

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO.598 OF 2016**

Ankush Babu Jadhav .. Appellant

**Versus**

The State of Maharashtra & Anr. .. Respondents

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Ms.Madhavi Ayyapan with Ms.Kalyani Mangave i/b Talekar & Associates for the Appellant.

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

Mr.Ifran Shaikh, Appointed Advocate, for Respondent No.2.

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**CORAM: BHARATI DANGRE, J.**

**RESERVED ON : 24<sup>th</sup> AUGUST, 2023**

**PRONOUNCED ON : 28<sup>th</sup> AUGUST, 2023**

**JUDGMENT :-**

1. The victim girl, aged 12 years, studying in 3<sup>rd</sup> standard in a municipal school, reported to her mother in the evening hours on 16/12/2013, that her teacher had touched her breasts and pressed them. She also informed that the teacher was doing this act with her since last two days i.e. 14<sup>th</sup> & 15<sup>th</sup> December, 2013, when he had pressed her breasts hard.

The above narration from the child resulted in mother approaching the police station, when she stated that upon

removing the clothes, she noticed redishness on the chest of her daughter, who complained, that it was paining.

The above narration resulted in registration of the subject C.R., which invoke Section 354-A of the Indian Penal Code (for short, **“the IPC”**) and Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short, **“the POCSO Act”**).

2. The person, who was alleged to have committed the said act is the Accused/Appellant before the Court, who came to be arrested on the next day.

PW 3, the Investigating Officer, who registered the F.I.R. recorded the statement of the witnesses and even the victim's statement under Section 164 was recorded before the Magistrate. On completion of investigation, the charge-sheet came to be filed.

3. The Accused faced the charge to the following effect :-

“Firstly : That on 14/12/2013, 15/12/2013, 16/12/2013 in Akurli Municipal School, Kandivali Station, you pressed the chest, abdomen and posterior part of victim minor girl Anjali age 11 years and established physical contact involving unwelcome sexual overtures and thereby committed sexual harassment of the girl, thus committed offence punishable U/s.354A of Indian Penal Code, 1860.

Secondly :- That on aforesaid dates and place you touched the chest, abdomen and posterior part of victim minor girl Anjali age 11 years and established physical contact with sexual intent and thereby committed offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012.”

He pleaded not guilty and was subjected to trial.

4. The prosecution relied upon the list of documents and cited 8 witnesses, which included the complainant, panch witnesses as well as the Medical Officer, who has examined the victim. However, the prosecution rest its case on three witnesses, namely, the victim, her mother (informant) and the Investigating Officer. No independent witness was examined and even the Doctor, who examined the victim, was also dropped.

5. The victim (PW 1) deposed that she went to her school on 16/12/2013 and on that date her class teacher was absent. She deposed about the incident as under :-

“He used to come near me under any pretext. He used to pinch on my chest and stomach and used to pat (slap) on my posterior (seat, buttocks). After doing this with me he used to go outside the class. My friend Ravina told me that I should not tell this fact to my mother else, she will scold. On the last day sir pressed my chest, pinched ( चिमटी घेतली ) on my stomach and slapped on my buttocks. While slapping me he said that I do uproaring (masti) and sir went away. I went home I was crying. My chest was paining. I told my mother.”

The victim is confronted with her statement recorded under Section 164 of Cr.P.C. and she admitted that the statement was recorded as per her say.

In cross-examination, the girl admitted that 16/12/2013 was Monday and 15/12/2013, being Sunday, the school was closed. A suggestion was given to her that she has not attended the school on Saturday, which she deny. She also

denied the suggestion, that on 16/12/2013, class teacher of 4<sup>th</sup> standard was also absent and, therefore, the students of the two classes were made to sit together and the students were uproaring (creating ruckus). She admit that the new sir came and scolded all students, as they were making noise and the Principal sir, came to their class to teach for one day, in absence of their class teacher.

The victim has given the names of her three classmates and stated that she did not report about the incident to the teachers standing near the gate, as she was scared.

