



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 201 OF 2022

Ashok Bhagwanrao Balatkaar
Age : 27 yrs, occ : business
R/o Kundi, Taluka Setu,
District Parbhani.

Appellant

Versus

1. The State of Maharashtra
2. X – Prosecutrix

Respondents

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Mr. S.J. Salunke, Advocate for the appellant.
Mr. R.D. Sanap, A.P.P. for respondent No.1 – State.
Smt. Renuka Ghule-Palve, Advocate for respondent No.2
(Appointed through Legal Aid).

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 6 November 2023

Judgment pronounced on : 2 February 2024

Judgment :

1. By preferring this appeal, the appellant, who is the original accused in Special (POCSO) Case No. 43/2020, has challenged his conviction in the aforesaid case under Sections 376-AB and 363 of the Indian Penal Code (for short “I.P.C.”) and under Section 8 of Prevention of Children from Sexual Offences Act, 2012 (for short, “POCSO Act”) imposed by learned Additional Sessions Judge and Special Judge, Parbhani (hereinafter referred to as “the learned trial Court”).

The appellant/accused is sentenced to suffer rigorous imprisonment for twenty years and to pay fine of Rs. 1000/-, in default to suffer simple imprisonment for six months for the offence punishable under Section 376-AB of I.P.C. He is also sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 1000/- in default to suffer simple imprisonment for six months for the offence punishable under Section 363 of I.P.C. Lastly, the appellant is also sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 1000/- in default to suffer simple imprisonment for six months for the offence punishable under Section 8 of POCSO Act.

2. According to prosecution, the appellant is the neighbour of the family of minor victim. He was having cordial relationship with the victim as well as her family members. Therefore, by taking undue advantage of such relationship, the appellant on 13.02.2020 at about 6.00 p.m. took away the victim in the field on the pretext of giving her fresh green peas (टहल). He first took away the victim to a shop situated in the village and thereafter to field. Then he took the minor victim in a small hut situated in the field where he took out her nicker and inserted his finger into her vagina.

He also applied his private part to the private part of the minor victim.

3. On the next day the informant i.e. father of victim lodged report in Selu Police Station on the basis of which crime was registered against the appellant for the offences punishable under Sections 376-AB, 363 of I.P.C. and under Section 4 and 8 of the POCSO Act. On completion of the investigation, the appellant/accused was chage-sheeted. Learned trial Court i.e. Additional Sessions Judge, Parbhani conducted the trial and convicted the appellant/accused as mentioned above.

4. Learned Counsel for the appellant/accused submits that age of the victim being of 8 years is not seriously disputed, but there are so many contradictions in the evidence of victim. He pointed out that on the point of taking the victim to the field when she was in the company of her friends, no reliable evidence is laid by the prosecution by examining one of her friends. He also pointed out that nobody from the neighbours of the victim's family were examined. According to him, all the interested persons have been examined by the prosecution. He pointed out that the Medical Officer, who had examined the victim, had in fact

stated that no external injury on the person of victim was found despite the allegations of slapping her by the appellant/accused. He pointed out that the C.A. report also could not establish the case of prosecution as it did not support any positive finding in respect of sexual assault on the victim. Besides his oral submission, the learned Counsel for the appellant/accused relied on the following citations :

- (i) State of Maharashtra vs Suresh @ Bhaskar Dashrath Gawai & ors, 2011 ALL MR (Cri) 3110*
- (ii) Ravi Anandrao Gulpude vs State of Maharashtra 2017 ALL MR (Cri) 1509*
- (iii) Mangesh Wadkar vs State, AIR Online 2023 Bom 312*
- (iv) Pradip vs State of Maharashtra through Police Station Officer, Police Station Old City Akola, (2022) 4 Bom CR (Cri) 631,*

5. On the contrary, learned A.P.P. supported the impugned judgment and vehemently argued that the F.I.R. was immediately lodged and father, mother and victim have corroborated each other on the material aspect. Further, PW-5 Baba Mahajan has also deposed that he saw the victim in the company of appellant/accused at the shop in the village. He pointed that the Medical Officer Dr. Archana Bhusewad i.e. PW-6 has specifically stated in her evidence that sexual violence with the victim could not be ruled out. Thus, he claims that the prosecution has established complete chain of

the incidents which is well supported by the evidence of victim, and therefore the appeal needs to be dismissed. He also placed reliance on the judgment in the case of ***State of Punjab vs Gurmit Singh reported in 1996 AIR (SC) 1393.***

6. On the other hand, learned Counsel for respondent No.2 / victim also supported the arguments of learned A.P.P. and submitted that the learned trial Court has properly convicted the appellant/accused considering the entire evidence on record. As such, she also prayed for dismissal of the appeal.

