

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1056 OF 2019
WITH
INTERIM APPLICATION NO.459 OF 2024
IN
CRIMINAL APPEAL NO.1056 OF 2019**

Satyawan Yashwant Ghodake Appellant

versus

The State of Maharashtra & Anr. Respondents

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- Ms. Vrushali L. Maindad a/w Ms. Shaheen Kapadia, Advocate for Appellant.
- Mr. Arfan Sait, APP for the State/Respondent.
- Mr. Yashpal Thakur, appointed advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th JUNE, 2024

JUDGMENT :

1. The Appellant was the original accused No.1 in Sessions Case No.197 of 2017 before the Additional Sessions Judge, Solapur. There was one more accused i.e. the accused No.2 Pratap Atkare. Learned Judge vide his Judgment and Order dated 25/07/2019 convicted the Appellant for commission of offence punishable under section 376(2)(i),(n) of the Indian

Penal Code and under section 6 of the Protection of Children from Sexual Offences Act, 2012. He was sentenced to suffer rigorous imprisonment for 10 years and was directed to pay a fine of Rs.10,000/-. In default of payment of fine, he was directed to suffer imprisonment for one month. Out of the fine amount, Rs.5,000/- was directed to be paid to the parents of the victim. In view of section 42 of POCSO, no separate sentence was imposed on the Applicant for the offence punishable u/s 376(2)(i),(n) of the IPC. The Applicant was acquitted from the charges under section 363 and 366(A) of the IPC.

The original accused No.2 Pratap was acquitted from the charges punishable u/s 376(2)(i)(n) and u/s 6 of the POCSO Act, as well as u/s 212 of the IPC.

2. Heard Ms. Vrushali L. Maindad, learned counsel for the Applicant, learned counsel Mr. Yashpal Thakur, for the Respondent No.2 and Mr. Arfan Sait, learned APP for the State.
3. The prosecution case is that the date of birth of the victim was 04/01/2002. On 11/04/2017, the Appellant

abducted her by giving threats to her that he would commit murder of her family members. She was taken to various places and finally to village Ambavane. The stay was arranged by the accused No.2. They stayed there between 12/04/2017 to 30/04/2017. During that period, the Appellant had physical relations with the victim. In the meantime, the victim's father had lodged the FIR. The investigation started and then the victim was rescued. The Appellant was arrested. Investigation was carried out and the trial proceeded before the learned Additional Sessions Judge, Solapur.

4. During trial, the prosecution examined 12 witnesses including the victim, her father, the Medical Officer, Headmaster of the school, Panchas and the Investigating Officer. The defence of the Appellant was that the victim was having love affair with him. Her father had planned her marriage with some other boy against her will. The victim came to the Appellant and threatened that she would commit suicide if she was forced to marry against her will with some other boy. Therefore, the victim's family had falsely implicated the Appellant in this case.

5. Learned Judge after considering the evidence, the statement of the accused and after hearing the arguments convicted the Appellant as mentioned earlier. Significantly, he held that the Appellant did not kidnap the victim. He did not entice her while she was in lawful guardianship. On these findings ultimately he passed the impugned judgment and order.
6. The most important witness in this case is the victim herself. She was examined as P.W.7. She deposed that she was staying in her village with her parents and brother. She deposed that the Appellant's field was adjacent to their field. It is her case that he tried to talk with her against her will. On 11/04/2017, she had gone to the village Degaon with her brother. On 2 to 3 occasions before that, the Appellant had followed her brother with a sickle in his hand. On 11/04/2017, when she went to the village, she asked the Appellant why he was following her brother with a sickle in his hand. It is her case that the Appellant told her to come at 04.00 a.m. in the morning and then he would answer her question. According to her, she went to the Appellant's field on 04.00 a.m. on 12/04/2017. At that time, the

Appellant told her that he would maintain her and that he would give money to her. The Appellant asked her to sit on his motorcycle. She refused. But the Appellant threatened that if she did not come with him, he would kill her family members. Because of this threat, she sat on the motorcycle. She further deposed that the Appellant took her to village Shetfal. Then he took her to Lonavala by S.T. Accused No.2 Pratap was present at Lonawala S.T. stand to receive them. He had arranged a room at village Ambavane. The accused No.2 Pratap took the Appellant and the victim to that room at village Ambavane. It is her case that between 12/04/2017 to 30/04/2017 the Appellant established sexual relations with her against her wish. On 30/04/2017, the police reached that room. They brought them to Mohol police station. It is her case that, during that period, the Appellant did not permit her to contact her parents. He used to lock the room from outside. Her statement was recorded at the police station in the presence of her parents. Her statement was also recorded u/s 164 of Cr.P.C. on 09/05/2017. It was produced on record at Ex.27. According to her, her date of birth was 04/01/2002. She was studying in ZP School at Degaon.

During investigation her clothes were seized. She was referred for medical examination. She identified the Appellant in the Court.

