

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

CRIMINAL APPEAL NO.973 OF 2021

Dinesh Laxman Dhotre

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Harshad A. Sathe, for the Appellant.

Ms. Ranjana D. Humane, APP for the Respondent/State.

Ms. Shaheen Kapadia i/by Vrushali L. Maindad, Appointed Advocate for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 9th JULY, 2024

ORAL JUDGMENT

1. The Appellant has challenged the judgment and order dated 18th January, 2020 passed by the Special Judge, Ratnagiri in Special Case No.16 of 2017. The Appellant was convicted for commission of offences punishable under Sections 376(2)(i), 376(2)(j) and 376(2)(n) of IPC and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”). He was sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/- and in default to suffer simple imprisonment for four months for having committed the offence punishable under Section 6 of the POCSO Act. The fine amount was to be given as compensation to the victim. The Appellant was granted set off under Section 428 of CrPC.

2. The case of the prosecution is that the date of birth of the victim was 12th June, 2002. The Appellant was her neighbour. He developed friendly relationship with the victim. They had their first physical relationship on 24th January, 2017. This was repeated on 10 to 12 occasions. She became pregnant. In August, 2017, her mother suspected her pregnancy. She was taken to a doctor, where her pregnancy was confirmed. The mother inquired with the victim, who gave the name of the present Appellant as the offender. The FIR was lodged on 17th August, 2017. The Appellant was arrested and the investigation was carried out. The victim delivered her child on 15th October, 2017. The blood samples of the victim, the Appellant and the child were drawn and were sent for DNA comparison. It was concluded that the victim and the Appellant were the biological parents of the child of the victim. At the conclusion of the investigation, the charge-sheet was filed and the case was committed before the Special Judge.

3. During trial, the prosecution examined ten witnesses including the victim, her mother, Pancha for spot Panchanama, carriers of articles to FSL, officer from Municipal Council, who had produced the birth certificate, Medical Officers and the Investigating Officer. The defence of the Appellant was that he was having love affair with the victim, but her family opposed their relationship and therefore, he was falsely implicated. Besides the oral evidence, the prosecution had also led the documentary evidence in the form of CA certificates and DNA report at Exh.29.

4. The most important evidence in this case is that of the victim herself, who is examined as PW-2. She has stated that her date of birth was 12th June, 2002. She was residing with her brother and mother. She knew the Appellant since her childhood. He was their neighbour. In November, 2016, their acquaintance turned into a love affair. On 24th January, 2017, the Appellant expressed her that they could have physical relations. She expressed her apprehension of becoming pregnant, but the Appellant assured her that he would marry her and would take care of the child. They had their first physical relations on 24th January, 2017. It was repeated 10 to 12 times upto 11th February, 2017. In March, 2017, she realized that she had become pregnant. She informed the Appellant about it. The Appellant suggested that she should take some tablets and then he started avoiding her. On 11th August, 2017, the victim's mother suspected her pregnancy. The victim was taken to a doctor. Her pregnancy was confirmed. Her mother inquired with her about the offender. The victim gave the Appellant's name. Her mother confronted the Appellant. He denied the physical relations, but when the victim's mother asked him again in her presence, he admitted the physical relations. After that, the FIR was lodged with the Police Station by the victim/PW-2. It is produced on record at Exh.44. It is dated 17th August, 2017. It was registered vide C.R. No.392 of 2017 at Ratnagiri City Police Station. On 15th October, 2017, she gave birth to a female child. The doctor obtained DNA samples from the victim and her child. The child was given to an

Orphanage. The police, then recorded a supplementary statement of the victim.

In the cross-examination, she categorically admitted that she had love affair with the Appellant. She had no complaint about the accused having established physical relations forcibly. She admitted that she was willing to marry the Appellant. Her family members were not accepting their marriage proposal. She denied that because of this reason, a false case was lodged against the Appellant.

5. Her FIR corroborates her version in material particulars. PW-3 was the mother of the victim. She has deposed that on 13th August, 2017, she suspected about the victim's pregnancy. She took the victim to a doctor on 14th August, 2017. The victim's pregnancy was confirmed. PW-3 then made inquiries with PW-2, who gave the name of the present Appellant. PW-3 then confronted the Appellant, who denied the paternity of the child, but later on, in the presence of the victim, he admitted about the physical relations. After that, on 17th August, 2017, she took the victim to the Police and then the FIR was lodged. She further deposed that she had given the birth certificate of the victim to the Police. The victim delivered a female child.

In the cross-examination, she deposed that she had told the Police about the date of birth of the victim, but she could not explain as to why that fact was not mentioned in the Police

statement. She further stated that she was not willing to perform the marriage between the victim and the Appellant.

6. PW-1/Mr. Pandurang Nandiwale was Pancha for the Spot Panchanama, which is produced at Exh.36. The spot i.e. hut of the victim was shown by the victim herself.

7. PW-4/Police Constable Mr. Adinath Aadavade had carried the sample articles on 23rd October, 2017 to Kolhapur and Pune. The DNA profile sample was collected from Civil Hospital. The blood sample was also collected from the Civil Hospital. The DNA sample was handed over to the laboratory at Pune. The other blood sample was handed over to the laboratory at Kolhapur. The blood sample for DNA was kept in a thermocol box. He collected the receipts from the FSL and gave them to the Investigating Officer, PSI Musale.

In the cross-examination, he could not explain as to why it was not mentioned in his police statement that he had obtained the DNA sample from Civil Hospital and that it was kept in a thermocol box.

8. PW-10/Police Constable Mr. Narayan Dhangade was another carrier. He had taken the blood sample and DNA kit to the Chemical Analyzer on 23rd August, 2017. The Chemical Analyzer gave a receipt of the report. He produced that receipt at Exh.77. This witness is concerned with carrying the articles like clothes of

the victim and the Appellant as well as their blood samples for CA examination.

