

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

**CRIMINAL APPEAL NO. 287 OF 2024
WITH
INTERIM APPLICATION NO.4665 OF 2023**

Aravind Mahadev Wadar ... Appellant
Versus
The State of Maharashtra & Anr. Respondents

.....

Mr. Kunal V. Patil a/w Rahul P. Kasbekar, Advocate for the Appellant.

Mr. Swapnil V. Walve, APP for the State/Respondent.

Ms. Pranali Kakade, Appointed Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 18th SEPTEMBER 2024**

ORAL JUDGMENT :

1. The Appellant has challenged the judgment and order dated 10th August 2021 passed by the Special Court (POCSO), Kolhapur in Special Case No.102 of 2018. The Appellant was convicted for commission of offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") and under Sections 376, 354, 354D, 506 and 323 of the Indian Penal Code (for short "IPC"). He was sentenced as

follows:-

- (i) For offence punishable under Section 6 of the POCSO Act, he was sentenced to suffer R.I. for 10 years and to pay fine of Rs.20,000/- and in default, to suffer R.I. for two years.
- (ii) For commission of offence punishable under Section 354-D of IPC, he was sentenced to suffer R.I. for 3 years and to pay a fine of Rs.5,000/- and in default, to suffer R.I. for three months.
- (iii) For commission of offence punishable under Section 506 of IPC, he was sentenced to suffer R.I. for 3 years and to pay a fine of Rs.5,000/- and in default, to suffer RI for six months.
- (iv) For commission of offence punishable under Section 323 of IPC, he was sentenced to suffer R.I. for one year and to pay a fine of Rs.1,000/- and in default, to suffer R.I. for 3 months.

The Appellant was also convicted under Section 376 and 354 of IPC, however, no separate sentence was imposed.

All the substantive sentences were directed to run concurrently. The Appellant was given set off under Section 428 of Code of Criminal Procedure. The fine amount, if deposited, was directed to be paid to the victim towards compensation. The case was referred to the Secretary, D.L.S.A., Kolhapur for compensation to the victim as per Section 357 of Cr.P.C. and Rule 7 of the POCSO Rules 2012.

2. Apart from the Appellant, his father also faced the trial as Accused No.2. He was charged and acquitted for commission of offence punishable under Sections 452 and 506 of IPC.
3. Heard learned counsel for the Appellant, learned APP for State and learned counsel for the Respondent No.2.
4. The prosecution case is that the date of birth of the victim was 28th December 2001. Between the period of 27th February 2018 to 20th August 2018, the Appellant harassed the victim. On three occasions, he took her to a Lodge and established physical relations against her wish. Because of this, the victim was under pressure. Her mother was concerned because of her changed

behaviour in the house. She made inquiries with the victim and came to know about the incident. After that the FIR was lodged on 20th August 2018. It is also the prosecution case that the Appellant's father had suggested that the victim and the Appellant should get married. However, that proposal was not acceptable to the victim's family. In spite of that, the Appellant harassed the victim resulting in this prosecution. The certificate regarding date of birth is produced on record and there is no challenge to her date of birth.

5. The Appellant was arrested on 21st August 2018. Investigation was carried out. The victim showed the Lodge where the offence was committed. The Register from the lodge was seized. The victim's clothes were seized. The victim was sent for medical examination and after conclusion of the investigation the charge-sheet was filed. The Appellant faced the prosecution as mentioned earlier.

6. During the trial, the prosecution examined 9 witnesses including the victim, her mother, the Medical Officer, pancha witnesses, the Manager of the Lodge and the Investigating Officer.

The defence of the Appellant was of total denial. After considering the evidence, the learned Judge convicted and sentenced the Appellant as mentioned above.