7. In the cross-examination, she denied the suggestion that at the time of her deposition she was 21 years of age. Her deposition was recorded on 06/12/2018. She denied that she has falsely deposed that she had studied in ZP School at Degaon and that her date of birth was not 04/01/2002. She could not assign any reason as to why these facts were not mentioned in her statement dated 01/05/2017 and 09/05/2017. Significantly, in further cross-examination, she deposed that she had not gone to Shetfal. She could not tell how much time was required to reach to Shetfal from her village. She also deposed that she had never gone to Pune from Shetfal. Some important contradictory statements made by her in her police statement were shown to her. She denied having stated those contradictory portions before the police. Those statements were proved through the evidence of the Investigating Officer, P.W.12 PSI Raju Rathod. Those are important contradictions and they were exhibited as

Ex.54, 55, 56 and 57. In those statements, she had clearly stated that she got acquainted with the Appellant about one year before the incident. They had developed a love relationship. But her parents were opposing that and they had told about their displeasure to the victim. She had told the Appellant that her parents were putting pressure on her and therefore they should not talk to each other. She had also stated in her statement before the police that on 11/04/2017 at about 11.00 p.m. she had gone to her house in a field with her mother to sleep. Before that she and the Appellant had decided to elope together. They had decided to elope on 12/04/2017 in the early morning. These four portion marks at Ex.54, 55, 56 and 57 are extremely important and completely contrary to her story deposed by her before the Court. Those contradictory statements are proved by the defence through the evidence of the Investigating Officer PSI Rathod, who had recorded that statement on 01/05/2017. The statement u/s 164 of Cr.P.C. was brought on record at Ex.27. The contradiction from her statement u/s 164 of Cr.P.C. was not put to her that the Appellant had taken her to Shetfal and then to Pune. From Pune, she was taken to Lonavala and then they had

gone to Ambavane. This contradiction was important, but it was not put to the victim to give her an opportunity to explain that contradiction. In any case, she was specifically given an opportunity to explain the contradictions in her police statement, which she could not explain.

8. P.W.3 was the victim's father and he had lodged the FIR. He has deposed that the victim went missing between the night on 11/04/2017 and 12/04/2017. Even the Appellant was not found in his house and therefore he was sure that the Appellant had abducted the victim. He, therefore, lodged the FIR on 13/04/2017 at Mohol police station vide C.R.No.269/2017 u/s 363 of the Indian Penal Code. He did not depose about the victim's exact date of birth. However, he stated that the victim was about 15 years of age. This was important because the evidence of Headmaster of the victim's school shows that the date of birth was entered into the register on the information supplied by the victim's parents. In that context, the P.W.3 has not stated about the exact date of birth. He has not produced the birth certificate.

9. P.W.8 Narayan Shinde was the Headmaster of the ZP Primary School, where the victim had studied. He produced the entry No.59 dated 16/06/2007 showing the victim's admission in the school in the first standard and as per that entry, her date of birth was 04/01/2002. The entry was produced on record at Ex.32. Significantly, he deposed that the victim's parents had furnished the information about the date of birth of the victim. Based on that entry, the School Leaving Certificate was prepared and produced at Ex.33. He admitted that he was deposing on the basis of the record maintained by the school and he did not have any personal knowledge about the same.

10. The other Pancha witnesses are not very important. To complete the narration, their evidence can be mentioned briefly.

P.W.1 Amar Atkare was a Pancha in whose presence, the motorcycle was seized.

P.W.2 Satyawar Shinde was a Pancha in whose presence Panchanama of the spot from where the victim was abducted was conducted. It was produced at Ex.13.

P.W.4 Rameshwar Mali was examined as a Pancha for the Panchanama of the room at village Ambavane. The uncle of the victim had shown that room. That Panchama was dated 30/04/2017. It was produced on record at Ex.20. The said uncle of the victim was not examined by the prosecution. That is an important missing link in the prosecution case.

P.W.9 Padmini Chavan was a Pancha for the Panchanma of seizure of the victim's clothes.

P.W.5 Nijam Shaikh had seen the Appellant near the agricultural field on 11/04/2017 at 03.00 p.m. His evidence is worthless.

P.W.11 P.C. Balasaheb Gade had carried the clothes of the victim and the Appellant as well as the articles to FSL. However, the C.A. reports are not incriminating in this case. Nothing much is revealed from those C.A. reports.

P.W.6 ASI Dattatray Jagtap had registered the FIR.

P.W.12 PSI Raju Rathod was the Investigating Officer. He has deposed about the investigation carried out by him. He had conducted, the Spot Panchanama, seizure of clothes Panchanama. He had collected the School Leaving Certificate. He had sent the victim and the Appellant for medical examination.

In the cross-examination, as mentioned earlier, he had proved the omissions and contradictions from the victim's statement before him.

