



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.301 OF 2022

Santosh s/o Shankar Yele, aged about 40
years, R/o Navsal Tq. Murtizapur,
District Akola.

... APPELLANT.

VERSUS

1. State of Maharashtra, through
P.S.O. Mana. Tq. Murtizapur, District
Akola
2. XYZ (Victim) through its
Complainant vide crime number
218/2019 Police Station Mana, Tq.
Murtizapur, District Akola.

... RESPONDENTS.

Shri A.S. Londhe, Advocate for the appellant.
Ms. Swati Kolhe, Addl.PP for the State.
Shri Inamul Haq, Advocate for respondent no.2.

CORAM : VINAY JOSHI AND M.W. CHANDWANI, JJ.
RESERVED ON : 15.12.2023.
PRONOUNCED ON : 21.12.2023.

JUDGMENT : (Per : Vinay Joshi, J.)

The appellant has been convicted in Sessions Case
No.22/2020 for the offences punishable under Section 354-A (1)(i),

376(2)(f)(1)(n), 506, 376(3) of the Indian Penal Code (for short 'IPC') and for the offence punishable under Section 6, 10 of the Protection of Children From Sexual Offences Act (for short 'the POCSO Act') vide judgment and order dated 08.03.2022, which is the subject matter of challenge. The Trial Court has imposed maximum sentence to suffer imprisonment of life along with fine for the offence punishable under Sections 376(2)(f)(1)(n) of the IPC and Section 6 of the POCSO Act.

2. It is the prosecution case in brief that the appellant (accused) has committed repetitive sexual intercourse on his own daughter. At the instance of the report lodged by the victim aged 14 years 2 months crime has been registered on 10.12.2019. It is the victim's case that she was living with her mother, father, brother and younger sister. Somewhere in the year 2017, in the afternoon, while she was in sleep, the accused forcibly committed sexual intercourse. The accused assured her to provide artificial limb as she was disabled. The accused also threatened her for not to disclose the things. In the year 2018, in presence of her younger sister, the accused has kissed the victim. The victim has disclosed the things to her mother but she neglected. It is the victim's case that on 08.12.2019, in the afternoon, the accused again committed forcible sexual intercourse. She physically

suffered a lot and therefore, she disclosed the things to her female friend. On her advice, after two days, she has lodged the report to police in presence of village Sarpanch. The Police completed the investigation and filed charge-sheet.

3. In order to establish the guilt of the accused, the prosecution has examined in all 8 witnesses. The prosecution evidence mainly consist of the victim (informant,) her mother and sister. Besides that the prosecution has examined the Medical Officer, Panch Witness, Gram Panchayat Secretary and Investigating Officer. Relying on the sole testimony of the victim girl, the Trial Court returned the finding of guilt and passed the aforementioned sentence.

4. The accused was arrested on 10.12.2019 and till date he is in jail. Learned Counsel appearing for the accused has assailed the impugned judgment and order by every possible mode. It is submitted that the Trial Court erred in basing the conviction on the sole unreliable testimony of the victim. The mother and sister of the victim girl did not support the prosecution case. The Medical evidence also speaks against the prosecution case. Chemical Analyzers report does not corroborate the victim's version. Moreover, it is submitted that the victim herself has

filed a reply in the appeal stating that no such incident occurred. On the basis of said material the learned Counsel for the appellant urged to set aside the order of conviction.

5. *Per contra*, learned Addl.PP has supported the impugned judgment and order of conviction. Our attention has been invited to the statutory presumption under Section 114-A of the Evidence Act and Section 29 of the POCSO Act. Learned Addl.PP would submit that the victim has categorically stated about the repetitive sexual assault, therefore, the appeal deserves to be dismissed.

6. At the inception, we have noted that it is a case of sexual assault by the father against his own daughter. Certainly, the allegations are serious, grave and a matter of indignation. However, we are not inclined to dilute the standard of proof required under the criminal law on account of gravity of the offence. We have carefully examined the entire material, the reasoning assigned by the Trial Court and considered the rival submissions.