She specifically deny the suggestion that on 14<sup>th</sup> and 15<sup>th</sup> December, 2013 she had not gone to school and no such incident took place and on 16/12/2013, Accused scolded her and asked her to sit at one place, but she did not follow his orders and, therefore, he was angry and she was humiliated.

6. The truthfulness of the version of the victim is to be tested as against her statement recorded by the Magistrate and also from the omissions, which are brought on record through the Investigating Officer i.e. PW 3.

When confronted with her 164 statement, she admit that portion marked 'A' in her statement, was stated by her to the police. Further, in cross-examination, she admit as under :-

"I stated in my statement u/s164 Cr.P.C. that I have not told to my mother about the incidence on 14 and 15 December 2013 as I was scared that she will scold me".

When the girl is specifically asked, as to which of the statement is correct, she answer that both the statements are correct.

In cross-examination, she is confronted with the portion mark B in the statement under Section 161 and she state that it is not true that she had not stated portion mark 'B' before the statement given to the police.

She give a clear admission in the cross-examination to the following effect :-

“It is true that on 16/12/2013 sir came in our class and took our attendance as usual at 5 pm. I have never seen new sir prior to he coming to our class.”

In another breath, she has testified as under :-

“It is not true to say that I am deposing false that new sir came in our class for 3 days and he used to come near me under any pretext and he used to pinch on my chest and stomach and used to pat (slap) on my posterior (seat, buttocks). It is not true to say that I am deposing false that after doing this with me he used to go outside the class.”

Another relevant statement, which comes from the victim in her cross-examination, read thus :-

“Mandakini Gangurde was peon in our school. It is not true to say that shed used to come in our class and used to ask us to keep quiet. It is not true to say that on 16/12/2013 for the whole day Mandakini was there in our class. Witness volunteers no one came in our class till 5 pm and sir came at 5 pm.”

7. At this juncture, I must turn to the evidence of PW 3, who has proved the omissions.

API Nikam, who registered the crime and investigated the offence, also admit that 16/12/2013 was Monday and 15<sup>th</sup> and 14<sup>th</sup> were Sunday and Saturday respectively.

The Investigating Officer state that he did not collect the copies of the Attendance Register of the relevant date nor did he record the statement of Rabina, the friend of the victim girl and he offer an explanation that she was called, but her parents did not allow to take the statement. He also admit that there is no statement of any witness from the school. In paragraph 4 of the deposition, he categorically admit as under :-

“It is true that the victim had not stated in her statement dtd.18/12/2013 that new sir pinched me in front of all students (Omission to the extent of pinching in presence of all students). Victim girl has not stated before me that new Sir asked us to open the language book and to read and further asked me to open page no. 12. It is true that Victim girl has not stated before me that I was searching page no.12 at that time sir pinched on my waist and pressed my chest. It is true that she has not stated before me that when they were playing recess sir again came and beat them, he pinched her and pressed chest and went away in the office.”

8. The informant, mother of the victim is examined as PW 2 and she deposed about the version given to her by her daughter, of being sexually harassed by her teacher on 16/12/2013 and also since last two dates i.e. 14<sup>th</sup> and 15<sup>th</sup> December, 2013. She deny the suggestion that on 14/12/2013, her daughter had not gone to school and she also disclose that the earlier incidents were not narrated by her daughter, as her friend had told her not to disclose the same, as she would be scolded and beaten.

The mother also deposed that her son was studying in the same school, but her daughter had not divulged the incident to him. Apart from this, she admit that she had not brought any document to show that the date of birth of her daughter was 30/06/2001.

9. It is pertinent to note that the prosecution did not examine any independent witness nor the Doctor, who had medically examined the victim, and all that it relies upon is, the version of the victim, her mother and the Investigating Officer.

