



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

CRIMINAL APPEAL NO. 1127 OF 2019

. Arvind S/o. Manohar Ambhore
Age: 25 years, Occu.: Labourer,
R/o. Akoli, Tq.Jintur,
Dist.Parbhani.Appellant
(Accused)

Versus

1. The State Of Maharashtra
Through Jintoor Police Station,
Jintur, Tq.Jintur,
Dist.Parbhani.
2. XYZRespondents

.....
Advocate for Appellant : Mr. N.S. Shah
APP for Respondent no.1 : Mr.S.M.Ganachari
Advocate for Respondent no.2 : Ms. Kalpalata Bharaswadkar Patil
(appointed)
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 MARCH, 2024

PRONOUNCED ON : 15 MARCH, 2024

JUDGMENT :-

1. Aggrieved by the judgment and order dated 17-10-2019 passed by the learned Sessions Judge, Parbhani, in Special Case (POCSO) No.47 of 2017, thereby convicting the appellant for offence under Sections 452, 506 of the Indian Penal Code (IPC) and under Sections 8 of the Protection of Children from Sexual Offences

(POCSO) Act, instant appeal is preferred by the appellant.

FACTS LEADING TO THE TRIAL

2. On 07-09-2016 victim a minor was alone in the house as her parents were out for work. At around 1:30 p.m. when she was taking bath, accused forced his entry in the house and then in the bathroom and expressed his love towards victim. When she resisted and left the bathroom, accused followed her, made her lie on cot and manhandled her. When she resisted and shouted, he banged her head to the wall and even beat her. Shortly thereafter, her maternal uncles namely Ram Dolse and Bharat Dolse came and accused fled, therefore. Police was approached and report exh.15 was lodged which was finally investigated by PW4 Narwade (PSI) and accused was duly chargesheeted.

Learned Sessions Judge, Parbhani, who conducted the trial, on appreciating the evidence, convicted appellant for offence under Sections 452, 506 of the IPC and Section 8 of the POCSO Act.

The above judgment dated 17-10-2019 is hereby questioned by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. According to learned Counsel for appellant, firstly there is no

reliable evidence that victim is a minor so as to attract provisions of POCSO Act. Secondly, accordingly to him, there is no convincing evidence and no corroboration to the story of the prosecution from independent corner. No immediate neighbour is examined. Thirdly, prosecution failed to prove very scene of occurrence. Fourthly, that ocular account does not find support from medical account. Fifthly, inspite it being day time, no alarm is raised by victim. Lastly, there is improper appreciation of evidence and law.

The learned Counsel for the appellant placed reliance on the following citations :

- (a) *P. Yuvaprakash v. State Rep. By Inspector of Police, 2023 SCC OnLine SC 846.*
- (b) *Ravinder Singh Gorkhi v. State of U.P., (2006) 5 SCC 584.*
- (c) *Satpal Singh v. State of Haryana, (2010) 8 SCC 714.*
- (d) *Mahendra Singh and Ors. v. State of M.P., 2022 LiveLaw (SC) 543.*
- (e) *Kanubhai Bhagvanbhai Nayak v. State of Gujarat, AIR 2019 SC 544.*

On behalf of State :

4. Per contra, learned APP submitted that finding victim minor in the house alone, accused forced his entry in the house and while victim was taking bath, he entered there also. That he expressed love

but victim refused. However, still accused continued to stay in the house and moreover, he forced himself on her. That she has deposed in the witness box. That her testimony has remained unshaken. That medical evidence supports her version. Learned trial Court has correctly appreciated available evidence and committed no error in recording guilt and convicting the accused.

On behalf of Victim :

5. On behalf of victim, appointed Counsel also resisted by submitting that testimony of victim is convincing. That her sole testimony inspires confidence. Her evidence remained unshaken in cross-examination. Her testimony is supported by medical witness and so she prays to dismiss the appeal for want of merits.

6. This Court, being first appellate Court and last fact finding Court is expected to re-appreciate, re-analyze and re-examine the entire oral and documentary evidence adduced by prosecution.

On doing so, it is noticed that following witnesses were examined by the prosecution in support of its case. Their status is as under :

EVIDENCE IN TRIAL COURT

PW1 is victim. Her evidence is at exh.14.

PW2 is maternal uncle of victim. His evidence is at exh.16.

PW3 Dnyanoba Laxmanrao Gattewar is Head Master of Primary School, Akoli. His evidence is at exh.18.

PW4 Suresh Kachru Narwade (PSI) is the Investigating Officer. His evidence is at exh.24.

PW5 Dr.Shivaji Pandurang Kute is the Medical Officer, who examined victim and noted injuries on the person of the victim.

ANALYSIS

7. **PW1** Victim gave her date of birth as 04-03-2000. According to her, at the time of incident, she was in 12th Standard. That accused, her relative, resided in the adjoining house. That on 07-09-2016 i.e. on day of incident, she was alone in the house. At around 01:30 p.m., she was taking bath. She specifically stated that there is no door available to bathroom and they use curtain. According to her, accused came inside the bathroom and said that he liked and loved her. When she declined, he questioned her whether she can understand language of love and further said that he would teach her other language. When she left bathroom, he followed her, made her lie on cot and manhandled her. When she raised shout, he caught her by her hair and banged it to wall and then beat her. She further categorically stated that it being noon time, no one was present. He

further threatened if she informs incident to her parents. That time her uncles namely Ram and Bharat came and accused escaped. She informed about the incident to her uncles and they approached Police.