7. The victim was examined as the Prosecution Witness No.2. She has deposed that in the year 2018 she was residing with her parents, grandmother and younger sister. Her date of birth is 28th December 2001. She was studying in the 11th Standard in College. She knew the Appellant. He was residing next to their house. The Appellant's father had put forth a proposal of marriage between the Appellant and P.W.2, but her family had refused that proposal. There was quarrel between the two families. The Appellant used to follow her when she went to college. He used to ask her to marry him. She also refused his proposal. The Appellant's father repeatedly visited their house with the same proposal. She has further deposed that when she used to go to college nothing further happened between her and the Appellant. She denied that the Appellant used to beat her when she refused to sit on his bike. She also denied that the Appellant showed her knife kept in the dicky of his motorcycle and that the Appellant had beaten her

with a stick. She further deposed that nothing happened between her and the Appellant in the month of March 2018. Thus, she did not support the prosecution case at all.

In the cross-examination, she stated that she was staying aloof in her house as she was restless because of the sexual harassment and beating caused by the Appellant. However, in the next answer she accepted that it was not true that in the month of March 2018 the Appellant had taken her to a Lodge and had committed forcible sexual intercourse against her will. Two of her friends knew that the Appellant was following P.W.2 and was harassing her. After 19th August 2018, when she returned from her maternal uncle's house, she narrated the incident of sexual harassment caused to her by the Appellant to her mother. She also narrated about the beating and also the rape committed by him. Thereafter, her mother lodged her FIR on 20th August 2018. Thus, she has given completely contradictory versions in her examination-in-chief and in the cross-examination. Significantly, she had denied the visit to the Lodge. She had not given any further details in her cross-examination regarding the allegations

of rape. She further deposed that her statement was recorded by Police as per her say. She also deposed that on 3rd September 2018 her statement was recorded by the learned Magistrate under Section 164 of Cr.PC. That statement was shown to her and was identified by her. During the course of investigation, she was sent for medical examination on 21st August 2018. She identified the clothes shown to her. She could not identify the knife and the stick produced in the Court. She identified the accused.

8. The victim PW.2 was also cross-examined by the defence. Her cross-examination shows that there used to be traffic on the road when she used to go to her college. There used to be traffic Police at the signal. The Appellant was residing in their lane and therefore, they used to visit each other occasionally. Her family had attended the Appellant's sister's wedding. She had not complained to her teachers that the Appellant was following her. On one occasion, they had quarreled when she refused the Appellant's proposal. That quarrel took place on a road near 10 minutes walk from Rajarampuri Police Station. She had not told anybody that the Appellant was following her. She did not tell anybody about

the incident of beating caused by the Appellant, which had taken place inside a Temple. The Appellant had beaten her with wooden stick and with hands.

9. Her statement recorded under Section 164 of Cr.P.C. mentions an incident in March 2018 when the Appellant had taken her to a Lodge and established forcible physical relationship. However, the victim - PW 2 had not stated so in her examination-in-chief and in her cross-examination. She had denied the suggestion given by the Special Public Prosecutor in that behalf. Then it was necessary for the learned Spl.PP. to invite her attention to this particular portion from the statement recorded under Section 164 of Cr.P.C. But her attention was not drawn to this very important contradictory portion from her statement in the light of the examination-in-chief, where she had denied the incident in the Lodge.

10. PW.1 is the mother of the victim. She had lodged the FIR. She has deposed that since six months prior to lodging the FIR, the victim was looking disturbed and was not paying attention to her studies. PW.1, therefore, sent her to the victim's maternal uncle's

place. When the victim returned on 19th August 2018, she told P.W.1 about the harassment and the beating caused by the Appellant. She also narrated the incident when she was taken to a Lodge where the Appellant had established forcible physical relationship with her. She also narrated the incident when the Appellant had beaten her in a Temple. Thereafter, the FIR was lodged on 20th August 2018. It is produced on record at **Exh.19**. Her evidence thus is more of a hearsay nature except for the fact that the victim was disturbed and that P.W.1 and her family decided to lodge the FIR.

In the cross-examination, she stated that the Appellant was residing in the area for about 3 to 4 years. They were from the same community. She admitted that she did not have personal knowledge about the incident but she was told about it by the victim. She had also deposed that the victim had told her that when the Appellant had beaten her on the road, an elderly man had intervened and questioned the Appellant. However, that particular fact is not reflected in the FIR.