10. The Accused came to be examined under Section 313 of Cr.P.C. and on being asked, as to why the witnesses have deposed against him, he has specifically stated as under :-

“On 16.12.13 Headmaster sent me on class of class III & IVth students for 15 minutes. I went in that class for first time since my joining a teacher on 18.11.2013. Students were uproaring (मस्ती ) and creating noise. I took attendance. I shouted scolded students. Except one girl all students sat down. She was making noise. I scolded. She cried and she felt humiliated. So they are deposing against me.”

The Accused also desired to examine the Headmaster of the school, as a witness and stated before the Court that a false case is filed against him, as he scolded the girl.

Mr.Anilkumar Yadav, the Headmaster of the school, was examined as DW 1 and he deposed that he was in-charge of both the sessions in which the school was conducted and he

look after the administration work and educational activities for all the classes.

As far as, the Accused is concerned, he informed the Court, he was appointed as Assistant Teacher, but was allotted the work of maintaining the record in the computer and was not assigned teaching. He brought the Muster of the teachers for the period from January to December 2013 to demonstrate that the Accused was not allotted any teaching work.

As far as 14/12/2013 is concerned, as per DW 1, the Accused was present in the school upto 12.50 p.m., being Saturday and on 16/12/2013, the Accused was in the school from 11.40 a.m. and left the school at 6.15 p.m.

DW 1 produced the original Students' Attendance Register of Class III, where the name of the victim was found to be recorded and the witness deposed that she was absent on 14/12/2013, as per the Register. DW 1 provided the following information :-

"On 16/12/2013, the class teacher of class III and IV were absent, so the classes were combined and one hours duty to teachers was allotted. At about 05.15 p.m., I asked accused to attend said combined class and take attendance of the students. He took attendance and let the students go to home at 05.50 p.m.. There were near about 70 students in the class. (Witness is referred to the extract of attendance Register of December, 2013). Contents of this copy are correct as per original Register. It bears my signature and signature of Administrative Officer Smt.Manisha Shanwar. Said Extract is marked at Exh.29."

In the cross-examination by the Public Prosecutor, the witness admit that he has no document to show that the Accused was send on combined class of Stds.III and IV at 5.15 p.m. on

16/12/2013. However, he referred to a Consolidated Daily Register, showing the teacher attending the class and it is marked as Exh.30, which reflect that post morning session, he had attended class III. He specifically deny the suggestion that the Accused was send to class III from 13/12/2013 to 16/12/2013.

11. The prosecution case, which has emerged through these three witnesses, suffer from glaring inconsistency, from the version of the victim herself, and when her version is posed against the version of her mother.

As far as the dates 14/12/2013 and 15/12/2013 are concerned, the case of the prosecution is that the girl was victimized on these two dates, but she did not report to anyone. However, it has come on record that 15/12/2013 was a holiday and as far as 14/12/2013 is concerned, DW 1 has produced on record, the Attendance Register, the victim was found to be absent in the school.

The version of the victim is specific about 14<sup>th</sup> and 15<sup>th</sup>, but there is inconsistency about the act, which she has attributed to the Accused. In her statement recorded under Section 164, she has stated that on 14<sup>th</sup> and 15<sup>th</sup>, new sir pressed her chest in front of everyone and pinched on her stomach, but since she was apprehensive that she would be scolded, she did not disclose it to anyone. However, in her deposition before the Court, she has stated that the new sir came in class for three days and he used to approach her on some pretext and pinched her chest and stomach and “also

patted on her posterior” and after doing this, he used to go outside the class.

However, in the cross-examination, she gave an admission that on 16/12/2013, sir came to the class and took attendance at 5.00 p.m. and that she had never seen him prior to this.

The above admission read with her statement that no one came in class till 5.00 p.m. and sir came at 5.00 p.m., create a doubt about her credibility.

**12.** Apart from this, as regards the incident dated 16/12/2013, there is variance in the version recorded by the Magistrate and what she deposed before the Court.

