

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

CRIMINAL APPEAL NO. 506 OF 2024

Shivaji Shripat Dhadave

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

**WITH
INTERIM APPLICATION NO. 1991 OF 2024
IN
CRIMINAL APPEAL NO. 506 OF 2024**

Mr. Rahul Arote a/w. Riya Mane for Appellant.

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

Mr. Dharmendra D. Jadhav (appointed Advocate) a/w. Mayank Tripathi for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 1 OCTOBER 2024**

ORAL JUDGMENT:

1. The Appellant was the original accused in Special (P) Case No.325 of 2016 before the Special Judge under POCSO Act, Thane. The learned Judge vide his Judgment and order dated 08.04.2024 convicted the Appellant for commission of offences punishable under section 376(2)(i)(j) of the I.P.C. and under

section 3 r/w.4 and U/s.5(m) r/w. Section 6 and U/s.7 r/w. Section 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'). He was sentenced as under:

- i) For the offence punishable U/s.5(m) r/w. 6 of the POCSO Act he was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.10000/- and in default to suffer S.I. for six months.
- ii) No separate sentence was imposed for the offence punishable U/s.376 of the I.P.C. in view of Section 42 of the POCSO Act.
- iii) No separate sentence was imposed for the other offences in view of sentence imposed U/s.3 r/w. Section 4 and U/s.7 r/w. Section 8 of the POCSO Act.
- iv) He was given set off U/s.428 of the Cr.p.c.

2. Heard Mr. Rahul Arote, learned counsel for the Appellant, Ms. Ranjana Humane, learned APP for the State and Mr. Dharmendra Jadhav, learned counsel for the Respondent No.2.

3. The prosecution case is that the victim was about 4 years and 8 months old at the time of the incident dated 10.10.2016. The Appellant was a neighbour and was knowing the victim's family. On the date of incident, in the late afternoon, the victim's

mother had gone out. The victim's father was not in the house. The victim and her younger brother were in the house. While, the victim's mother was returning home, she was told by her nephew that the Appellant had taken the victim to his house. Therefore, the victim's mother went to the Appellant's house and saw that the Appellant was committing rape on the victim. She raised shouts. The people in the locality gathered. Somebody informed the police. The Appellant was taken to the police station. The mother of the victim lodged her F.I.R. vide the C.R.No.210 of 2016 at Shrinagar police station. It was registered at around 8:50p.m. on 10.10.2016. The victim was sent for medical examination. She had suffered injuries. The Appellant was arrested. The clothes of the victim and the Appellant were seized and sent for chemical analysis. The investigation was carried out. The spot panchanama was conducted. The statements of the witnesses were recorded. The victim's statement and her mother's statement were recorded U/s.164 of the Cr.p.c. At the conclusion of the investigation, the charge-sheet was filed and the case was committed before the Special Judge, Thane.

4. During the trial, the prosecution examined nine witnesses, including the victim, her mother, the Medical Officers, the panchas, a neighbour and the police officers. The defence of the appellant was of total denial. He had answered that, he had constructed some portion of his house. He had told the victim's mother that she could also make a similar construction and because of that, a false case was lodged against him.

On the face of it, this defence does not seem acceptable at all. The learned Special Judge after considering the evidence, the arguments and the defence raised by the Appellant, convicted and sentenced the Appellant, as mentioned earlier.

5. The victim was examined as PW-3. Her deposition was recorded in October 2023 i.e. nearly about 7 years after the incident. She had deposed that the Appellant had committed wrong act with her. She further deposed that her mother came there and she narrated the incident to her mother. Because of the Appellant's act she was having pain in her stomach. Then they went to the police station and recorded her statement. She was

referred to hospital for medical examination. Her statement was recorded U/s.164 of the Cr.p.c. She identified the Appellant produced through the video conferencing. There is hardly any effective cross-examination of the victim. Her statement recorded U/s.164 of the Cr.p.c. mentioned that the Appellant had taken her to the loft. He slept on her. She was suffering from pain. He poured oil inside her underwear and he committed wrong act.

