

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

CRIMINAL APPEAL NO.439 OF 2021

Pranit @ Sonu Satish Sawant	Appellant
Versus	
The State of Maharashtra & Another	 Respondents

Ms. Gunjan Mangla, Advocate (appointed) for the Appellant.

Mr. Swapnil Valve, APP for the Respondent No.1-State.

Ms. Shradha Sawant, Advocate (appointed as *amicus curiae*) for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th JUNE, 2024

ORAL JUDGMENT :

1. The appellant has challenged the judgment and order dated 16.3.2021 passed by the Additional Sessions Judge, Ratnagiri in Special Case No.18/2019 dated 16.3.2021. The Appellant was convicted for commission of the offence punishable under Section 354 of IPC and was

sentenced to suffer RI for one year and to pay fine of Rs.500/- and in default to suffer SI for one month. He was convicted for commission of the offence punishable under Section 506 of IPC and was sentenced to pay fine of Rs.1,000/- and in default to suffer SI for two months. He was further convicted for commission of the offence punishable under Section 9(m) read with Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and was sentenced to suffer RI for five years and to pay fine of Rs.5,000/- and in default to suffer SI for six months. The recovered fine amount was directed to be paid to the victim. Further benefit was granted to the victim under Section 357-A of Cr.P.C. The Appellant was granted set off under Section 428 of Cr.P.C.

2. Heard Ms. Gunjan Mangla, learned appointed counsel for the Appellant, Mr. Swapnil Valve, learned APP for the Respondent No.1-State and Ms. Shradha Sawant, learned *amicus curiae* appointed for the Respondent No.2.

3. The prosecution case is that the incident took place on 7.11.2019 at about 6.30 p.m.. At that time the victim was about 10 years and 4 months old. Her date of birth was 30.6.2009. On that day, she was sick. She went to the house of the Appellant to collect leaves of castor tree. The Appellant took her to a cow-shed and committed the offence of sexual assault as defined under Section 7 of the POCSO Act. The victim returned home and told about the incident to her mother. Both of them went to the police station on the next day and the FIR was lodged on 8.11.2019 at about 8.00 p.m.. The Appellant was arrested. The investigation was carried out. After filing of the charge-sheet, the trial proceeded before the learned Additional Sessions Judge, Ratnagiri.

4. During the trial, the prosecution examined 13 witnesses including the victim, her mother, the panchas, police officers and the witnesses to prove the victim's age. Apart from that, the medical evidence in the form of the medical officers was also recorded. The defence of the

Appellant was that there were two groups in the village. There was quarrel between the Appellant's wife and the victim's mother and because of these reasons, false case was lodged against him.

5. Learned Judge considered the evidence, the submissions of the Appellant and the arguments advanced. He reached the conclusion of the Appellant's guilt, as mentioned earlier and thereafter convicted and sentenced the Appellant as mentioned earlier.

6. The most important piece of evidence in this case is the deposition of the victim herself. She is examined as PW-2. She was about 12 years of age at the time of recording of her deposition. She has stated that she was knowing the Appellant. She was studying in 6th standard. She was residing with her grand-parents, mother and younger sister. Her date of birth is 30.6.2009. On 7.11.2019, she herself, her grand-mother and her sister had gone to the house of the Appellant to bring those medicinal

leaves. It was evening time. She gave full name of the Appellant in her deposition. It is further deposed by her that the Appellant told the grand-mother of the victim to stay in the house and that he would go with the victim to bring the leaves. He took the victim inside the *Wada*. After collecting leaves, he lifted her top and touched her breast with his mouth. He again touched her mouth with his mouth. Thus, he committed the offence. The victim started crying loudly. Then he left her. He threatened her. The victim rushed towards her grand-mother. All of them went home. While returning home she told the incident to her grand-mother. After reaching home, she told this incident to her mother. She deposed that the police made inquiries with her and that her statement was recorded by the learned Magistrate. Said statement was recorded under Section 164 of Cr.P.C. and it was produced on record at Exhibit-24. She was taken to the civil hospital, Ratnagiri for medical examination. She showed the spot of incident. She identified the photographs of the spot.