In her 164 statement, she has stated that the sir came to teach them and asked them to take out the textbook and while she was searching for the relevant page, he pinched her on her waist and pressed her chest, and even during the recess also, he hit her and pinched her and pressed her chest. This incident was again repeated after the school hours, as she state in her statement recorded under Section 164. However, in her deposition before the Court, she has deposed that new sir came to their class for three days and he used to come near her on one pretext or other and pinched her on chest and stomach and patted on her posterior. About the last date, she deposed that he pressed her chest hardly and pinched her stomach and slapped on her buttocks.

**13.** The testimony of the victim does not inspire confidence as it suffers from contradictions and inconsistencies. The omission as regards the incident of 16/12/2013 about pinching the waist and pressing her chest is proved. The incident about she being abused during recess, is also proved as a omission.

**14.** The burden of proving guilt of an accused lies on the prosecution and the prosecution has to establish it's case beyond reasonable doubt.

The prosecution must establish the guilt, by bringing on record cogent and reliable evidence, but in this case, it has failed to discharge the burden of proving the guilt of the Accused under Section 354-A of IPC and Section 8 of the POCSO Act. The discrepancy in the version of the prosecutrix goes to the root of the case and her evidence does not inspire confidence. On one hand, she categorically state that the incident, which took place on 16/12/2013, had earlier occurred on two days, but in the cross-examination, she admit that the Appellant visited her class on 16/12/2013 in the evening hours and he merely recorded the attendance and she had not seen him before.

Another improbability is the alleged sexual assault committed on her in the classroom, with no other witness being examined. The Investigating Officer, though made a feeble attempt to state that her friend was not ready to give the statement, if the alleged incident had taken place in the classroom, it was the duty of the prosecution to examine the students, who were present in the classroom. When

Headmaster (DW 1) inquired about such abuse, he received response in the negative.

Lack of evidence of material independent witnesses, has thus grossly affected the case of the prosecution, as it is the duty of the prosecution to lead best evidence in it's possession and though several witnesses were cited as prosecution witnesses, for the reasons best known, they were withheld and this definitely lead to an adverse inference, about happening of the incident and the accusations faced by the Accused, being doubtful.

**15.** To some extent, the trial Court has also expressed about, lack of serious efforts on part of the investigating agency and the Prosecutor to bring on record the independent witness, but the trial Judge is swayed, by only one rationale i.e. there is no reason why the victim girl aged 12 years and her mother would depose against the Accused. Though one may not find answer to the same, the prosecution, in no case, can be absolved from it's burden to prove the accusations levelled against the Accused beyond reasonable doubt and undisputedly, it is the duty of the prosecution and the Court to ensure that youth is not exploited, but at the same time, in absence of establishing the guilt of the Accused that he has sexually assaulted the minor girl, it cannot be accepted as an established fact, as the prosecution has failed to furnish any explanation in respect of the contradictions, infirmities and inconsistencies in the statement of the prosecutrix as well as other prosecution witnesses.

The inherent infirmities and inconsistencies strike at the very root of the prosecution story, making it unbelievable and improbable.

The evidence brought on record by the prosecution is not sufficient for convicting the Appellant, as the evidence of PW 1 is not found to be reliable and trustworthy. The prosecution has failed to lead positive evidence to give rise to an inference beyond reasonable doubt, that it is the Appellant/Accused, who has committed the offence. The prosecution story does not inspire confidence and is not worthy of credence, particularly, in the wake of the specific case of the Accused, which has been placed before the trial Court through his statement recorded under Section 313, supported by the defence witness, the Headmaster of the school.

**16.** In the wake of the above, the impugned judgment dated 22/08/2016 passed in POCSO Special Case No.16 of 2014 cannot be sustained and it is set aside. The Appellant is entitled to be set at liberty. The bail bond stands discharged.

**17.** I would like to place on record the words of appreciation for the able assistance of Mr.Irfan Shaikh, who was appointed to represent Respondent No.2. The Legal Services Authority is directed to pay the legal remuneration due to him, within a period of six weeks from today.

The Appeal is allowed in above terms.

**( SMT. BHARATI DANGRE, J.)**