6. The victim's mother was examined as PW-1. She has deposed that she was residing with her husband and two children; i.e. the victim and one year old son. The date of birth of the victim was 24.01.2012. She produced a true copy of the birth certificate on record at Exhibit-32. The learned trial Judge has noted that the defence had not challenged the age of the victim and had not challenged her birth certificate. PW-1 further deposed that on 10.10.2016, at about 5:30p.m. she went to the market to buy vegetable. Her husband was not in the house. Her children were in the house. She bolted the door from outside. At about 6:15p.m., while she was returning home, she met her nephew. He told her that the Appellant had opened the door and taken the victim to his

house. PW-1 went to the Appellant's house which was adjacent to their house. She heard that her daughter was crying. She went inside. She saw the Appellant and the victim on the loft of his room. The Appellant had made the victim lie down on the loft. He had taken off their clothes and he was sitting on the victim. PW-1 took the victim out of the house after making her wear her clothes. PW-1 saw that there was bleeding from the private parts of the victim and that there was some oil applied. PW-1 told her husband. Their neighbours gathered. The police came there and took the Appellant with them. PW-1 also went to the police station. The victim told her that the Appellant removed her underwear and applied oil on her private parts. PW-1 gave her F.I.R. which is produced on record at Exhibit-33. The victim was sent for medical examination and for treatment to the Civil Hospital, Thane and then she was referred to Jupiter Hospital. PW-1's statement was recorded by the learned Magistrate U/s.164 of the Cr.p.c. She identified that statement. She also identified the clothes of the victim produced in the Court.

In the cross-examination, PW-1 stated that she knew

the Appellant since about 4 years prior to the incident. Their houses were next to each other. Her nephew who informed her about the Appellant taking the victim to his house, was 8 years of age. She denied the suggestion that the victim sustained injuries to her private parts because of a fall. A true copy of the birth certificate was produced on record at Exhibit-32 which shows that the date of birth of the victim was 24.01.2012. PW-1's evidence is sufficiently corroborated by the F.I.R. lodged by her which is produced on record at Exhibit-33, as well as, her statement recorded U/s.164 of the Cr.p.c. which is produced at Exhibit-35.

7. PW-5 Rohit Bhandari was a neighbour. He has deposed that on 10.10.2016, when he was returning home from his work, he saw that PW-1 along with the victim PW-3 was present in front of the Appellant's house and she was shouting. There were 3-4 other women. PW-1 said that the Appellant had committed rape on her daughter. PW-5 himself and some other people from the locality went inside the house and went to the loft. The appellant was sitting there. He was frightened. In the meantime, the police came there and took the Appellant with them. He identified the

Appellant in the Court. He was produced on the video conferencing.

In the cross-examination, he deposed that they went to the loft on the say of PW-1.

8. PW-2 Dr. Halgarkar had examined the victim on 10.10.2016 when she was brought to the hospital by the police with the history of sexual assault. PW-2 took the history from the mother of the victim and the police. The victim's undergarments were stained with blood. She had suffered linear abrasion on the right hand of 3cm in length; it was a simple injury and linear abrasion on the right cheek of 1cm in length. On local examination, it was noticed that the victim had fresh injury of 0.5cm x 0.2cm x 0.1cm on the inner side of right labia minora, at 7 O' clock position. It was a laceration. Edema and redness over the injury was seen. Bleeding was present. PW-2 then took swab for chemical analysis.

In the cross-examination, she stated that the abrasion could be possible if body comes in contact with hard surface. The

injuries on labia majora and labia minora were possible by a fall due to activities like cycling, swimming etc. She has given the final opinion that it was a case of sexual assault. She produced the report at Exhibit-42. In that report the injuries are mentioned and her opinion was that, over all findings were consistent of sexual assault, however, the final opinion was kept pending till receipt of FSL report.

9. There was one more Medical Officer examined by the prosecution in support of the injuries suffered by the victim. That witness was PW-9 Dr. Parmanand Aandankar. He was attached to Jupiter Hospital. The victim was referred to their hospital by the Civil Hospital, Thane. He admitted the victim on 12.10.2016. The Gynecologist examined the victim. PW-9 also examined the victim and did sonography. There was no internal bleeding, but there could be infection in her private parts. She was discharged on 14.10.2016. The injury certificate is produced on record at Exhibit-84. In that certificate, there is mention that as per the medical record available, the victim had sustained injuries in sexual assault, ruptured hymen with no abrasion. He denied the

suggestion put by the defence counsel that he had given a false injury certificate.

