



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

CRIMINAL APPEAL NO. 1036 OF 2023

XYZ
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Yogesh K. Bobade, Advocate for Appellant
Mr. Rajdeep D. Raut, APP for Respondent No.1/State
Mr. Umesh G. Mitkari, Advocate for Respondent No.2

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 19th SEPTEMBER, 2024

PER COURT :

1. This appeal filed under Section 372 of Cr.P.C. by victim challenges judgment and order of acquittal dated 17/07/2023, passed by learned Additional Sessions Judge, Jalna, in Special Case (Child) No.01/2020.

2. The prosecution's case in short is that the victim is minor boy of 13 years. On 22/07/2019, at about 11:00 a.m., victim went to the house of his classmate. After flying kite, victim came down from terrace and was proceeding towards his house. At that time, accused was standing in the door of his house. He invited victim to watch T.V. saying that he has big T.V. He took victim inside the house. At that time, no one was in the house of accused. Accused took victim to the room where there was cot. Accused removed all the clothes on his person. He brought oil bottle, gave it to the victim and asked him to massage his penis. When the victim

refused, he threatened to kill him. Then victim gave massage for half an hour. Thereafter, accused removed shirt of victim and slept on his person for sometime. Accused then threatened victim that if he discloses the incident to anyone, he will be killed. Thereafter, for four to five times accused did the same thing with victim. Prior to one month of lodging of FIR, victim handed over gold ear ring Zumka to accused. On 02/09/2019, victim's father noticed that gold ear ring Zumka is missing from his shop. On inquiry victim disclosed that accused asks him to massage his penis and he has handed over the gold ring Zumka to accused. Hence, the FIR came to be lodged by victim's father, which is registered at C.R. No.337/2019 with Kadim Jalna Police Station, Jalna, for offence punishable under Section 506 of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). On completion of investigation, charge-sheet came to be filed and accused was charged for offence punishable under Section 506(2) of I.P.C., Section 7 punishable under Section 8, Section 11 (i) and (ii) punishable under Section 12 of the POCSO Act. In support of the case, prosecution examined eight witnesses. Trial Court has acquitted accused. Hence, the appeal.

3. Heard learned advocate for appellant, learned APP for State and learned advocate for respondent No.2 accused. Perused the appeal memo and impugned judgment and order.

4. It appears from record that FIR is lodged after two months of the first incident. Victim and prosecution witnesses have improved their version in the evidence. There was dispute between accused and victim's father on account of parking of vehicles, which is brought on record by the defence. Statement of victim's father (PW4) was recorded after six days of disclosure of incident to him by the victim. Defence has also brought on record the fact that victim's father is convicted in criminal case for offence of theft and house burglary and was sentenced to suffer imprisonment for one year and fine of Rs.2,000/-. He has also admitted that many cases about committing theft of railway property are pending against him. Therefore, victim's father is well aware about the Court proceedings and procedure. In these circumstances, the defence of false implication appears to be probable.

5. In this case, prosecution has failed to prove the age of victim. Spot of incident is also not proved. Considering the improvements made by prosecution witnesses in their evidence, the Trial Court has rightly come to conclusion that no trustworthy evidence is brought on record by prosecution to prove the sexual assault, sexual harassment or criminal intimidation to the victim. Trial Court is justified in holding that prosecution has failed to prove foundational facts against accused to raise presumption under POCSO Act. Therefore, the prosecution has failed to establish guilt of

accused for the offences charged against him.

6. The impugned judgment and order of acquittal is a well reasoned order. Trial Court has taken a possible view, which is not liable to be interfered with in the facts of the present case. No case is made out by appellant to interfere in the impugned judgment and order of acquittal. Appeal being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)