7. The first limb of the prosecution case is about the evidence of the victim and her family members. The victim's mother (PW1) has

not supported the prosecution case. She has given several admissions in the cross-examination to indicate that the victim's behaviour was strange and she was of quarrelsome nature. The victim's younger sister (PW3) also refused to buy the prosecution story. Then the prosecution has examined the victim's schoolmate aged 16 years however she also remained back footed in the Court. In substance, the evidence from said quarter was not available. True, the victim's mother was not the eye-witness but her evidence was laid on the point that the victim has disclosed the things to her and she accompanied the victim while lodging the report. The evidence of victim's sister was on the point that in her presence, the accused has outraged the victim's modesty. The evidence of victim's friend was on the point that the victim has disclosed the atrocities to her on which she has advised her to approach to the Police. However, to the dismay of the prosecution, all these witnesses turned hostile, meaning thereby their evidence is not available to assist the prosecution.

8. In said background, the prosecution has examined the victim (PW4), who was staying at Anand Ashram i.e. at shelter home at relevant time. On the point of occurrence, the victim stated that her father (accused) has committed rape on her. Particularly, she has stated

that the incident of rape has repetitively occurred. She deposed that once in the field in presence of her younger sister, the accused kissed her and on return she has disclosed the things to her mother. The victim stated that the accused used to threaten her. She has disclosed the things to her friend and on her advice she met with Village Sarpanch and lodged the report.

9. The evidence of prosecutrix is criticized by pointing certain admissions given by the victim during the cross-examination. The defence tried to make out that the victim was a quarrelsome girl, she was twice expelled from the school on account of her unruly behaviour. The accused father scolded and beat her, and thus, out of anger false report has been lodged. In order to built such defence, we have been taken through the victim's evidence. She has admitted that after taking initial education of two years at Murtizapur, she was expelled from the said school. She admits that since there were complaints of the teachers against her at Balaji Convent School, she was dismissed from the said school. She stated that once without informing the School Authorites of Women Military School, Nagpur, she ran away but brought back by the Police. She stated that she has put grievance against the School Administration about the hygienic food. She also admits that the School

Authorities have called her father (accused) and handed over the School Leaving Certificate. Certainly, these admissions indicate that the victim's behaviour was not proper, she was twice removed from the School on account of behavioral aspect. True, that cannot be a reason but it is one of the bit for consideration, while appreciating the defence version.

10. Learned Defence Counsel took us through some vital admissions to state that the report was lodged out of anger. The victim admits that due to various complaints made against her, on two to three occasion, her father (accused) beat and scolded her. She admits that due to such beating she was angry on her father and having revengeful attitude against him. Since the victim's admission made in paragraph 9 of her evidence are vital, we wish to reproduce as below :

“9..... It is correct that due to such type of compliant for 2-3 occasions my fahter beat and scolded me. It is correct that due to such incidents I was angry with my father. It is correct that due to such fact I was having revengeful attitude against my father.”

11. The victim has stated in her evidence that she has lodged the report against her father alleging beating and scolding. On that

basis, it is argued that though the victim stated the incident of beating only, however the Police have exaggerated the story. Notably the victim admits that except the contents of beating and scolding by her father, she has not lodged the report to the Police about any other incident. Particularly, the victim was asked whether out of revenge she has lodged the report against the father, to which she answered in the affirmative however when the Court has repeated the question, she replied in the negative. Certainly, it is a matter of appreciation whether such evidence can be relied.

12. We deem it appropriate to refer the decision of the Supreme Court in case of *Santosh Prasad Alias Santosh Kumar vs. State of Bihar (2020) 3 SCC 443*, wherein it is observed that no doubt, it is true, that to hold accused guilty for the commission of offence of rape, solitary evidence of prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality.

