



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 875 OF 2019

Vikas Jalindar Chavan
Age: 25 years, Occu.: Nil,
R/o. Labde Vasti, Belapur Road,
Ward No.7, Shrirampur,
Tq.Shrirampur,
Dist.Ahmednagar
....Appellant

Versus

1. The State Of Maharashtra
2. X.Y.Z.Respondents

.....
Advocate for Appellant : Mr.K.B.Jadhav h/f. Mr.A.D.Sugdare
APP for Respondent no.1 : Mr.S.M.Ganachari
Advocate for Respondent no.2 : Mr.Nagarsoge Sahebrao A.
.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 18 JANUARY, 2024
PRONOUNCED ON : 25 JANUARY, 2024**

JUDGMENT :-

1. This appeal arises out of judgment and order of conviction passed by learned Additional Sessions Judge, Shrirampur, Dist. Ahmednagar in Special Sessions Case No.16 of 2018 on 01-04-2019 holding present appellant guilty for commission of offence under Section 450 of the Indian Penal Code (IPC), Section 5(j) (ii) r/w

Section 6 of the Protection of Children from Sexual Offences Act (POCSO Act) and Section 376(1)(2)(n) of the IPC.

BRIEF CASE OF PROSECUTION

2. Shrirampur Police registered complaint and finally chargesheeted accused Vikas alleging that in the month of February 2018 at around 10:30 a.m. while victim aged between 16 to 17 years was alone in the house, accused entered the house and demanded water, when victim went inside, he followed her, initially embarrassed her and thereafter, on issuing threats to kill her parents, bolted the door, made her lie down on cot, undressed her, himself got undressed and had forcible sexual intercourse. Taking disadvantage, he second time entered the house and this time threatened to create obstruction in her marriage and again committed forcible sexual intercourse. When her menses stopped, she was taken to the Doctor and on examination, she was revealed to be pregnant and on being questioned by her mother, she disclosed about forcible sexual intercourse by accused and therefore, report to that extent was lodged at Shrirampur Police Station, on the strength of which crime no.264 of 2018 was registered and after investigation he was chargesheeted and finally tried and also held guilty by the learned

Additional Sessions Judge, Shrirampur.

This judgment and order of conviction is now assailed before this Court by raising various grounds spelt out in the appeal memo.

SUBMISSIONS

On behalf of Appellant :

3. Learned Counsel for the appellant would submit that apparently there is false implication. That there is no full-proof or conclusive evidence in support of accusations. He pointed out that there is no witness, who seen accused entering house of victim on any of the two occasions. Learned Counsel also questioned regarding age of the victim and about she to be a minor. According to him, age of victim has not been proved and therefore, charges under POCSO Act cannot be attributed. His specific defence is that once victim is caught raid-handed in a lodge with one person and therefore, to save herself, there is false implication. That though medical expert has examined, examination is after almost six months. He further submitted that there are several lapses and lacunas while conducting DNA test and therefore, even DNA evidence and its report ought not to have been relied. He submitted that there is no evidence suggesting safe custody of DNA samples and possibility of tampering

cannot be ruled out. According to him, samples were not shown to be retained in proper condition, rather they are deposited at a later stage thereby creating doubt about chain of custody. According to him, it is a fit case for extension of benefit of doubt and so lastly, he submitted that appellant has already undergone almost half of the sentence and consequently, it is prayed that the appeal be allowed.

On behalf of State :

4. In answer to above, learned APP pointed out that prosecution has cogently and firmly proved victim to be a minor. That there is ample proof of her age. That mother of victim has given date of birth. That Gram Panchayat record was brought before the Court. He further pointed out that evidence shows that accused sexually assaulted victim by entering in her house not once but twice. That she was impregnated by accused. That medical examination confirms sexual intercourse. He further pointed out that DNA results are positive regarding accused and victim to be biological parents. That defence raised has no foundation about false implication. Therefore, he submits that findings reached at by the learned trial Judge being in consonance with the evidence on record, conviction and guilt is rightly recorded and therefore, he prays to dismiss the appeal.

Learned Counsel for the victim would point out that victim has no grievance now. That mother of victim has no complaint whatsoever against accused.

5. In support of its case, in the trial Court prosecution had adduced evidence of 14 witnesses. After hearing submissions of both the sides this Court proceeds to categorize the witnesses as under :

PROSECUTION WITNESSES

FIRST SET

PW1 victim

PW2 mother of victim

SECOND SET

PW3 Ramesh Asaram Bokphode is Pancha to spot panchanama, seizure of clothes of victim and accused exh.17, 18, 19.

