

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.738 OF 2022
WITH
INTERIM APPLICATION NO.2041 OF 2022

Suraj Shankar Singh .. Appellant
Versus
The State of Maharashtra .. Respondent

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Mr.Manas Gavankar for the Appellant.
Ms.P.N.Dabholkar, A.P.P. for the State.

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CORAM: BHARATI DANGRE, J.
DATED : 28th MARCH, 2023

P.C:-

1. The Appellant was prosecuted for committing an offence punishable under Section 377 of the Indian Penal Code (for short, **“the IPC”**) and the offence under Section 3(d) punishable under Section 4 read with Section 5(m) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, **“the POCSO Act”**) .

Upon being tried by the learned District Judge-4 & Additional Sessions Judge, Kalyan in Special Case No.41 of 2014, he stood convicted on being found guilty of the charges pressed against him and by judgment dated 25/07/2019, he was sentenced to undergo R.I. for a term of 10 years and pay fine of Rs.5,000/-, in default to undergo S.I. for 3 months, on

conviction under Section 6 of the POCSO Act. By granting benefit of Section 42 of the POCSO Act, no separate punishment was imposed, though he being convicted under Section 377 of the IPC and Section 4 of the POCSO Act.

2. When the Appeal was taken up for hearing today, the learned A.P.P. has informed that the Appellant, on undergoing the sentence imposed, by granting the benefit of remission was released on 14/11/2022.

Shockingly, barely within fortnight of his release, he committed another offence on 01/12/2022, this time with more brutality, which resulted in registration of C.R.No.672 of 2022, which invoked Sections 302, 376, 377 of the IPC and Sections 4 and 6 of the POCSO Act and it is informed that he has been arrested and is presently behind bar.

3. Advocate Manas Gavankar, who was appointed through Legal Aid, to represent the Appellant has taken me through the record and proceedings, including the judgment under challenge.

I have also heard the learned A.P.P. Ms.Pallavi Dabholkar for the State.

4. The C.R. came to be registered with Mahatma Phule Chowk police station, when it was reported that a boy, aged 9 years, was sexually abused by luring him to offer a puppy. It was reported that the Appellant/Accused took him on the

terrace of a building and in order to satisfy his carnal desire, unzipped him and took his penis in his mouth. This incident was witnessed by two girls, who happened to be on the terrace, when they followed the Accused and the victim. The incident complained of was corroborated by one of the girl, who stood before the Court and by the version of the victim. The Accused was immediately apprehended and taken to the police station.

5. The victim boy stepped into the witness box and identified the Accused to be the same person, who had committed the wrong act with him on 18/11/2013, while he was playing with his friends behind the building. He reiterated his ordeal in the witness box.

His version was corroborated by PW 2, who was known to the victim, as he describes him as the son of his aunt and he deposed that since his mother was in jail, he was residing at the house of PW 2's grandmother and he was aged 9 at the relevant time.

To corroborate the version of PW 1 and PW 3, he deposed that when he was present near the building, he heard someone shouting "Wo Niche Aaya" and, therefore, he caught hold of one person. The victim was present there, who narrated that some wrong act was committed with him and he described the act of the Accused. It is PW 2, who lodged the complaint, which resulted in registration of the FIR and it was exhibited through him. PW 2 also identified the Accused, who was produced on video conferencing.

6. One of the girl, who was present on the terrace alongwith her friend, was also examined as PW 3 and she corroborate the version of PW 1, by deposing that when she was descending from the terrace for drinking water, she noticed the victim sitting with one person and he was doing bad act by removing pant of the victim. She inquired with the victim, whether he knew that person, who answered in the negative and he also informed her that he accompanied him, because he had promised to give a puppy. Thereafter, the victim was taken to the terrace and the Accused was caught hold of by PW 2 and his friend.

PW 3 also identified the person, who had committed the wrongful act with the victim through video conferencing and he was none else than the Appellant.

7. PW 4-the Investigating Officer, also entered into the witness box and deposed that he sent the child to the Child Welfare Committee, Bhiwandi for recording of statement and he specifically deposed that he had done so, since the boy was crying and was in a frightened condition and, therefore, his statement could not be recorded by him.

The statement of the victim boy was recorded by PW 5, Chairman of the Child Welfare Committee at Bhiwandi. She has deposed that the statement was recorded as per his say and the same was exhibited at Exhibit 25.

In Exhibit 25, the victim has specifically sated that he was taken on terrace by the Accused, who was unknown to him, by saying that he would hand over him a puppy. Some

girls were studying on the terrace and, therefore, he brought him down on the staircase, made him to sit, removed his pant and started sucking his penis. Thereafter, since the girls on the terrace noticed the incident, the Accused ran away and the girls rescued him and the Accused was taken to the police station.

8. The prosecution examined the above witnesses to establish it's case and when the cross-examination of the witnesses at the instance of the Accused is carefully perused, I do not find any material indicating that the prosecution case has lost it's ground. Suggestion given to PW 2 about his criminal character/antecedents, in no manner has affected the prosecution case and, particularly, the version of PW 1, which is duly corroborated by PW 3. The victim boy was consistent in his deposition before the Court and deposed in sync with the statement given to PW 5, the Chairman of the Child Welfare Committee.

9. Recording that the offence under Section 377 of the IPC as well as under Section 4 and 6 of the POCSO Act has been made out against the Accused through the cogent and reliable evidence placed on record, apart from the fact that PWs 1, 2 and 3 have identified the Accused to be the person, who had committed the said act, the learned Judge has rightly appreciated the evidence and has convicted the Accused and imposed a befitting sentence, considering the gravity of the accusations and by keeping the spirit of the POCSO Act in the

forefront, being to prevent such heinous offences being committed against the children, whether male or female.

10. I do not find any legal infirmity in the impugned judgment dated 25/07/2019 and it is upheld. As a consequence, Appeal assailing the said judgment is dismissed.

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

11. Before I part, I would like to place on record my appreciation for Advocate Manas Gavankar, who has ably assisted this Court in espousing the cause of the Appellant, by taking sincere efforts.

The Legal Services Authority is directed to pay legal remuneration to Mr. Manas Gavankar, within a period of six weeks from today.

(SMT. BHARATI DANGRE, J.)