13. In case of *Rai Sandeep Alias Deepu vs. State (NCT of Delhi) (2012) 8 SCC 21* the Supreme Court had an occasion to consider, which cannot be said to be a “sterling witness”. In paragraph 22, it is

observed and held as under :

“22. In our considered opinion, the “sterling witness” should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral,

documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

14. With this we may advert to some other circumstances. We have no doubt in our mind that in sexual offences corroborative evidence is not a must. We are also aware about the statutory presumptions. However unless the victims evidence inspires full confidence, it is not safe to base conviction. In view of the nature of the victim's evidence, we are bent upon to look for corroborative material to lent assurance.

15. After lodging of the report, the victim was examined by the Medical Officer Dr. Sujata Chavan (PW5) on the very day. The victim did not allow the Medical Officer to conduct genital examination. The Medical Officer has made a general examination and collected samples. Medical Examination Report (Medico-Legal Examination Report) is tendered on record at Exhibit 26. It reveals that the Medical Officer did not find external injuries including side of vagina. The Medical Officer stated that she cannot say whether hymen was ruptured or intact. The Medical Officer stated that she cannot opine whether sexual intercourse was occurred or not. In substance, the medical evidence does not

provide any sort of corroboration to the sole testimony of the victim.

16. It take us to consider the Expert's evidence. It is the victim's case that she was subjected to sexual intercourse on 08.12.2019 for which police report was lodged on 10.12.2019. The police visited the place of occurrence on 10.12.2019 and seized several articles including a mattress. On the very day, the clothes of the victim as well as the accused have been seized. During the course of investigation, seized articles have been sent for chemical analyzation. The Regional Forensic Laboratory on analyzation submitted the examination report, which indicates that neither blood stains or semen was found on either of the bed-sheet, clothes or the samples collected from both. Resultantly, though within two days, the samples were collected and the victim was medically examined, the said material does not support the case of sexual assault. True, the said material relates to the extent of incident dated 08.12.2019 however it is a matter of appreciation whether a ring of truth lies to rely on the victim's evidence about earlier occurrence.

17. At the cost of repetition, we may say that there is no difficulty in basing the conviction on the sole testimony of the prosecutrix. The conviction can be based on her sole testimony subject to inspiring full confidence of the Court. It is well settled that the

victim's evidence is to be tested like the evidence of other witnesses. Though the statutes provide presumption however foundational facts are to be established. When the Court is confronted with the sole testimony of the victim, the Court must be cautious and careful while accepting her version. Certainly, law does not require that the prosecution shall establish the guilt with 100% certainty but it should establish the guilt beyond reasonable doubt. If the circumstances gave rise to the reasonable possibility of innocence then benefit of doubt belongs to the accused. The Trial Court while relying on the victim's sole testimony has expressed that, the victim who must have proud of her beloved father has no reason to depose falsely. The Trial Court has also taken aid of the marked portion of the hostile witnesses, which was established through the evidence of the Investigating Officer. The Trial Court appears to have much swayed against the accused on account of relationship.

18. Considering the entire material, we find it difficult to place implicit faith on the sole testimony of the victim to base the conviction. It emerges that the victim was rebellant girl attracted expulsion from the School. Admittedly, she was beaten by her father and she accepted that, she was having revengeful attitude against her father (accused). Besides that in duel mind she admitted that out of revenge she has filed

the report.

19. In view of such a nature of evidence, we thought it necessary to seek corroborative material. However neither medical evidence nor the chemical analyzer's report support the prosecution case. Besides that the victim's mother who must be more concerned with her innocent child has not supported the prosecution case. In our considered opinion, a reasonable and entertainable doubt arose. Certainly in such a situation the law prefers to accord benefit of doubt to the accused.

20. In view of the above, the impugned judgment and order is unsustainable in the eye of law. We therefore by allowing this appeal set aside the judgment and order of conviction dated 08.03.2022 passed by the Extra Joint District Judge and Addl. Sessions Judge, Akola in Sessions Trial No.22 of 2020. The appellant/accused Santosh s/o Shankar Yele is acquitted from all the charges levelled against him and he be set at liberty forthwith, if not required in any other case. Fine amount, if deposited, shall be refunded to the appellant/accused.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

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