THIRD SET – MEDICAL EVIDENCE

PW6 Ramchandra Pandurang Vaidhya, who is a carrier of muddemal for DNA to Forensic Science Laboratory (FSL) and deposited it in FSL

PW7 Dr.Yogesh Kisanrao Band, is Medical Officer, who examined

accused.

PW8 Dr.Harshada Vitthal Pawar is the Medical Officer, who examined victim and issued report about pregnancy.

PW9 Dr.Pushpa Trimbak Narote is Medicaio Officer, who extracted blood samples of victim for DNA test

PW10 Dr.Akshay Manoj Jain, is also a Medical Officer and Radiologist, who conducted Sonography and certified duration of pregnancy of victim.

PW11 Dr.Kruti Ghanshyam Malviya, is the Doctor, who performed delivery of victim at Sasoon Hospital.

PW12 Dr.Vaishwani Walmik Bhagat, is the Doctor, who collected blood samples of new born child for DNA analysis

FOURTH SET – FORENSIC EVIDENCE

PW13 Dipak Yadav Kudekar is forensic expert, who conducted DNA analysis and issued report exh.61.

FIFTH SET

PW4 Rajendra Dagdu Patare is Profession of the Institution, who carried documents about victim's admission and bonafide certificate exh.22.

PW5 Surekha Jagannath Girigosavi, Senior Assistant of Panchayat Samiti, who carried original record of birth and death register (exh.15) of village Nimgaon Khairi.

SIXTH SET

PW14 Shriram Vishnu Shinde is the Investigating Officer, who carried out investigation and filed chargesheet.

Defence denied to lead any evidence.

6. While exercising powers under Section 374 of the Code of Criminal Procedure, this Court is called upon to re-examine, re-appreciate, re-analysis the entire evidence adduce by prosecution in the trial Court.

ANALYSIS

7. At the threshold, let us deal with fundamental objection raised by learned Counsel for appellant regarding age of victim. It is submitted that prosecution failed to prove age of victim. He submits that there is no conclusive proof of her age or date of birth and according to him, certificate like bonafide certificate is not standard proof for consideration of age. Thus he submits that prosecution had

failed in the trial Court to show that victim is a minor so as to attract provisions of the POCSO Act.

In the light of above objection, if the evidence of victim is visited, she is found to be giving her age as 17 years. In her testimony at exh.10, she gave her date of birth as 27-06-2001. Alleged occurrence has taken place in February 2018.

In her cross-examination of PW1 victim, except suggestions that date given by her is not her date of birth and that she is more than 19 years of age, which are virtually denied, there is no effective cross on the age of the victim. Even before the learned JMFC, while giving statement under Section 164 of the Cr.P.C., she seems to have given her age as 17 years 6 months old.

PW2 mother of victim has given date of birth of victim as 27-06-2001. According to her, pregnancy was revealed during the medical examination done on 06-08-2018 and at that time, she was carrying 18 to 20 weeks pregnancy.

PW4 Patare stepped in the witness box and stated that victim was admitted in the College for academic year 2018-2019 in first year and as per College record, her date of birth of victim is 27-06-2001 and therefore, College has issued bonafide certificate exh.22.

However, bonafide certificate is not a document for consideration of date of birth.

8. **PW5** Surekha Girigosavi, who was working as Assistant in Panchayat Samiti has deposed at exh.23 regarding carrying original record of date of birth of Nimgaon Khairi and as per register, there is a entry at Sr.No.71 pertaining to victim and her date of birth is 27-06-2001 and she has placed certified copy of the same exh.15 on record.

In her cross, she is unable to state who took the entry and in whose handwriting extract was drawn.

9. Therefore, taking into consideration evidence given by the victim, her mother, and the Officer of the Panchayat Samiti, it is clear that there is evidence establishing date of birth of victim as 27-06-2001. On the date of alleged occurrence, which allegedly took place in February 2018, victim was 16 years 7 months of age and hence, a minor.

10. Now, to ascertain whether offence of sexual assault / rape has at all been committed and whether prosecution has established the

same, again on this aspect, we have to visit the testimony of **PW1** victim, who is crucial witness.

