

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 91 OF 2023

Krishnat Shankar Kadav .. Appellant
Versus
The State of Maharashtra and anr .. Respondents

Mr. Sushil Inamdar for appellant.(legal aid appointed)
Mr. Rajesh Dharap for respondent no.2. (legal aid appointed)
Ms. A.A Takalkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 13th MARCH, 2023

P.C:-

1 The victim girl ‘X’, whose birth date co-incidentally fall on what is celebrated as ‘Children’s Day’ by the entire Nation i.e. 14th November, aged 11 years and 10 months on the date of the incident being ravished, resulted in the appellant being charged for the offence punishable under the Indian Penal Code and under the Special Act created for Protection of Children abuse in form of POCSO Act.

2 On 24/10/2019, when the victim girl was in her house and drawing pictures, the appellant whom she referred to as “Tatya” residing in her neighbourhood called her. She stepped out of her house and accompanied him, since she was assured that he would offer her custard apple. She was taken to his house and handed over the custard apple, but in return, he expected something.

When she started to return, he caught hold of her from behind and forcibly pressed her breast and when she attempted to leave, he resisted by pressing her mouth by one hand.

The victim girl, gauging the situation, bit on his right hand and rushed out of the house to be followed by the appellant, who also entered into her house, in the neighbourhood. The mother of the victim (PW 1) was washing clothes in bathroom, and on entering the house, the appellant attempted to work on the television when inquired by PW1, he left the house.

3 On feeling secured on his exit, the victim narrated incident to PW 1, who in turn, narrated it to her grandmother. Gathering courage, the duo approached the house of the appellant, and questioned him about the act, but he expressed no remorse.

Thereafter, the members of the family gathered and the police patil was informed about the incident. The PW 1 accompanied by another relative, the police patil, approached PW 2, ASI, Karad Taluka Police Station. PW 2 typed the version of PW 1, read over it to her and on admitting its contents, PW 1 put signature upon it, along with PW 2.

This complaint resulted in registration of C.R. No. 448 of 2019 invoking Section 354 A, 506 of IPC and Section 7, 8, 11 of the POCSO Act.

4 The FIR has been brought on record through PW 2 being marked as Exhibit 14. The investigation machinery was set

into motion and PW 5, PSI attached to Karad taluka police station stepped into witness box and highlighted about the investigation carried out for bringing home the guilt of the accused.

A spot panchnama was drawn on the spot being shown by PW 1. The spot panchnama is signed by the panchas and complainant as well as PW 5 and that is the reason that despite PW 3, the panch to the spot panchnama turning hostile, the prosecution case, establishing the spot remain unshattered.

5 The statement of the victim and complainant were recorded under Section 164 of Cr.P.C and included in the charge-sheet. While the statement of the victim girl was recorded, being minor, her mother was permitted to remain present.

6 On completion of investigation, the charge-sheet has been filed and the accused was put to trial and made to face charge of outraging the modesty of the victim and committing an offence punishable under section 354 of IPC on 24/10/2019 at around 9:30 am, when he asked the victim girl to accompany to his house and caught her by backside and pressed her breast by applying the criminal force, with an intention to outrage or knowing it to be likely to outrage her modesty. He was also charged for the offence punishable under Section 506 of IPC, by criminally intimidating and threatening the victim girl. Apart from this, was also charged under section 8 and 10 of the POCSO Act, as he committed sexual assault, with sexual intent by catching hold of the minor girl and touching inappropriately a minor girl.

7 The appellant pleaded not guilty and was subjected to trial.

Prosecution examined 5 witnesses, which included the victim girl. PW 1, the mother of the victim/ the complainant stepped into the witness box ahead of other witnesses, and she narrated the version, as narrated to her by her daughter. She specifically narrated that she had shown the spot of incident to the police, based on which the spot panchanama was prepared. She had given xerox copy of birth certificate to the police officer during the course of investigation, wherein the date of birth of her daughter was recorded as 14/11/2008.

8 The mother of the victim PW 1 was extensively cross-examined, with an attempt to bring on record a previous quibble between the family of Sampath, who was residing exactly opposite to the house of PW-1 and victim and she categorically admitted about the said discord, but pertinent to note that this discord was with Swati and Sampath, the brother of the present appellant, and if at all, the suggestion was given to the effect that in order to revenge the said complaint being lodged, the aforesaid complaint has been lodged, it could have been against Sampath and not against the present appellant, who was residing in the neighbourhood along with his family.

PW 1 withstood the scrutiny in the cross-examination and her version did not anyway affect the case of the prosecution and rather on cross-examination, her version emerge clearly to the effect that her daughter was subjected to sexual assault by the appellant.

9 The victim herself stepped into the witness box being examined as PW 4 and she also depose in sync with PW 1, corroborating on every material particulars from the point of time, when she was asked by the appellant to leave her house on the pre-text of offering custard apple. She categorically deposed that on handing over the custard apple, when she was about to leave his house, she was caught from behind and the appellant, pressed her breast and she protested, but as a small child she was, the appellant tried to press her mouth by his one hand and the victim girl took a bite on the right hand, and freed herself and rushed to her house. The appellant with an intention to manipulate her came behind her, stepped into her house and started meddling with the television set.