The victim was cross-examined mainly on the point that if she was suffering from fever she could not have gone out of her house. She was further cross-examined in respect of the location and the surrounding area of the spot of incident and the possibility of others being present near the spot at the time of incident. Besides this cross-examination, further questions were put in the form of suggestions about the truthfulness of her deposition. She stood firm in her cross-examination and denied all the suggestions that she was deposing falsely and that the Appellant was implicated falsely because of the enmity between the Appellant's wife and PW-2's mother. After her cross-examination was conducted, she identified the Appellant in the Court. Her statement recorded under Section 164 of Cr.P.C. was produced on record at Exhibit-24. It was absolutely consistent with her deposition.

7. PW-1 was the first informant and mother of the victim. She has narrated that on 7.11.2019 PW-2 was sick and was suffering from fever and cough. In the evening,

PW-1's father suggested to bring medicinal leaves from the Appellant's house. PW-1's mother, the victim and the victim's sister went there. When they returned, the victim – PW-2 narrated the incident to her. The victim was crying. She described the incident as per the deposition of PW-2 herself. PW-1's father was a heart patient and had recently undergone surgery. Therefore PW-1 did not immediately go to the police station, but she went there on the next day and lodged FIR. The FIR is produced on record at Exhibit-20. She has further deposed about recording of her statement under Section 164 of Cr.PC.. She deposed about the spot panchnama as well. In her cross-examination she fairly admitted that there were two groups in the village and those two groups were not on visiting terms with each other. Apart from that, only suggestions were put to her regarding purported enmity with the family members of the Appellant. She denied those suggestions. She also denied the suggestion that there was quarrel between herself and the Appellant's wife which had resulted in lodging of this FIR.

She deposed that, on the next date of incident she went to the police station at about 2.30 p.m. and she was there for about 5-6 hours. The FIR is produced on record at Exhibit-20. Even in the FIR the story of the prosecution is consistently narrated as per the description given by the victim herself. The FIR was lodged at Deorukh police station vide C.R. No.143/2019.

8. These are the two important witnesses in this case. Apart from them, the prosecution examined the pancha witnesses. PW-3 Vinayak Khapare was the pancha for the spot panchnama, which was conducted on 11.11.2019. He has deposed that the spot of incident was in the cattle shed. The victim had shown that spot. There was that particular tree at about 25 ft. from the spot. In the cross-examination he deposed that there was only one house at the spot of incident. It was at about 100 meters distance. There was no other adjacent house to the house of the Appellant.

9. PW-4 Vishwas Bargale had taken the

photographs of the spot on his mobile phone.

10. PW-5 Sulabha Kadam had produced the bonafide certificate at Exhibit-36 showing the date of birth, which was 30.6.2009. It was prepared as per the general register. She further deposed that the victim was absent from the school from 7.11.2019 to 11.11.2019. In the cross-examination, she admitted that she was not personally concerned with the entry made in the register in respect of the victim and that she had no personal knowledge about the victim's age.

11. PW-6 Anagha Bhatkar was working in Deorukh Nagar Panchayat. She issued the birth certificate of the victim on the basis of the birth registration register. That birth certificate is produced at Exhibit-45. There is hardly any effective cross-examination in that connection and in any case there is hardly any dispute about the age of the victim.

12. There is medical evidence in the form of PW-7 Dr. Vanita Kangule, who had examined the victim on

12.11.2019. There was no external injury on the person of the victim. She was referred to a Psychiatrist Dr. Bhagwat. In the cross-examination, PW-7 admitted that there was no injury found to support the history given by the victim.

13. PW-8 Dr. Bhagwat was a psychiatrist. She had a conversation with the victim who narrated the incident. She did not feel any mental disturbance on the part of the victim. Accordingly the medical certificate was issued.

14. PW-9 Urmila Shede attached to Deorukh police station had registered the FIR. She had not sent the victim for medical examination, as deposed in her cross-examination.

15. PW-10 was a Teacher, in whose presence the police recorded the victim's statement.

16. PW-11 is PI. Nisha Jadhav, who had conducted the investigation from 16.11.2019. She collected the photographs of the spot, the birth certificate and the 7/12 extract of the spot of incident.

17. PW-12 Dr. Abhijeet Bhojane had treated the victim on 7.11.2019 in the morning. He produced the papers in that behalf.

18. PW-13 PSI Prachi Pawar was the first investigating officer. She had sent the victim for medical examination. She had conducted the spot panchnama and had caused recording of the statement under Section 164 of Cr.P.C. She issued letters for getting the birth certificate. She admitted in the cross-examination that she did not investigate as to whether there were two groups in the village.

19. Learned counsel for the Appellant made the following submissions :

- i. The incident is improbable. It was not possible for the victim to have gone out of the house if she was suffering from fever and cough.
- ii. There is discrepancy between the evidence of the victim and her mother.

- iii. The conduct of the victim was unnatural. She did not narrate the incident to her grand-mother. The grand-mother of the victim is not examined.
- iv. The police did not record statements of the neighbours or the family members of the Appellant.
- v. The medical examination of the victim did not show any injuries or other indications supporting the incident.
- vi. The victim's demeanor of answering the questions and narrating the incident calmly before the Psychiatrist shows that she was not suffering from any trauma, which would also indicate that the incident had not taken place.
- vii. The Appellant was falsely implicated because of the rivalry between the two groups in the village; and in particular, because of the quarrel between the Appellant's wife and PW-1.
- viii. Learned counsel submitted that the Appellant is a

young man having a young child. He is in custody for more than three and half years and, therefore, he should be acquitted.

20. Learned APP as well as learned counsel for the Respondent No.2 opposed these submissions. They relied heavily on the depositions of the victim and her mother. They submitted that there was no reason for the victim to depose falsely against the present Appellant. Considering her tender age, it was not possible that she would stand scrutiny of cross-examination if she was telling a lie. They submitted that the offence is serious, particularly considering the young age of the victim. They submitted that learned trial Judge has imposed the minimum sentence and, therefore, there was no scope to argue for reduction of the sentence.

21. I have considered these submissions. As discussed earlier, the evidence of PW-1 and PW-2 is absolutely consistent with each other. Even the statement of

of the victim recorded under Section 164 of Cr.P.C. is consistent with her deposition. PW-2, the victim, has stood very firm in her deposition, in her cross-examination and her statement under Section 164 of Cr.P.C. I do not find any infirmity or inconsistency in any of these statements. Even the cross-examination of PW-2 has not yielded any answer in favour of the defence.

22. The victim was ten years of age. There is no dispute whatsoever about her age. In any case the age of the victim is proved from the birth certificate as well as the bonafide certificate. Both these documents are proved to be the genuine documents. The birth certificate was based on the register maintained officially. Therefore, it is quite clear that the victim was about ten years of age at the time of incident.

23. As far as the spot of incident is concerned, in that regard, significantly the spot was shown by the victim herself. Learned counsel for the Appellant tried to submit

that there is no consistent evidence about the spot of incident. However, the victim PW-2 was very categoric about the place of incident. It was inside the cattle shed located behind the house of the Appellant. The spot panchnama also supports here case.

24. The Appellant was known to the victim and, therefore, there is no question of any mistaken identity or insufficiency of light which would throw doubt on the evidence of PW-2.

25. The submission that the Appellant was falsely implicated by the victim because of the previous enmity between the families is also not acceptable. Besides giving some suggestions about the group rivalry and the quarrel, no concrete material is produced on record by the defence. No defence witness is examined to support this particulate defence. Even the wife of the Appellant was not examined. She was the key person because of the defence taken by the Appellant that there was quarrel between his wife and PW-1.

Even the Appellant's wife is not examined as a defence witness.

26. In short, there is nothing on record to conclusively prove or to raise a reasonable doubt in respect of the prosecution story that it could be false because of false implication due to previous rivalry.

27. As far as the medical evidence is concerned, looking at the nature of allegations, there could not be any physical indication on the person of the victim. It was clearly a case of touch, as described under Section 7 of POCSO Act. This by itself would not create any mark on the person of the victim and, therefore, the medical examination in this particular case would not make any dent to the prosecution story.

28. As far as the Psychiatrist's evidence was concerned, the victim had already narrated the incident to the police and thereafter she had narrated the incident after a couple of days to the Psychiatrist and, therefore, if, only

because she could narrate it calmly; that would not mean that she had not suffered any trauma or the incident had not taken place.

29. Considering all these aspects, I do not find any infirmity in the prosecution evidence. The prosecution has proved its case against the Appellant beyond reasonable doubt. Learned Judge has imposed the minimum sentence. Therefore, in that behalf also there is no scope to reduce the sentence further. In this view of the matter, I do not find any merit in the Appeal. The Appeal is accordingly dismissed.

(SARANG V. KOTWAL, J.)

Deshmane(PS)

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