P.W.10 Dr. Pralhad Gaikwad was another important witness. He had examined the victim on 01/05/2017. He had mentioned in the Court that hymen was ruptured. But in the cross-examination he admitted that the sexual intercourse was not the only reason for rupture of hymen. He produced medico-legal examination report on record at Ex.38, in which the Appellant's name was mentioned as the offender.

This, in short, was the evidence led by the prosecution.

11. Learned counsel for the Appellant submitted that the prosecution has not proved its case beyond reasonable doubt. Learned Trial Judge had framed issues. He had acquitted the Appellant as well as the accused No.2 from the charges of abducting the victim from the lawful guardianship. She therefore submitted that the major portion of the prosecution story was not accepted by the learned Judge. Therefore, it is not safe to rely on some portion of the prosecution story. She submitted that the School Leaving Certificate was based on the entry made in the school record. It in turn was based on the information supplied by the parents of the victim. However, the victim's father has not deposed about the actual date of birth or having given information to the school at the time of her admission. She submitted that the evidence of the victim herself is full of contradictions and omissions. She has completely changed her story during her deposition. Therefore, she is not a truthful witness. The medical evidence is not conclusive and doctor has admitted that apart from rupture of hymen, there was nothing indicating of any sexual assault. In that case, there

would be other causes of rupture of hymen. She therefore submitted that considering this weak nature of evidence, the Applicant cannot be convicted.

12. Learned APP as well as learned counsel for the Respondent No.2 submitted that the victim had stated that the physical relations were kept against her will. In any case, even assuming that she was the consenting party, her consent would not matter because she was below 18 years of age as is proved by the record of the school. Therefore, the offence is complete. The Appellant had established physical relations with her when the victim was a minor. Hence the offence is made out. They, thus, supported the impugned judgment.

13. I have considered these submissions. In this case the most important evidence is that of the victim herself. The Court has to therefore satisfy itself about the quality of her evidence. Only after her evidence is found truthful, it can be relied on. In this context, it can be seen that her deposition is full of important contradictions and omissions from her police

statement as well as from the statement recorded u/s 164 of Cr.PC. She has stated in her deposition that she was forced to sit on the motorcycle as the Appellant had issued threats to her that he would commit murder of her family members. According to her, therefore she had no choice but to accompany the Appellant. This particular theory was totally contradictory to her earlier version, which she had given before the police on 01/05/2017. In that statement through the marked portion which is proved by the Investigating Officer, she had clearly stated that they were having love affair and they had decided to elope together on 12/04/2017. This part of her earlier statement is very important, because that is completely contradictory to her version before the Court. Thus, the genesis of the incident itself become doubtful and therefore her further evidence about all other aspects become doubtful. In this case, the truth and falsity in her evidence are inseparable.

In the examination-in-chief she had stated that the Appellant had taken her to village Shetfal. However, in the cross-examination she deposed that she had never gone to Shetfal and

therefore she did not know how much time was required to reach Shetfal from her village. This part of her deposition in the examination-in-chief and the cross-examination itself is contradictory. Learned Judge has already held that the prosecution has not proved that the accused was responsible for her abduction.

14. As per the prosecution case, the accused No.2 had arranged for a room at village Ambavane, where the Appellant and the victim had stayed together from 12/04/2017 to 31/04/2014. Learned Judge has given benefit of doubt to the accused No.2 in that behalf. The same reason should apply in favour of the present Applicant as well. The prosecution has not examined any witness from village Ambavane to show that the Appellant and the victim had stayed together in that particular room. The uncle of the victim had showed that room to the police as mentioned earlier. But that uncle is not examined. That was an important piece missing in the prosecution case. Therefore, considering that the victim's evidence is not free from doubt, her contention that they had physical relations during

that period becomes doubtful. The Medical Officer has accepted that there could be other reasons for rupture of hymen. There were no other signs of sexual intercourse.

15. As far as the victim's statement is concerned, considering that the victim's evidence itself is doubtful, the age of the victim will not make any difference in this case. Even otherwise, the school record was prepared on the basis of information supplied by the parents. The father was examined. But he has not deposed anything about the actual date of birth or about the information given to the school authorities about her date of birth. This additional factor is in favour of the Appellant in this case.

16. Considering all these aspects, sufficient reasonable doubt is created against the prosecution and the benefit of such doubt must be go in favour of the Appellant. Hence he deserves to be acquitted.

17. Hence, the following order :

ORDER

- (i) The Judgment and Order dated 25/07/2019, passed by the Additional Sessions Judge, Solapur. in Sessions Case No.197 of 2017, convicting and sentencing the Appellant, is set aside.
- (ii) The Appellant is acquitted from all the charges.
- (iii) The Appellant shall execute P.R. Bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only) with one or two sureties in the like amount, under section 437(A) of Cr.P.C. After such execution of bond by the Appellant, he shall be released forthwith, if not required in any other case.
- (iv) The Appeal is disposed of.
- (v) With disposal of the Appeal, the Interim Application is also disposed of.

(SARANG V. KOTWAL, J.)