7. Heard rival submissions. Also perused entire oral and documentary evidence on record.

8. It is significant to note that the learned Counsel for the appellant/accused during the course of argument did not dispute the age of victim being of 8 years at the time of incident seriously. Therefore, there is no need to discuss the evidence on that point as discussed by the learned trial Court. So far as the evidence in respect of guilt of appellant/accused is concerned, the victim in her evidence has specifically deposed that on the day of incident she was in 3rd Standard and after school she attended private tuition and

returned home at about 6.00 p.m. She further deposed that then she went to play with her brother, sister and friends by seeking permission of her mother. According to her, when she was playing in front of her house, the appellant / accused came there and asked her to come with him on the pretext of giving fresh green peas (टहल). They first went to the shop of Jogi Mama where the appellant purchased Goa Sachet and then took her to his field. She has deposed that when she saw torch lights in the said field, the appellant told her about arrival of thieves. When she uttered word “mother” loudly, the appellant pressed her mouth and slapped her. Thereafter she has deposed about the incident of removing her nicker by appellant/accused and inserting his finger in her private part. She also deposed that appellant/accused applied his private part on her private part and kissed her cheek. She further deposed that appellant / accused then took her to various places in the field and did not allow her to sleep whole night. Further, in the morning when her parents and maternal uncle came in the field to search her, the appellant/accused left her near the bridge and ran away. Thus, the victim, except certain minor contradictions, has deposed as per the prosecution story. She has also stated that after coming home, she narrated the incident to her mother and then they

went to Police Station and lodged report. She has also stated about her visit to hospital at Parbhani alongwith her mother and her examination through the doctor.

9. Considering the age of the victim at the time of deposition, her aforesaid testimony definitely appears trustworthy and reliable since it is also corroborated by her mother i.e. PW-3 Kalinda. The evidence of father of the victim i.e. PW-2 Bharat also corroborates the version of mother of victim as well as victim. Therefore, considering the evidence of these witnesses, it has come on record that the appellant / accused had taken the victim to his field and they had searched victim in the night till 2.30 a.m. Further, the evidence of PW-4 i.e. the uncle of informant also indicated that he had seen the accused alongwith victim in the shop of Jogi. It has come in the evidence of father of victim i.e. PW-2 that PW-5 Baba had told that he had seen the appellant / accused and victim while going by Pandan road. Though this witness Baba i.e. PW-5 refused to support the prosecution while deposing before the Court, but in the cross-examination it has also come on record that he had cordial relationship with the appellant/accused. As such, it was obvious that he did not support the case of prosecution. Further, it seems

that the appellant/accused tried to raise the defence that he alongwith father of victim used to drink liquor which caused heavy expenditure and therefore, the other family members of victim out of annoyance because of such expenditure falsely made complaint against him. However, such defence appears highly improbable especially when the victim and her parents corroborated each other on material aspect of sexual penetrative assault on the victim.

10. Learned Counsel for the appellant/accused heavily relied on the judgment in the case of ***State of Maharashtra vs Suresh @ Bhaskar Dashrath Gawai*** (supra) wherein this Court has observed that it would not be easy to believe the prosecutrix contrary to medical evidence. In the instant case, if the evidence of Dr. Archana i.e. PW-6 is seen, then it is evident that the victim had not sustained any injury to her private part or on the other part of her body. Medical Officer PW-6 Dr. Archana has admitted in her cross-examination that in case of insertion of finger in the private part of any woman, there would of redishness, bleeding and other injuries might be possible. She has also admitted that such type of injuries were not found while examining the private part of the victim. Learned Counsel for the appellant/accused, by referring such

admissions given by Medical Officer, argued that the prosecution could not establish the fact of penetration. However, learned trial Court has referred in the judgment amended definition of penetrative sexual assault under Section 375-B of I.P.C. wherein the word “vagina” is inclusive of “libia majora”. Therefore, in the instant case, even though there were no injuries on the private part of the victim, but in the light of specific evidence given by victim, the insertion of finger upto libia majora can also be categorized as “rape”. Moreover, despite such admission on the part of the Medical Officer, she has specifically deposed that the possibility of sexual violence with the victim could not be ruled out. Therefore, the aforesaid judgment is not helpful to the appellant/accused.

11. Further, there is also presumption as per Section 29 of the POCSO Act under which the Court shall presume that the accused has committed offence unless contrary is proved. In the instant case, I have already observed earlier that defence of appellant/accused appears improbable, and therefore, it can safely be observed that the appellant/accused has not rebutted the aforesaid presumption by way of reliable defence. Further, on perusal of the impugned

judgment, it is evident that the learned trial Court has properly appreciated the facts of the case and evidence adduced thereof, in the light of the judgments of the Hon'ble Apex Court as well as this Court in proper perspective. Therefore, considering the entire evidence on record, the prosecution has clearly established the guilt of appellant/accused beyond all reasonable doubts.

12. Learned Counsel for the appellant/accused heavily relied on the judgment in the case of *Pradip vs State of Maharashtra* (supra) and prayed for reduction of sentence as he has sentenced to suffer rigorous imprisonment for twenty years, specially when the medical evidence on record as regards the incident of rape is not convincing. However, I have already opined that though there were certain admissions on the part of PW-6 Dr. Archana, who examined the victim, but the other evidence on record specially of the victim, found convincing. Moreover, in the aforesaid judgment of this Court, reduction in the sentence of imprisonment was on the ground that the accused therein was a young boy of 20 years shouldering responsibility of his widowed sister and her son. Such is not the case in the present matter. The appellant/accused was also having

daughter who was friend of the victim, and therefore, the act of appellant/accused in the instant case needs to no leniency. As such, the aforesaid judgment is also not helpful to the appellant/accused. Thus, considering all these aspects there is no need to interfere with the judgment of the learned trial Court and accordingly the appeal stands dismissed. The fees of the appointed Counsel for respondent No. 2 / victim be quantified as per rules.

(SANDIPKUMAR C. MORE, J.)