10. PW-6 Dr. Kamlakar Jawale had examined the Appellant on 11.10.2016. He found three injuries on his body – 1) three linear scratch marks on left side of back, middle part, erythema (redness) seen, 2) abrasion in middle part of back 1/2cm x 1/2cm, 3) contusion on right side of back 3cm x 2cm. Redness seen. According to him, the abrasions were possible due to scratching by nails. All the injuries were fresh. He produced the medical report at Exhibit-66.

In the cross-examination, he deposed that the abrasions were possible if the Appellant had come in contact with hard surface. The medical report corroborates his deposition.

11. PW-4 Gulab Pawar was a pancha for arrest of the Appellant and for seizure of his clothes. That panchanama is produced on record at Exhibit-62.

12. PW-7 P. I. Satish Pawar was the first investigating officer. He had registered the F.I.R. and had conducted the spot

panchamama which is produced on record at Exhibit-70. He had arrested the Appellant and had referred the victim and the Appellant for medical examination.

13. PW-8 P. I. Sandeep Kadam was the second investigating officer. He had collected the victim's clothes and sent the articles for C.A. examination. At the conclusion of the investigation he had filed the charge-sheet. The C.A. reports are produced on record at Exhibit-88 and they show that the victim's underwear and the Appellant's underwear showed presence of blood.

This, in short, is the prosecution evidence.

14. Learned counsel for the Appellant made the following submissions.

The birth certificate is not produced in original form. Therefore, the victim's age is not proved. The medical evidence does not corroborate her evidence fully. The Medical Officer has deposed that the bleeding injury to the private parts was possible due to fall during cycling or swimming etc. The victim herself in her deposition has not described the incident of penetrative sexual

assault. She has vaguely stated that the Appellant committed wrong act with her. The Appellant was implicated falsely because of the family dispute. The C.A. reports are not incriminating.

15. Learned counsel for the Respondent No.2, as well as, the learned APP opposed these submissions. They relied on the evidence of the mother of the victim who was examined as PW-1, as well as, the medical evidence. According to them, this evidence supports the prosecution case and the victim's deposition. According to them, the prosecution has proved its case beyond reasonable doubt.

16. I have considered these submissions. The victim was barely four years and eight months old at the time of the incident. The age of the victim is not in dispute. The learned Judge has noted while recording the deposition of PW-1 that neither the age of the victim nor the birth certificate was disputed by the defence. Therefore, it was conclusively proved that date of birth of the victim was 24.01.2012 as mentioned in the birth certificate. The incident had taken place on 10.10.2016 between 5:30p.m. to

6:30p.m. At that time, she was about four years and eight months old. The victim herself had stated that the Appellant had committed wrong act with her. Considering her tender age, it was not expected of her to describe the incident in detail. She, however, deposed that because of the Appellant's act she was having pain in her stomach. She had identified the Appellant. She had denied the suggestion that she was deposing at the instance of her family members. Her statement U/s.164 of the Cr.p.c. was recorded on 16.12.2016 wherein, she had given more details that he had slept on her and that the Appellant had poured oil and had committed wrong act. Nothing more can be expected from a victim who is barely four years and eight months old.

17. The evidence of the victim's mother is important in this case. She was an eye witness. She had gone out to buy vegetables. In the meantime, the Appellant had taken the victim to his house and had committed that act. While PW-1 was returning home, she was informed by her young nephew that the Appellant had taken the victim to his house. She had immediately rushed to the Appellant's house and had seen the act. She raised shouts and the

Appellant was apprehended from his house itself. He was immediately taken to the police station. The registration of the F.I.R. was also immediate. The victim was sent for medical examination. PW-1 had noticed bleeding injuries on her private parts which were confirmed by the medical examination and the depositions of two doctors referred to herein above. Thus, there is direct evidence of the victim and her mother which is sufficiently corroborated by two doctors. There are injuries to the private parts of the victim causing bleeding. All the ingredients of penetrative sexual act are proved through this evidence. The C.A. report also shows that there was blood on the underwear of the victim, which is one more corroborating incriminating piece of evidence against the appellant. In addition, the evidence of PW-5 Bhandari, who had immediately reached the spot also supports the prosecution case and the version of PW-1. There is absolutely nothing in favour of the Appellant. The prosecution has proved its case beyond reasonable doubt.

18. The learned Judge has imposed the minimum sentence on the Appellant. There is no scope to reduce it further. Hence, I

do not see any reason to interfere with the impugned Judgment and order. With the result, the Appeal is dismissed. With disposal of the Appeal, the interim application is also disposed of.

(SARANG V. KOTWAL, J.)