11. P.W.3 – Kailas Kore was a pancha in whose presence P.W.2

showed the room in a Lodge. In his presence, the Lodge Manager had produced the register before the Police. The spot panchanama is produced on record at **Exh.30**. The register was seized by the Police.

12. P.W. 4 - Sagar Salvi and P.W.5 – Raghunath Lad were the two panchas in whose presence the register produced by the Lodge Manager was seized but both of them turned hostile and did not support the prosecution.

13. P.W.6 – Aakash Pathrut was a pancha in whose presence the bike was produced at the instance of Appellant's brother. The stick and the knife were produced from the dickey of the bike. That panchanama is produced on record at **Exh.35**.

14. P.W. 8 – Vijay Patil was the Lodge Manager. He deposed that in the year 2018, the Police had visited his Lodge with a girl who had shown three rooms to the Police. He has further deposed that the Police seized the register maintained in the lodge. There were three entries dated 15th January 2018, 16th February 2018 and 19th March 2018 wherein the names of the Appellant and the victim were shown together. However, he further deposed that those

entries were not in his handwriting. He was not present in the lodge when those entries were taken and when both of them had come to the Lodge.

In the cross-examination, he deposed that the proof of identification was discarded after one month as per their usual practice. He admitted that he saw the victim for the first time when she had come to the lodge with the Police. The entries from the register are produced on record at **Exh.39**.

15. P.W. 9 - Dr. Smt. Saubhagya Bhajantri had medically examined the P.W.2. She deposed that P.W.2's hymen was not intact. P.W.9 collected the swab and other samples. The medical report is produced at **Exh.47**. She further deposed that the hymen was not intact and that was possible due to several reasons including the reason of sexual intercourse.

16. P.W.7 – PI Chavan had investigated the offence. She had registered C.R. No.292 of 2018 at Rajarampuri Police Station. She arrested the Appellant on 21st August 2018. She conducted the spot panchanama and seized the register. She sent the victim for medical examination. She caused recording of the statement of

victim under Section 164 of Cr.P.C. She seized the two wheeler, the stick and the knife.

In the cross-examination, some omissions from the FIR were brought to her notice to which she deposed that it could be because of the typographical errors.

17. This in short, is the evidence led by the prosecution.

18. The learned counsel for the Appellant submitted that the victim who is the most important witness in this case has not supported the prosecution case. She has given contradictory answers. Therefore, her evidence is not of sterling nature. In her examination-in-chief and in the initial part of her cross-examination, PW.2 had categorically denied that the Appellant had committed any forcible sexual intercourse with her. She had denied that the Appellant had taken her to a Lodge and had committed forcible sexual intercourse. He submitted that therefore, the offence under Section 376 of IPC as well as the one defined under Section 3 and made punishable under Section 6 of the POCSO Act are not proved. Apart from the main allegations of rape, even the prosecution case of beating the victim, is not

proved. P.W.2 had denied the incident regarding beating in her examination-in-chief itself. Only in the cross-examination, she made a reference to the beating caused by the Appellant and also to the harassment caused by him. The learned counsel submitted that the victim's attention was not drawn to the contradictory statement made by her in her police statement or in the statement recorded by the learned Magistrate. Both these statements cannot be taken into consideration against the Appellant.

19. He submitted that, offence of beating or using force was not proved. There was a reference to an elderly person who had intervened when the Appellant was beating the victim. However, he was not examined nor his details were given. The victim had not complained about beating or harassment for a period of six months. Only after lodging of the FIR, all these allegations had surfaced. The medical evidence does not show any signs of beating. In fact, the medical evidence is quite vague and it does not even show that there was any sign of physical relation as can be seen from the cross-examination of the Medical Officer. He submitted that due to all these infirmities, the prosecution has

failed to prove its case beyond reasonable doubt. He further submitted that the evidence of seizure of the register will also not help the prosecution as those entries are not proved by the prosecution.

