



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

CRIMINAL APPEAL NO. 822 OF 2018

Kishor s/o Shivaji Bade
Age: 26 years, Occu.: Nil,
R/o. Loni, Tq.Shirur,
Dist.Beed.

....Appellant
(Orig. Accused)

Versus

The State of Maharashtra
Through Police Inspector,
Police Station, Shirur (K),
Tq.Shirur (K), Dist.Beed.

....Respondent

.....
Advocate for Appellant : Mr. Ankush N. Nagargoje
APP for Respondent : Mr.N.D.Batule
.....

CORAM : ABHAY S. WAGHWASE, J.

DATE : 06 MAY, 2024

JUDGMENT :-

1. Judgment and order passed by the learned Additional Sessions Judge, Beed dated 05-10-2018 in Special (POCSO) Case No.41 of 2015 is taken exception to by filing instant appeal.

BRIEF FACTS OF THE CASE

2. PW1 victim, a minor, who was going to school on 02-02-2015,

was intercepted by present appellant, who had come there on motorcycle. By obstructing her way, he expressed his feelings and love with her. Victim raised alarm and gave call to one Bhimrao Bargaje, who was working in adjoining field. After seeing Bhimrao coming towards the spot, accused fled away. She reported occurrence to her father and brother and thereafter, report exh.23 was lodged, on the strength of the same, crime bearing no.10 of 2015 was registered for the offence punishable under Sections 354-D, 341, 506 of the Indian Penal Code (IPC) and under Section 12 of the Protection of Children from Sexual Offences Act (POCSO Act).

After gathering sufficient evidence, PW7 Sominath Parve Patil (API) chargesheeted accused and accused was made to face trial before learned Additional Sessions Judge, Beed, who on appreciation of oral and documentary evidence, recorded guilt of the appellant but only under Section 341 of the IPC and he is acquitted from other charges. While sentencing, learned trial Court has directed the appellant to pay fine of Rs.500/-.

Correctness, legality and sustainability of the said Judgment and order is now questioned before this Court by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant submitted that firstly there is apparently false implication, secondly there is no evidence either oral or documentary in support of the occurrence. He pointed out that except testimony of victim, there is no supportive or corroborative piece of evidence. He next pointed out that including PW5 Baban Bargaje, father of victim, PW4 Bhimrao Shankarrao Bargaje are not supporting prosecution and therefore, under such circumstances, his submission is that the learned trial Court ought not to have accepted the case of prosecution even for offence under Section 341 of the IPC. According to him, there is improper appreciation of the evidence. Required ingredients for attracting offence under Section 341 of the IPC are patently missing. He also pointed out that there are allegation of intercepting by riding Motorcycle, however, owner of the Motorcycle is not examined. Therefore, case of prosecution was palpably weak and was a fit case for extending benefit of doubt.

Learned Counsel further submitted that in the alternative, if this Court is not convinced with the submissions, then benefit of provisions under the Probation of Offenders Act be extended to the

appellant.

On behalf of State :

4. Per contra, learned APP pointed out that victim is a 'minor'. That while she was going to school, appellant intercepted her way. She was restrained from moving ahead. It is pointed out that he also indulged in expressing his love to the minor. That prosecution had established victim to be a 'minor'. That she has deposed to that extent. That her testimony has inspired confidence and therefore, learned trial Court committed no error whatsoever in recording guilt under Section 341 of the IPC. Learned APP pointed out that learned trial Court has acquitted accused from charge of Sections 354-D and 506 of the IPC and held guilty for offence under Section 341 of the IPC, this itself shows that there is meticulous examination of available evidence. Therefore, guilt so recorded is perfectly valid and hence, he seeks dismissal of the appeal for want of merits.

GIST OF EVIDENCE BEFORE TRIAL COURT

5. After hearing submissions of both the sides, visited the evidence adduced before the trial Court and re-appreciated the same.

6. **PW1** is victim. She is examined at exh.22. The gist of her evidence is that on 02-02-2015 at around 09:30 a.m. while she was proceeding to School, accused came on Motorcycle, he obstructed her on road from proceeding ahead and expressed his love. She gave call to Bhimrao Bargaje, who was working in the field aside and seeing Bhimrao coming towards spot, accused fled away. She reported occurrence to her father and brother and thereafter, lodged report.

7. **PW2** Balasaheb Bhagwan Sable is Pancha to spot panchanama. He did not support prosecution.

8. **PW3** is brother of victim. He also deposed that incident took place on 02-02-2015. That his sister had been to school to appear for examination. That she returned home crying and on enquiry, reported the above act of accused.

9. **PW4** Bhimrao Shankarrao Bargaje, independent witness did not support prosecution.

10. **PW5** is father of victim. He in his evidence at exh.45 submitted that his daughter informed about she being harassed by

accused by restraining her way. He submitted that except informing such act, she did not inform other things.

11. **PW6** Radhakishan Uttamrao Taqui is Head Master, who placed on record school extract showing date of birth of victim to be 03-10-1999.

12. **PW7** Sominath Arunrao Parve Patil (API) is the Investigating Officer.

ANALYSIS

13. Here considering the nature of allegations, evidence of **PW1** victim is of relevance and significance. On meticulous examination and analysis of her evidence, she is found to be deposing that on 02-02-2015, while she was going to school at around 09:30 a.m., accused came on Motorcycle and obstructed her way. According to her, he also expressed his love. She claims to give call to Bhimrao Bargaje, who was working in the adjoining field.

On going through the **cross-examination** faced by victim, it appears that her above testimony has not at all been shaken or rendered doubtful. Paragraph nos.4 and 5 of the cross-examination are confined to only geographical location and location of the spot.

Questions are put regarding her Standard and she is asked whether her brother accompanied her while going to school. Questions are put whether her brother and father have mobiles. She specifically answered in paragraph no.6 that on that day, she was going to appear for examination and she was going by walk, whereas other students had used bicycles. Questions put in paragraph no.7 are post occurrence.

Therefore, her substantive evidence regarding she going to school at around 09:30 a.m., being intercepted by accused on road and expressed love has not at all been questioned or challenged. There is no reason for girl to falsely implicate appellant. Even for namesake, there is no suggestion about false implication. Consequently, as the evidence of victim is inspiring confidence, the same needs to be accepted and even acted upon. Precisely, this is what learned trial Judge seems to have done. Required ingredients for attracting offence under Section 341 of the IPC are palpably present in the prosecution evidence.

Therefore, learned trial Judge committed no error whatsoever in holding accused guilty only for the said charge. No case being made out on merits, appeal deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.822 of 2018 stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE