

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.471 OF 2018
WITH
INTERIM APPLICATION NO.4087 OF 2022

Mehboob Raju Multani .. Appellant

Versus

The State of Maharashtra & Anr. .. Respondents

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Ms.Nazia S. Shaikh, Appointed Advocate for the Appellant.

Mr.S.R.Agarkar, A.P.P. for the State.

Ms.Prachiti Deshpande for the Respondent No.2.

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CORAM: BHARATI DANGRE, J.

DATED : 24th MARCH, 2023

P.C:-

1. The present Appellant was subjected to trial by the learned Additional Sessions Judge, Pune in Special S.C.No.88 of 2016, on being charged for the offences punishable under Sections 363, 376(2)(i)(n) of the Indian Penal Code (for short, “**the IPC**”) and Sections 3, 4, 5(1) and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, “**the POCSO Act**”). Alongwith the present Appellant, his mother was tried as accused No.2 and one Dilipkumar Sanklecha was tried as accused No.3. On culmination of trial, the Appellant stood convicted for the offences punishable under Sections 363,

376(2)(i)(n) of IPC and Section 3 r/w Section 4 and Section 5(1) r/w Section 6 of POCSO Act and came to be sentenced to suffer R.I. for ten years and to pay fine of Rs.50,000/-, in default to suffer R.I. for two years for the offence under Section 376(2)(i)(n) and to suffer R.I. for one year for the offence under Section 363 of IPC. Since he was already sentenced for the offence under Section 376 of IPC, no separate sentence was awarded for the offences punishable under Section 3 r/w Section 4 and Section 5(1) read with Section 6 of POCSO Act. All the sentences were directed to be run concurrently.

Accused Nos.2 and 3 stood acquitted of the charge under Sections 363 and 366-A of IPC.

2. The prosecution case which has surfaced through 8 prosecution witnesses is to the effect that the victim girl, approximately aged 14 years, was residing with her foster father (PW 1). Her date of birth has been established by the prosecution to be 28/02/2002 and she was pursuing her education in 9th standard in a school in the city, where she was residing. She was acquainted with the accused, who was residing in a flat, across her flat.

On 02/12/2015, when her father left the house for travelling to Mumbai and she was supposed to attend her private classes, she received a phone call from the Appellant, who informed her that he is at Pune railway station alongwith accused No.3 and asked her to reach there. Following his instructions, he reached Pune station by bus and found accused Nos.1 and 3 present there. She accompanied them to

the bus stand and boarded a bus to Solapur. From Solapur, the trio boarded a bus, this time for Hyderabad. She was taken to the house of matrimonial uncle of the Appellant, where she stayed for three days. On getting a tip from the grandmother of the Appellant that some search is carried out by the police, she was taken to Chennai and made to reside in a flat alongwith the mother of Appellant (Accused No.2) and one Chirag. Even Accused No.3 was present. It is at this place, she was subjected to forcible sexual intercourse by the Appellant and this was repeated every day in the night hours till 31/12/2015.

On 01/01/2016, police rescued the girl from the flat in Chennai and the accused persons were arrested. She was taken to Pune, where her custody was handed over to her parents.

3. Pursuant to the said event, PW 1, foster father of the victim girl had lodged the missing complaint on 02/12/2015.

Upon being rescued, she was subjected to medical examination at the hands of Dr.Dipali Jadhav, who is MS in Obstetric and Gynecology, attached to Sassoon Hospital. On examining the victim, in the wake of the consent accorded by the girl, she found the hymen to be totally torn with evidence of multiple old healed tears. On clinical examination, she clearly gave an opinion that there is evidence of penetrative sexual vaginal intercourse, though no evidence of inflammation or injury was noted on any part of the body. The clear opinion is expressed in column No.12 as under :-

“From clinical examination, there is evidence of penetrative sexual vaginal intercourse with no evidence of inflammation or injury on any part of body.”

PW 5 deposed in support of the said opinion, though in the cross-examination she recorded that it was disclosed to her by the victim that the Appellant did not have sexual vaginal intercourse with her and he never forced himself upon her.

4. PW 3- the victim girl herself stepped into the witness box and narrated her ferment, which would only reflect the unmindfulness and innocence of a girl, aged 14 years, who accompanied the Appellant, without intimating her parents and specifically by taking advantage of the fact that her father was out of the city. She has specifically narrated that the Appellant forcibly committed sexual intercourse with her everyday in the night hours in the flat at Chennai and this continued till 31/12/2015.

The victim offered an explanation about her statement made to PW 5, when she states that she stated so, since she was ashamed, as male persons were present there.

5. An attempt to create dent in her version is largely unsuccessful and though two omissions are brought on record, which are recorded in para 12 of her cross-examination, they are not of any significance. In cross-examination, she categorically gave the following admission :-

“I have stated to police on next day myself and Mehboob slept in bedroom. I have stated to police from next day at Chennai on every day accused No.1 committed sexual intercourse with me by force. I stated to police accused No.1 committed the sexual intercourse with me till 31.12.2015.”

6. The Investigating Officer came to be examined as PW 8, who has supported the case of the prosecution with the supporting spot panchnama and corroborative material, which was collected from Hyderabad and Chennai. The statement of the Appellant was recorded under Section 313 of Cr.P.C. and except stating that a false case has been foisted upon him, he do not take any specific stand.

7. In the wake of the material brought on record, the learned Judge appreciated the evidence and, since, the girl upon whom the sexual assault was committed was minor, he held that the offence under the POCSO has been made out and, since, there was aggravated penetrative sexual intercourse, he imposed befitting sentence. No illegality/ perversity is noticed in the impugned judgment, in the wake of the prosecution establishing it's case beyond reasonable doubt with the aid of 8 witnesses, with PW 3 being the star witness, supporting the case of the prosecution and who assisted the Court in recording a finding of guilt against the present Appellant.

8. Upholding the impugned judgment dated 31/01/2018 passed in Spl.S.C.No.88 of 2016, the Appeal is dismissed.

In view of the dismissal of the Appeal, nothing survives in the interim application and it also stands disposed off.

9. I would like to place on record my appreciation for the learned counsel Ms.Nazia S. Shaikh, who has effectively represented the cause of the Appellant on being appointed through the Legal Services Authority. The remuneration due and payable to her shall be ensured within six weeks from today.

(SMT. BHARATI DANGRE, J.)