On visiting her evidence and carefully re-assessing the same, this Court found depositing her that while she was alone in the house, accused entered in the house, asked her about her parents and when she told that they had been to work, he asked for water and when she went inside, he bolted door of house. She deposed that she questioned accused what he is doing. According to her, accused threatened to kill her brother and parents, removed her clothes and had sexual intercourse with her. She further deposed that he also threatened her, if she discloses the act to anyone. She further deposed that as she has not disclosed incident to anyone, again after 15 days, he visited her house and finding her alone, he told her that if she did not allow him to have sexual intercourse, he will disclose earlier incident and she will not get married and again committed sexual intercourse with her. But even she had not disclosed second incident to her parents. In August, she had vomiting sensations and her menses also stopped and therefore, she was taken to Dr.Tribhuvan, who examined her and opined regarding pregnancy and so report was lodged. Her mother asked as to from whom she conceived and she named accused. She further deposed about

delivering a baby girl and her statement being recorded by the Magistrate.

On visiting her **cross-examination**, it is seen that she is asked standard in which she is studying, standard of her brother, her residence, its surroundings, names of neighbours, College timings, details of her friends, their visits to her house, occupation of her parents, circumstances of the house, its doors, windows, distance of cot from main door, timings at which her parents return from work, year of appearance of SSC examination, name of school. She admitted that she was on visiting terms with accused. She used to talk with him on mobile phone of her father but she is unable to give number of accused. She admitted that no previous complaint was made against accused. She is questioned as to how many times she being visited to Police Station. She is questioned about friend of her brother namely Vishal and regarding some matter which had taken place at Panchashil Lodge while she had accompanied Sonu Kamble. She admitted that Sonu Kamble was nabbed by Police. She admitted that Vikas instigated Yogesh to go to Lodge and thereafter, they all going to Police Station. Omission is brought about sensation of vomiting in the month of August. Rest is all denial.

11. Therefore, what is culled out from the testimony of PW1 victim i.e. on considering her substantive evidence, is that when she was alone, accused visited her house due to acquaintance and according to her, he bolted the door, undressed her, himself got undressed and had sexual intercourse with her. She deposed about threats being issued to kill her brother and parents. He allegedly again had sexual intercourse with her when she was alone. Admittedly, it is only on detection of pregnancy, report has been lodged. But as stated above, at the time of incident, she was admittedly below 18 years of age. Therefore, even if as pointed out by learned Counsel for the appellant that there was no forcible sexual intercourse, her consent is immaterial. Above all, she is very categorical about he threatening to kill her near and dear ones and threatening to cause disruption for her marriage.

12. PW8 Dr.Harshada Vitthal Pawar, Medical Officer, who examined her, also deposed about examining victim, who gave history of sexual assault. Examination was apparently done on 15-08-2018. That nothing was revealed during physical examination and there were no injuries on libia majora and private part. Therefore, much hue and cry is made by learned Counsel for the

appellant that apart from being no evidence of forcible intercourse, there to be no injuries, still in cases of such nature, even if no injuries are noticed on the person or private parts.

13. Still if the evidence of victim inspires confidence, the sole testimony of victim can be taken into account to ascertain the guilt. Law to that extent is very clear in numerous cases and few could be named as under:

State of Maharashtra v. Chandrapraksh Kewalchand Jain, AIR 1990 SC 658;

State of U.P. v. Pappu alias Yunus and another, AIR 2005 SC 1248,

State of Punjab v. Gurmit Singh and others, AIR 1996 SC 1393

14. In the above cases, it has been reiterated that there is no need or legal compulsion to look for corroboration or other evidence to accept the case of prosecutrix for recording conviction. Only condition is that the testimony of the victim should be worthy of credence and further reliable. Here also evidence of victim does inspire confidence. There is nothing to suggest false implication. Moreover, accused has impregnated victim. She has further delivered a a girl child. DNA report confirms victim and appellant to be

biological parents. With such quality of evidence, there is no further requirement of independent evidence or corroboration to the testimony of victim. PW1 victim, being below 18 years of age and she having deposed about he entering her house and having sexual intercourse after threatening her not once but twice, there is no hesitation to hold that charges for which appellant was booked are successfully brought home by the prosecution.

SUMMATION

15. To sum up, evidence of victim, mother of victim, medical experts, who examined victim, detected pregnancy, performed her delivery and further CA, who conducted DNA and confirmed paternity, amounts to overwhelming and clinching evidence. Testimony of above witnesses have remained intact and unshaken. Therefore, guilt of accused is established beyond reasonable doubt.

16. Perused the judgment under challenge. The findings and conclusion reached at by the trial Court is the only view that could emerge on re-appreciation and re-analysis of evidence. No perversity is brought to the notice of this Court. There being no merits in the appeal, it deserves to be dismissed. According, I proceed to pass following order :

ORDER

Criminal Appeal No.875 of 2019 stands dismissed

(ABHAY S. WAGHWASE)
JUDGE