10 The minor witness is also subjected to extensive cross-examination by the counsel on behalf of the accused and the quibble between Swati and her grandmother was put to her, but the little girl was unaware of such things but she depose about the surroundings in her neighbourhood by stating that brother of the appellant was residing in front of her house and Swati was his wife, whereas the appellant was residing with his wife.

11 A question was specifically put to her whether his wife was present in the house when the incident took place, which she responded by stating that she had not seen her in the house. When specifically questioned whether there were any villagers on the road, while returning to her own house from the house of the appellant, the minor girl had answered that since

she rushed, she did not see any villagers though they may be present on her way back. She assertively stated that she use to refer the appellant as 'Tatya' though she was attempted to be confused that some other person is also known as 'Tatya' she remain consistent on her stand that when she refer to Tatya, it was the present appellant, who was before the Court.

Minor inconsistencies in her version were also attempted to be brought on record, but on perusal of cross-examination on that aspect, I do not think that the credibility of the minor girl who depose the actual happening of the incident was shattered, though attempted to. She specifically denied that she had falsely reported about the act of Tatya, grappling on her breast and pressing it and that she falsely narrated incident to her mother.

12 The case of the prosecution is further supported by PW 5 the Investigating Officer, who was also cross-examined by the counsel of the accused on the point of delay, but the Investigating Officer has categorically asserted that the victim came to the police station on the day of lodging of complaint i.e. on 24/10/2019, but the statement of the victim could not be recorded on 25/10/2019, is a candid admission given by the PW-5.

Minor omissions have surfaced in the cross-examination of the said witness, but from the relevant aspects, there is no deviation in the prosecution case, and as the mother and the daughter has deposed in sync with each other in establishing the case of the prosecution that the appellant,

committed sexual assault, as contemplated under Section 7 of the POCSO Act, by touching the breast of the child with a sexual intent and thus establishing physical contact.

Aggravated sexual assault being defined in Section 9, is also established since the age of the child was not below 12 years.

13 During the course of the arguments before the Additional Sessions Judge, Karad and even before me, the learned counsel for the appellant vehemently asserted upon the date of birth of the victim girl not having been conclusively established. Neither the trial court found flaw in the said argument, nor I am impressed by the same. The photocopy of the birth certificate was already placed on record while PW 4 was in witness box, the original birth certificate was sought to be exhibited, being a public document.

A serious objection was raised about taking the same on record and exhibiting it, but the Court immediately dealt with the said objection and on examining the xerox copy of the birth certificate produced in papers and the original birth certificate produced during the course of examination of the victim girl and on noting that they are one and the same, the objection was overruled and considering that the same is issued by a Public Officer, which deserve an acceptance being a public document the birth certificate was exhibited at exhibit 17.

The birth certificate clearly record the date of birth of the victim as 14/11/2008, establishing that on the date of the incident i.e. on 24/10/2019, she was below 12 years, thereby

attracting Section 9 (m) of the POCSO Act and on establishing the commission of the said offence, calling for imposition of penalty under Section 10 for aggravated sexual assault.

14 Undisputedly, the other offences with which the appellant is charged with Section 354-A and 506 is clearly established through the case of the prosecution as laid before the Special Court. The girl though minor, definitely has a right to possess modesty and by the conduct and act committed by the appellant, which has been proved by PW 2 by stepping into the witness box and being corroborated by version of victim's mother, the appellant stand convicted under section 354 A along with Section 506. Pertinent to note that the statement of the victim recorded under Section 164 of CrPC, she had remained consistent and this is what has been considered by the Special Court, while convicting the appellant for the offences with which he was charged i.e. section 354 of IPC and Section 8, 11 and 12 of the POCSO Act.

15 The POCSO Act being a special piece of enactment to protect the innocent children like the victim girl, who at the relevant time was below 12 years and had fallen in trap laid down by the appellant, who on the pretext of being an elderly person and being well-known to her family residing in the neighbourhood accompanied him, on being lured that he is going to offer her custard apples.

16 The prosecution has been successful in establishing the charge levelled against the appellant and on being convicted the Additional Sessions Judge, Karad has also imposed befitting

punishment upon the appellant by sentencing him to suffer RI for period of 5 years on being convicted under Section 10 of the POCSO Act and directing him to suffer RI for 3 years on being convicted under Section 8 of the POCSO Act. Ultimately, the cumulative effect of the sentences imposed upon the appellant that he shall undergo RI for 5 years, since on account of conviction, the sentences imposed upon him are directed to run concurrently.

17 It is informed that the appellant has undergone 2 years of imprisonment and, therefore, he deserve to undergo the remaining sentence. Finding no merits in the appeal, since the prosecution has successfully established the charge level against the appellant. The Appeal is dismissed.

18 The learned counsel Mr. Sushil Inamdar, who represented the appellant is appointed through Legal Services Authority and so is also Mr. Rajesh Dharap, who represented the complainant.

I would like to place my appreciation for both the counsels for effectively representing the appellant and the complainant, and for assisting this Court, in espousing their respective cause.

The Legal Services Authority is directed to furnish their remuneration due and payable to them, within a period of 6 weeks from today.

(SMT. BHARATI DANGRE, J.)