



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1175 OF 2023

XYZ

... Appellant

Versus

1. Arvind @ Arun Babaji Sanap,
Age : 29 years, Occu. : Driver,
R/o. Damalwadi, Tq. Pathardi,
Dist. Ahmednagar.

2. The State of Maharashtra

... Respondents

...
Mr. Shubham Jaybhar h/f. Mr.S. R. Wakale, Advocate for Appellant.
Mr. S. R. Andhale, Advocate for Respondent No.1.
APP for Respondent No.2 : Mr. N. D. Batule.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18th MARCH, 2024

PRONOUNCED ON : 5th APRIL, 2024

JUDGMENT :

1. With the consent of parties, matter is heard finally at the stage of admission.

2. Original complainant, who is dissatisfied by the judgment and order of acquittal passed by learned Additional Sessions Judge, Ahmednagar in Special Case No. 57 of 2021, which was tried for offence punishable under sections 354, 504 and 506 of Indian Penal Code (IPC) and for offence punishable under sections 7 and 8 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

FACTS LEADING TO TRIAL ARE AS UNDER

3. On 02.08.2020, victim aged 13 years, was alone in the house as her other sister and mother had been to the field to water the crops. Finding victim alone, accused immediate neighbour approached the victim, held her hand and expressed his special feelings towards her. When her mother and sister returned, she reported the occurrence, and therefore, mother approached police and lodged complaint which was registered with Pathardi Police Station, Dist. Ahmednagar, bearing Crime No.I-530 of 2020 for the offences punishable under Section 354, 504, 506 of IPC and Section 7 read with section 8 of POCSO Act.

4. On completion of investigation, accused was charge-sheeted and tried by learned Special Judge, who on appreciation of oral evidence of six witnesses and examining the documentary evidence, acquitted the accused from all charges.

Hence, instant appeal.

SUBMISSIONS

On behalf of Appellant :-

5. Learned counsel for appellant submitted that, victim was 13 years old girl at the time of incident. That, while she was alone, accused caught her hand, outraged her modesty and victim reported the occurrence to her mother as such there was prompt

complaint. That, prosecution had adduced evidence of mother, victim and nephew etc. That, testimonies have remained unshaken. Accused not only outraging modesty, but also issued threats and therefore all above charges are made out. Moreover, victim was belonging to reserve category and therefore offence of Atrocities Act was also committed. Learned counsel submitted that, in spite of such serious crime being committed, learned trial court has acquitted the accused. That, there is improper appreciation of evidence as well as law. Hence, he prays to set aside the impugned judgment by allowing the appeal.

6. Learned APP also supported the above submissions and he too prays to set aside the impugned judgment and order.

On behalf of Respondent :

7. Per contra, learned counsel for respondent accused would submit that, prosecution had miserably failed to establish the charges. That, there is no corroboration regarding age of victim nor there is supporting corroborative evidence in the testimony of victim. Alleging false implication, it is submitted that, land dispute is converted into criminal complaint. That, necessary ingredients for attracting none of the charges being available, learned trial court rightly acquitted the accused. For all above reasons, he prays to dismiss the appeal for want of merits.

EVIDENCE ON RECORD.

8. Heard both sides. Perused the record. On going through the papers, prosecution seems to have adduced evidence of seven witnesses and their status and sum and substance of their testimonies are as under :-

PW1 victim gave her age as 13 years and date of birth as 24.08.2007 and to be studying in 8th standard. According to her, incident took place on 01.08.2020. She was alone in the house and her mother and sister had been to the field. Around 4:00 p.m., accused Arvind came near ota, held her hand and tried to touch her and made her feel ashamed. Out of fright, she cried and ran in the home, that time, accused expressed his love towards her and after arrival of her mother, she reported the occurrence, which was further reported by her mother to police.

PW2 mother- informant, stated that, when she returned from field at around 4:30 p.m., she found her daughter crying and on being asked she told that accused was sitting near Vyayam Shala and looking that she had gone out, he came to their house and she further told he has acted in a manner of which she feel ashamed. She told that he held her hand and behaved in very indecent manner. She also told that, he had called victim about four days ago and told her that she should not tell anybody in the

house, he may go mad, he will go in mental hospital. Therefore, in the evening, she approached police and lodged complaint.

PW3 Nephew of PW2 claims that, he received phone call from his aunt informing the occurrence.

PW4 Navnath, panch to panchanama (Exh.21).

PW5 P.I. Vasant Pawar is the Investigating Officer.

PW6 Dr. Satish Wadgire, in whose hospital birth of victim had taken place and he gave details of birth of child.

PW7 Dr. Prajakta Amberkar, who also placed birth certificate (Exh.47) issued by MCGM.

9. Learned counsel for accused supporting acquittal pleaded false implication, failure to establish minority of the girl and material omissions and contradictions.

10. In view of the charge at the threshold, it is necessary to see whether victim is shown to be a minor i.e. below 18 years of the age.

Considering the testimony of victim, mother and doctor, who issued birth certificate, there is material suggesting that, she was below 18 years of the age, at the time of incident.

11. Now, it is to be further seen whether offence of 354 of IPC and provisions of POCSO Act are also made out or not.

Victim in her substantive evidence deposed about accused approaching her, while she was sitting on ota, catching her hand. She stated that, he tried to touch her and therefore, out of fright, she ran in the house and at that time the accused also expressed love towards her. She claims to have felt ashamed. Therefore, according to her, while she was sitting at the ota accused done above act, but in statement under section 164 of Cr.P.C. given to Magistrate, she is found to be deposing about accused entering the house and holding her hand. Resultantly, she is contradicted by herself.

What mother deposes is that, a daughter told that accused caught her hand and behaved in a very indecent manner. Such is not the version of victim also. In fact, testimony of mother is ambiguous. She does not depose about accused expressing his love. Here, there is mere act of catching hand. Victim is not clear where accused tried to touch her. In view of sections 7 and 8 of POCSO Act, there has to be sexual assault with sexual intent. Apparently such essential aspect is not getting established.

12. Further, mother claims to have learnt about the

occurrence around 4:30 p.m. and she further states that she went to house of accused to give him understanding, but as there was abuse and threats for life, she has approached to police, but on the next date. Therefore, there is no prompt complaint.

13. Therefore, as pointed out, necessary ingredients for outraging modesty or ingredients for attracting sections 7 and 8 of POCSO Act not being available, benefit of doubt seems to have been given to the accused by learned trial Judge. In the considered opinion of this court, offence of section 354 of IPC and offence of POCSO Act for above provisions also not made out as the essentials ingredients are patently missing. The view taken by learned trial Judge that none of the charges are proved and hence accused deserves acquittal cannot be faulted at.

15. No case being made out on merits, appeal is dismissed.

(ABHAY S. WAGHWASE, J.)