

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

CRIMINAL APPEAL NO. 1131 OF 2022

Ms. X ... Appellant
Versus
State of Maharashtra & Anr. ... Respondents

Mr. Adnan A. Mookhtiar for the Appellant.
Mr. V. B. Konde-Deshmukh, APP for the Respondent-State.
Mr. Vishal V. Rankhambe for respondent No.2.

**CORAM : NITIN W. SAMBRE &
S. G. DIGE, JJ**

DATED : 22nd FEBRUARY, 2023

P.C.:

1. This appeal is by the victim in Crime No. 394 of 2015 for the offence punishable u/s. 354 and 506 of IPC and u/s. 4, 8 & 12 of POCSO Act.
2. The case of the prosecution is, the victim at the relevant time was 13 years old. On 17/10/2015, the complaint came to be lodged against the respondent no. 2 i.e. mother of the victim that in April, 2015, the respondent-mother entered in the bedroom of the victim, caught hold of her and after removing her clothes committed an offence punishable u/s. 4 of POCSO Act by inserting her finger in her vagina. It is further alleged that accused thereafter moved her breast towards the victim and further

threatened the victim not to inform the matter to the father.

3. As a sequel of above, the aforesaid offence came to be registered. During the investigation the prosecution has examined PW No. 1-complainant father, P.W. No. 2 - Dr. Narendra Baluram Kumar, P.W. No. 3 - Victim and P.W. No. 4- Jayashree. In addition to above witnesses, prosecution has relied on Exhibit 11-FIR, Exhibit-12 - statement of victim recorded u/s 164 of Cr.P.C., Exhibit 13- Copy of birth certificate, Exhibit 41-medical report, Exhibit 45-spot panchanama, Exhibit 46-arrest form and Exhibit 50-death certificate of grand mother viz. Rajashree Lad.

4. The Special Court after examining the evidence in analytical manner recorded the verdict of acquittal. In support of the reasons, the Court has noted that the delay in lodging FIR is not explained and so also the incident narrated by the victim is not deposing faith in the story of the prosecution.

5. While assailing the judgment, learned counsel for the appellant would urge that the Court below committed an error in recording the findings of acquittal. So as to support the aforesaid contentions, he has invited attention of this Court to the testimony of P.W. No. 3 - victim, who is law student. According to him, the victim in entirety has supported the case of the prosecution. He

would also urge that P.W. No. 1-complainant has also supported the case of the prosecution, which the Court below has failed to consider.

6. Learned APP would assist the Court in deciding the appeal on merits. Learned counsel for the accused would support the judgment and order of acquittal delivered by the Court below.

7. We have appreciated the submissions.

8. P.W. No. 1-Jitendra was married to the accused and couple is blessed with two daughters of which victim is a elder one. It appears that there is matrimonial discord *inter-se* between the P.W. No. 1 and the accused, which has led to filing of following cases against each other:

(a) Divorce Petition filed by Mr. Jitendra R. Lad against the Respondent No. 2 before Family Court Bandra Mumbai case bearing No. A-1963/2011 (pending).

(b) Criminal complaint filed by the Respondent No. 2 against Mr. Jitendra R. Lad u/s. 324 of IPC (convicted by Trial Court).

(c) Domestic Violence filed by Respondent No. 2 against Mr. Jitendra R. Lad before Metropolitan Magistrate Court at Bandra case bearing no. 60/DV/2014 (pending).

(d) Domestic Violence filed by Daughters of the Respondent No. 2 against Respondent No. 2 before Metropolitan Magistrate Court at Bandra case bearing No. 36/DV/2014 (Pending).

(E) Criminal Complaint filed by Mr. Jitendra R. Lad against

the Respondent No. 2 pending case before Metropolitan Magistrate Court at Bandra Case bearing No. 1544/PW/2015.

(F) Civil Suit filed by Mr. Jitendra R. Lad against the Respondent No. 2 pending case before City Civil Court Mumbai Case bearing No. S.C. 698/2016 (pending).

(G) Writ Petition filed by Mr. Jitendra R. Lad against this Respondent No. 2 before this Hon'ble Court bearing No. WP/13297/2017 (pending).

(H) Criminal Complaint filed by Mr. Jitendra R. Lad against the Respondent No. 2 pending case before Metropolitan Magistrate Court at Bandra Case bearing No. 1881/PW/2018.

(I) One Criminal Writ Petition filed by Mr. Jitendra R. Lad against Mahim Police Station and superior authority before this Hon'ble Court.

9. P.W. No. 1 in 2011 had initiated divorce proceedings in Family court against the respondent-accused whereas complaint of the respondent-accused for an offence punishable u/s 324 of IPC against P.W. No. 1 has resulted into his conviction.

10. Apart from above, the accused has initiated DV Act proceedings in 2014 against P.W. No. 1 and daughters of the accused and P.W. No. 1 have initiated DV Act proceedings in 2014, which are pending before the Court of Metropolitan Magistrate. Apart from above, it has come on record that PW. No. 1 has initiated Civil Suit against respondent/accused seeking declaration and injunction.

11. As such, it can be inferred from the records that since 2011

P.W. No. 1 and respondent/accused are litigating out of their matrimonial discord. Apart from above, the victim alongwith her sister through P.W. No. 1 has initiated DV Act Proceedings in 2014 which sufficiently speaks of the very intention of the P.W. No. 1 of initiating legal proceedings against the respondent/accused in the name of daughters who are in his custody sufficiently establishes / justifies the fact that the P.W. No. 1 has every intention to use the daughters to twist the arms of the accused.

12. Apart from above, the Special court while analyzing the evidence in categorical term has noted the bias relationship of mother and daughter and has rightly made observations in paragraph no. 18 of the impugned judgment.

13. Apart from above, the testimony of doctor i.e. P.W. No. 2 has not supported the case of the prosecution to the extent that the victim has suffered any injury.

14. The fact remains that though the incident in question came to have occurred in April, 2015, the victim claims that the same was informed to the grandmother and subsequent thereto to the P.W. No. 1 who has lodged the complaint in question.

15. The fact remains that the victim so also P.W. No. 1 are residing under one roof and there is no reason as to why the

incident was not immediately narrated to the P.W. No. 1 particularly when the grandmother has not responded to the alleged complaint made by the victim. The fact remains that while analyzing the evidence of P.W. No. 3 - victim, the Court has rightly observed material improvements and unexplained contradictions.

16. In the aforesaid background, view expressed by the Court below appears to be a possible view and in our opinion no interference is called for.

17. In view of above, no case for causing interference is made out. The appeal as such fails and stands dismissed.

(S. G. DIGE, J)

(NITIN W. SAMBRE, J.)