his complaint. She proved the contents of the portion marked 'A' and 'B' from the F.I.R. which were contrary to PW-3's deposition in the Court. The complaint i.e. F.I.R. was produced on record at Exhibit 28. The offence was registered vide C.R.No.448 of 2018 at Karad Taluka police station. Those portion marked 'A' and 'B' were in respect of the incident of the victim going to the field and the appellant holding her from behind.

10. PW-5 A.P.I. Rathod was the investigating officer. He proved the contents of PW-3's supplementary statement which is produced on record at Exhibit 30. He had conducted the spot panchanama. He had sent PW-2 and PW-3 to the court of J.M.F.C. for recording their evidence. After completion of the investigation,

the charge-sheet was filed by him. His cross-examination was full of suggestions which he had flatly denied.

11. As mentioned earlier, the defence of the appellant was of total denial. According to him, there was a quarrel between him and PW-3 and, therefore, PW-3 filed a false case using his daughter; the victim.

12. Learned counsel for the appellant submitted that the prosecution case is not reliable. The main witnesses i.e. PW-2 and PW-3 have not supported the prosecution case. They have also given the reasons why they had stated about the incident before the J.M.F.C. and before the police. She submitted that, they have accepted that, there was a quarrel between the appellant and PW-3 which had resulted in filing of this false F.I.R.

13. Learned APP, as well as, learned counsel for the Respondent No.2 relied on the contrary statements brought on record in the form of statements of the witnesses PW-2 and PW-3 recorded U/s.164 of the Cr.p.c. They also relied on the contradictory version from the F.I.R.

14. I have considered these submissions. Learned Trial Judge has relied on the statements of the witnesses recorded U/s.164 of the Cr.p.c. and also on the F.I.R. given by PW-3. The victim and her father have not supported the prosecution case. The victim has categorically denied the occurrence of the incident. She, in fact, has given explanation as to why this false F.I.R. was lodged. According to her, there was a quarrel between the appellant and her father. The appellant had threatened her father and, therefore, this complaint was lodged. She has stated that, she had given her statement because her father had told her to give that statement.

15. Similar is the case with the evidence of PW-3. He has also not supported the prosecution case. He has also accepted that, there was a quarrel between him and the appellant on the previous evening and on the next day he went and lodged the F.I.R. He also has denied the occurrence of the incident or that his daughter had told him anything about the incident.

16. Thus, everything depends on the quality of the evidence of PW-2 and PW-3 and in this case, I find that they are not reliable

witnesses at all. They have changed their versions at the investigation stage and at the stage when their deposition was recorded before the Trial Court. They have also accepted that, there was a quarrel between the appellant and PW-3. Thus, I find that they are totally unreliable witnesses and, therefore, based on their statements recorded during investigation; either U/s.161 of the Cr.p.c. or even U/s.164 of the Cr.p.c., it would not be safe to record the conviction against the appellant. The appellant has probalised his defence that he was implicated falsely because of the quarrel between him and PW-3. There is no other independent witness examined by the prosecution. According to the prosecution case, there was another lady present at the spot who had asked the victim about the occurrence of the incident. The victim had allegedly narrated the incident to her, but even that lady is not examined. There is no explanation offered as to why she was not examined. Thus, there is no other independent witness. There is no corroborative circumstance. Two important witnesses were declared hostile. They have not supported the prosecution case. Their evidence is wholly unreliable. In such circumstances, it is not

possible to uphold the conviction and sentence recorded by the Trial Court. With the result, the Appeal must succeed.

17. Hence, the following order is passed.

O R D E R

- i) The Appeal is allowed.
- ii) The impugned Judgment and order dated 17/01/2022, passed by learned Extra Joint Additional Sessions Judge, Karad, in Special Case No.65 of 2018 is set aside.
- iii) The Appellant is acquitted from all the charges framed against him.
- iv) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)