9. PW-5/Police Constable Mr. Suhas Mandavkar had brought the DNA kit from Pune at the instance of PSI Musale. It was handed over to PSI Musale by this witness. It was brought on 17th August, 2017.

10. PW-7/Dr. Ninad Nafade had confirmed the victim's pregnancy on 19th August, 2017. PW-8/Dr. Leena Kumbhare had examined the victim on 4th October, 2017. At that time, she was pregnant for 36 weeks. In the cross-examination, she admitted that she did not perform any test for determination of the victim's age.

11. PW-6/Mr. Jitendra Aayare was working with Ratnagiri Municipal Council. He produced the birth certificate of the victim at Exh.60. The victim was born at Civil Hospital, Ratnagiri and her date of birth was 12th June, 2002. The entry of her birth was taken by the Municipal Council as per the request of the Civil Hospital. He was cross-examined about his authority to produce the birth certificate in the Court. Beyond that, there was hardly any cross-examination of this witness.

12. PW-9/PSI, Deepika Musale was the Investigating Officer. She had recorded the victim's FIR. She carried out the spot Panchanama. She arrested the Appellant. She obtained the DNA kit from Pune. She arranged the medical examination of the victim. She

caused blood samples of the accused, victim and the child to be taken for DNA sampling. They were sent to Pune for analysis. On completion of the investigation, the charge-sheet was filed by this witness. In the cross-examination merely suggestions were put to this witness that whatever she had deposed in the examination-in-chief was false. All these suggestions were denied by this witness.

13. Apart from this oral evidence, the important piece of documentary evidence is the concerned DNA report which is produced on record at Exh.29. It is prepared by the Assistant Chemical Analyzer, Regional Forensic Science Laboratory at Pune. That report specifically mentions that the victim and the Appellant were concluded to be the biological parents of the female baby of the victim.

This, in short, is the prosecution evidence.

14. Learned counsel for the Appellant submitted that the prosecution has failed to establish the link between drawing of the blood samples for DNA testing, keeping them in the safe custody and then sending them to Pune. He submitted that the prosecution has not led any evidence to show as to how the samples were drawn. No evidence was led to show which doctor had drawn the blood samples for DNA testing and how they were handed over to the Police Officers for sending it to FSL for analysis. He further submitted that the officer from the Municipal Council i.e. PW-6/Mr.

Jitendra Aayare was not cited as a witness in the charge-sheet and the birth certificate produced by him in the Court was not given to the Police during investigation. Therefore, there is nothing to show as to how the Police reached the conclusion that the victim was a minor on the date of incident.

He further submitted that the Medical Officer had admitted that the victim's age determination test was not conducted.

15. Learned APP as well as learned counsel for the Respondent No.2 opposed these submissions. They relied on the evidence of the victim as well on the DNA report. They submitted that the consent of the victim was immaterial. The offence amounts to aggravated penetrative sexual assault. The learned Judge has rightly appreciated the evidence and therefore the conviction and sentence was rightly recorded. The minimum sentence was imposed as provided under Section 6 of the POCSO Act.

16. I have considered the submissions.

17. In this case, the most important evidence as mentioned earlier is that of the victim. I have carefully perused her evidence. I do not find any infirmity in her evidence. She is a truthful witness. She has honestly deposed that she was having love affair with the Appellant. This fact is admitted by the Appellant himself in his statement recorded under Section 313 of CrPC. She has further

narrated as to how they had physical relations on 24th January, 2017 and as to how they continued to have such relations on 10 to 12 occasions till 11th February, 2017. After that she became pregnant, but she could not tell this fact to her family. At that point of time, the Appellant did not support her and started avoiding her. The fact that she had become pregnant and delivered a child is not disputed. There is absolutely no reason as to why her deposition should be disbelieved. She has clearly named the present Appellant, as the person, who had made her pregnant. The DNA report on record also confirms the fact that the Appellant was the biological father of the victim's child. There is some substance in the arguments of the learned counsel for the Appellant that the prosecution did not lead cogent evidence to establish as to which doctor had drawn the blood samples and how it was handed over to the Police after taking all the precautions. In the present facts, the evidence of the victim will prevail. Her deposition is actually supported by the defence taken by the Appellant that they were having a love affair. I do not see any reason to disbelieve the victim. The corroborative piece of evidence in this case is the evidence of the mother and the fact of delivery of a child. Her mother came to know about the pregnancy in August, 2017. As a natural conduct, PW-3/mother immediately took the victim to a Medical officer, who confirmed the victim's pregnancy. After that, immediately the FIR was lodged on 17th August, 2017, naming the present Appellant and describing the role played by him.

18. The fact that the victim was taken for medical examination is proved by PW-7/Dr. Ninad Nafade.

19. Since it was established that the Appellant and the victim had physical relations resulting into pregnancy and birth of a child, it is necessary to see whether the prosecution has proved that the victim was below 18 years of age. In this behalf, the prosecution had examined PW-6/Mr. Jitendra Aayare from the Municipal Council. He had produced the birth certificate prepared from the record maintained by the Municipal Council. It is a public record. The birth certificate is produced by the authorized person working with the Municipal Council. Therefore that birth certificate is duly proved at Exh.60. The victim's date of birth according to Exh.60 was 12th June, 2002. The incident had taken place in January and February, 2017. At that time, she was below 16 years of age. Therefore, the offences alleged against the present Appellant including the offences of POCSO are duly proved. The learned Judge has imposed minimum sentence on the Appellant. Therefore, there is no scope to reduce the sentence in this case. In this view of the matter, I do not find any substance in the Appeal.

20. The Appeal is therefore dismissed.

(SARANG V. KOTWAL, J.)