On visiting her **cross-examination**, questions seem to be posed about her earlier residence, surroundings to the house, strength of the rooms of the house, distance and geographical location, family size, where her parents were at that time, her college timings. Relevant cross is in paragraph 9 wherein she answered that she was in the bathroom for 1-2 minutes. She answered that she raised shouts while leaving bathroom to enter the room. She admitted that she did not take shelter in the adjacent house, but she volunteered that there was no one in the house as it was locked. She answered that incident lasted for 5-10 minutes. She also answered that her uncles tried to catch accused but he escaped. Rest all is denial.

8. **PW2** maternal uncle of victim deposed that incident took place on 07-09-2016. He and his brother Ram had been to visit their sister at around 01:30 p.m. and they saw accused beating victim. When they were about to enter the house, accused escaped. He claims that they saw wound on face and other body parts of the victim and on

query, she informed about the incident regarding accused entering in the bathroom and expressing his love and when she declined, accused stating that he would explain her the language, followed her, made her lie on cot and manhandled her and hit her head on the wall.

On carefully going through the **cross-examination**, there is virtually no cross about the incident narrated by this witness.

9. **PW3** Gattewar, Head Master has placed on record exh.21 and 22 i.e. extract of admission register.

In **cross-examination** he answered that he had no personal knowledge about date of birth of victim.

PW4 Narwade (PSI) is the Investigating Officer.

PW5 Dr.Kute is the Medical Officer, who examined victim and issued injury certificate exh.29.

10. The fundamental grounds raised in the appeal are that **firstly**, age of victim is not proved, **secondly** no independent corroboration and **thirdly** medical witness not supporting testimony of victim.

11. As regards to age is concerned, **PW1** victim in witness box gave

her date of birth as 04-03-2000. According to her, at the time of incident, she was studying in 12th Standard.

PW3 Gattewar, Head Master deposed that victim was student of their school. As per school record, her date of birth is 04-03-2000 and it is recorded on the information given by her parents. He identified exh.21, exh.22 and exh.23 i.e. admission extract, transfer certificate. His evidence shows that victim took admission in the 1st Standard and left the School in 4th Standard. Therefore, apparently it is the first school where victim studied.

The Hon'ble Apex Court in the case of ***Ashwani Kumar Saxena v. State of Madhya Pradesh***, (2012) 9 SCC 750, after referring to various judgments, provisions provided under Juvenile Justice (Care and Protection of Children) Act, in para 43 observed that admission register in the school in which the candidate first attended is a relevant piece of evidence as regards to date of birth is concerned.

Even in the recent case of ***P. Yuvaprakash*** (supra) priority said to be given to date of birth certificate from the school or the matriculation or equivalent certificate from concerned examination board, if available and only in its absence, birth certificate issued by local body and further in absence of it also, medical age determination test should be relied.

Here it is reiterated that in view of evidence of PW3 Gattewar, Head Master, the admission details at the time of taking admission is relevant. Her date of birth therein and date of birth narrated by victim being the same and further taking date of occurrence into consideration, on such date she is apparently a minor.

12. As regards to second ground of challenge about reliability of victim's evidence alone, it is fairly settled law that sole testimony of victim, if it inspires confidence, can be taken recourse to and relied to. There is no need for independent corroboration in cases of such nature, which generally take place in secrecy or when victim is alone. Law to this extent has been expounded and settled in numerous judgments and few could be named as under:

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

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

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

(d) Vijay @ Chinee v. State of Madhya Pradesh, (2010) 8 SCC 191.

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.

13. In the case in hand precisely same has happened. Victim was alone in the house. It was noon time and she was taking bath in the bathroom. She categorically stated that accused was not only her relative but was immediate neighbour. She has very categorically stated that bathroom had no permanent or fixed door and they use curtain. Such part of her testimony has not been touched in the cross. She is very categorical that he entered the bathroom and expressed love, inspite of her resistance followed her, made her fall on the cot, and when she shouted, he caught hold of her hair and banged her head on the wall. There is no reason for false implication, on the contrary, accused has expressed his love towards victim. She is very specific about he manhandling her. She also deposed about her uncles arriving shortly, one of them is examined and he has lent support to her story by deposing that he saw accused in the house hitting his niece and making his escape good and thereafter, they approaching Police. Complaint is lodged promptly i.e. on the very

day. Therefore, occurrence is not rendered doubtful.

14. **PW5** Dr.Kute, deposed about examining victim on the same day and he has narrated injuries noticed by him on examination and had issued injury certificate, exh.29. Victim as well as her uncle are consistent about accused beating her for resisting and shouting. Therefore, victim's evidence finds support from medical evidence.

15. Perused the rulings relied by the learned Counsel for appellant. They are all settled legal position of which there is no dispute.

In the case of *P. Yuvaprakash* (supra), transfer certificate was relied and was resultantly held to be not standard proof.

Here there is record of school since 1st Standard to 4th Standard and in view of decision of the Hon'ble Apex Court in the case of *Ashwani Kumar Saxena* (supra), the same is worthy of credence and relied.

CONCLUSION

16. Resultantly, there is evidence suggesting forced entry of accused in the house as well in the bathroom, issuing threats and manhandling victim by attempting to force himself on her. Therefore,

required ingredients for attracting offence under Sections 452, 506 of the IPC are available and victim being a minor, offence under Section 8 of the POCSO Act automatically gets attracted.

17. Perused impugned judgment. Learned trial Court correctly appreciated evidence as well as law. No illegality or perversity in the impugned judgment is brought to the notice of this Court. Accordingly, I proceed to pass following order:

ORDER

- (i) Criminal Appeal No.1127 of 2019 is dismissed.
- (ii) Fees of appointed Counsel is quantified at Rs.10,000/-. It is to be paid through the High Court Legal Services Sub-Committee, Aurangabad.

(ABHAY S. WAGHWASE)
JUDGE