20. Learned counsel for the Respondent No.2 as well as the learned APP submitted that though P.W.2 – Victim had not supported the prosecution case, but in the cross-examination conducted by the learned Spl. PP, she had given answers supporting the prosecution case including the allegations of commission of rape. They submitted that the victim was trying to help the Appellant and was trying to live peacefully without being disturbed by this incident and therefore, she had turned hostile. Hence, the Appellant could not be given the benefit of doubt. They submitted that the medical evidence to a certain extent supports the prosecution case. Both of them relied upon the entries in the register showing that the Appellant and the victim had visited that lodge on three occasions.

21. I have considered the submissions. As far as the mother of the victim is concerned, her knowledge is based on the information

provided by P.W.2 – Victim. Therefore, her evidence is largely hearsay. As far as the main allegations of sexual harassment and other serious allegations are concerned, P.W.1's evidence only goes to show that the FIR was lodged on 20th August 2018 after P.W.2 had narrated the incidents to her. Therefore, the most important witness in this case is the victim herself. In this case, the victim has not supported the prosecution case and has stated that nothing had happened between her and the Appellant. She had also denied that the Appellant had beaten her when she refused to sit on his bike and that the Appellant had shown her knife and that he had beaten her with a stick. There was no reference to the commission of forcible sexual intercourse mentioned in her examination-in-chief. In the first part of her cross-examination conducted by the Spl. PP she had denied that in the month of March 2018 the Appellant had taken her to a Lodge and had committed forcible sexual intercourse. This entire deposition shows that the victim – P.W.2 has not supported the prosecution case. After this part of the deposition, she further deposed that she had told her mother about the sexual harassment and the rape committed by the Appellant as

well as the beating committed by him. However, her first part of deposition is not consistent with the narration to her mother as rightly submitted by the learned counsel for the Appellant. The learned Spl. P.P. did not draw the attention of P.W.2 to the contradictory statements made by her in her police statement and in her statement recorded under Section 164 of Cr.P.C. wherein she had referred to the forcible sexual intercourse and the sexual harassment. No explanation is offered by the prosecution or by P.W.2 at all.

22. In this view of the matter, a serious doubt is created about the victim's version. Since she is the only witness who could have deposed about this fact and since she has not supported the prosecution case and was declared hostile, the benefit of doubt in this case must go to the Appellant.

23. There is one more incriminating circumstance regarding the seizure of the register mentioning the three entries wherein the names of the Appellant and the victim were mentioned. However, P.W.8 – the Lodge Manager who had produced this register has stated that those entries were not made in his handwriting. He was

not present when those entries were made or when those two persons had visited the Lodge. He had admitted that he had seen the Victim for the first time when she had come to their Lodge with the Police. Therefore, there is no evidence to show that it was only the Appellant and the Victim who had visited that Lodge on those three occasions. Nobody else from that Lodge is examined. The identity proof given by those persons were destroyed. Therefore, that particular evidence is also weak. The prosecution has not proved beyond reasonable doubt that the Appellant and the victim had visited that Lodge on those occasions.

24. As rightly submitted by the learned counsel for the Appellant the medical evidence is quite vague and it does not fully corroborate the prosecution case of forcible sexual intercourse or of beating caused by the Appellant. As per the prosecution case, the instances of beating was on the road and in the Temple but there is no other corroborative evidence either in the form of independent witnesses or any signs of beating. Admittedly, the victim has not narrated about the instances to anybody including her teachers. Therefore, again the only evidence in this respect is

that of P.W.2, whose evidence as mentioned earlier, is not free from doubt.

25. Considering all these circumstances together, it can be seen that the prosecution has failed to prove its case beyond reasonable doubt and therefore, the benefit of doubt must go to the present Appellant. Hence the following order:-

ORDER

- (i) Judgment and order dated 10th August 2021 passed by the Special Court (POCSO), Kolhapur in Special Case No.102 of 2018 convicting and sentencing the Appellant is set aside.
- (ii) The Appellant is acquitted from all the charges.
- (iii) The Appellant is in custody. He shall be released forthwith, if not required in any other case.
- (iv) The Appellant shall execute PR. Bond in the sum of Rs.30,000/- before being released to ensure his presence in case Appeal against acquittal is filed.
- (v) The companion applications are disposed of.

(SARANG V. KOTWAL, J.)