



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.75 OF 2021

Appellant : Shyamkaran Sadashiv Sontakke,
 Aged about 50 years, Occu : Labour,
 R/o. Yashoda Nagar, Galli No.4, Amravati,
 Tq. & Dist. Amravati.

– Versus –

Respondent : State of Maharashtra,
 through Police Station Officer,
 Police Station Frezarpura, Amravati.

 Mr. M.L. Vairagade, Advocate (Appointed) for the Appellant.
 Mr. H.D. Futane, A.P.P. for the Respondent.

CORAM : **M.W. CHANDWANI, J.**
RESERVED ON : **16th JANUARY, 2024.**
PRONOUNCED ON : **31st JANUARY, 2024.**

JUDGMENT :

The appeal challenges the judgment and order dated 20/05/2020 passed in Special (POCSO) Case No.77/2018, thereby convicting the appellant for the offence punishable under Section 10(m) of the Protection of Children From Sexual Offences Act (hereinafter referred to as “POCSO Act” for short) and Section 354-A of the Indian Penal Code (I.P.C.).

02] The facts, which give rise to the present appeal, can be summarized as under :

Reena Anil Dhakde (PW-1), a mother of one of the victims, lodged the report before Police Station Frezarpura, Amravati alleging that on 10/03/2018 at about 12:00 noon, she along with her neighbour went to the hospital. When she returned from the hospital at about 03:00 p.m., the victim girls disclosed that the appellant touched their private parts at the house of one Bhagabai Kawre. Therefore, on her written complaint, Police Station Frezarpura registered the offences punishable under Sections 354 and 354-A of I.P.C. and Sections 8 and 12 of POCSO Act. Subsequently, during investigation, offences under Sections 376(2)(i) of I.P.C. and Sections 4, 6 and 10 of POCSO Act were added. The appellant was arrested and after completion of investigation, charge-sheet came to be filed against the appellant.

03] To prove its case, the prosecution examined six witnesses viz. Reena Anil Dhakde (PW-1), Victim Girls (PW-2 and PW-3), Ashok Namdeorao Tayade (PW-4), Jyoti Ramrao Balegave (PW-5) and Rajeshri Chandapure (PW-6), and also relied on various documents. After appreciating the evidence, the learned Sessions Judge by the impugned order convicted the appellant for the offence punishable under Sections 10(m) of the POCSO Act and sentenced him to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/-, in default of payment of fine, to suffer further simple

imprisonment for three months. The appellant is also sentenced to suffer rigorous imprisonment for two years for the offence punishable under Section 354-A of I.P.C. and to pay fine of Rs.5,000/- in default of payment of fine, the appellant to suffer further rigorous imprisonment for one month. The appellant is acquitted of the offence punishable under Section 376(2)(i) of I.P.C. and Sections 4 and 6 of POCSO Act. Feeling aggrieved with the impugned judgment and order of conviction, the present appeal came to be filed.

04] It is contended on behalf of the learned Counsel for the appellant that the appellant has been falsely implicated in this case. According to him, the appellant was having relations with Bhagabai Kawre and, therefore, the appellant used to visit her house frequently, which was not liked by neighbour Reena (PW-1). On the day of alleged incident, just because the appellant slapped the victim girls, a false complaint has been lodged against the appellant. According to him, PW-1 has admitted in her cross-examination that she did not like frequent visits of the appellant in the house of Bhagabai. Taking help of the said admission, the learned Counsel for the appellant submits that to take revenge, a false case has been lodged against the appellant. According to him, the case put forth by the prosecution of molesting two girls at a time, does not appear to be probable. Hence,

according to him, the learned Sessions Judge did not appreciate this aspect of the case and erroneously held the appellant guilty for the aforesaid offences. According to him, the trial Court did not appreciate the evidence on record in proper perspective and came to a wrong conclusion of holding the appellant guilty. Therefore, the findings of the trial Court do not consistent and liable to be set aside by acquitting the appellant.

05] *Per contra*, the learned Additional Public Prosecutor for the State vehemently submits that the evidences of the prosecution witnesses are consistent and corroborating each others. According to him, Section 29 of the POCSO Act permit to rely on the sole version of the victim girl. The victim girls have given details of the alleged acts, which were rightly appreciated by the learned Sessions Judge. According to him, nothing is brought on record to disbelieve the versions of the prosecution witnesses. The learned Sessions Judge has rightly appreciated the evidence of the prosecution witnesses and, therefore, no interference in the impugned judgment and order is required.

06] Having heard the learned Counsel for the appellant as well as the learned A.P.P. for the State, I have perused the evidence and documents on record.

07] At the outset, let me state that the birth certificates of the victims have been placed on record, which show their date of birth as 10/01/2014

and 28/04/2011. The birth certificate of victim (PW-3) is admitted by the defence. Rather, the defence has not seriously challenged the age of victim girl. There is no single suggestion to victim (PW-2) that she was not child on the alleged date of incident. Reena (PW-1), the mother of a victim, has specifically deposed the date of birth of victim (PW-2), which supports the birth certificate (Exh.22) of victim (PW-2). Thus, the victims are child within the meaning of Section 2(1)(d) of the POCSO Act.

08] Reema (PW-1) has deposed that victim (PW-2) was 4 years of age and victim (PW-3) was 7 years of age at the time of incident. They both were studying in a school, namely, Vaibhav Prathamik Marathi School at Mudliyar Nagar, Amravati. On the day of incident i.e. on 10/03/2018, they have dropped both the girls in Anganwadi and they went to the hospital along with daughter-in-law of Bhagabai. When they returned from the hospital, both the girls approached to them and disclosed that they were watching TV in the house of Bhagabai; the appellant was also there; and he inserted his hand into the nicker of both the girls and touched to their private part. Therefore, they approached the Police Station and lodged the report.

09] To corroborate the version of PW-1, prosecution has examined her daughter i.e. victim (PW-2). She has categorically narrated about the incident. She testified that Bhaga Aaji is residing near to her house. On that

day, the appellant has put his hand inside her nicker. She has used the word “Chaddit Hat Takla”. She has also narrated the name of another victim girl. She also testified that she has narrated incident to her mother, police and one madam. She has also visited the police-station and hospital.

10] PW-3 is another victim girl. She has also disclosed that she is residing in the house of Bhaga Aaji. Another victim girl (PW-2) is also residing with her parents. She testified that on the day of incident, the appellant has put his finger into her urinal place and urinal place of another girl. On that day, her mother had been to the hospital along with Bhaga Aaji. She has also identified the appellant, who was sitting behind the partition.

11] Through Ashok Namdeorao Tayade (PW-4), spot-panchnama has been placed on record. PW-5 and PW-6 are the Investigating Officers, who have deposed about referring the victim girls for medical examination; preparation of spot-panchnama and completion of investigation by recording the statement of witnesses. The important witnesses viz. PW-1, PW-2 and PW-3 have been cross-examined at length. The only thing, which could be brought on record, is that the visit of the appellant to the house of Bhagabai was disliked by PW-1 and the mother of PW-3.

12] Perusal of entire evidence of PW-1, PW-2 and PW-3 reveals that at the relevant time, mothers of both the victim girls were not at house and the

victims were at the house of Bhagabai, where the appellant was present. This takes me into the statement of the appellant recorded under Section 313 of the Code of Criminal Procedure, wherein he has admitted his presence along with these two girls at the house of Bhagabai. However, he further put rider that he slapped a victim girl, therefore, a false complaint has been lodged against the appellant.

13] There is consistency in the evidence of PW-1, PW-2 and PW-3 regarding molestation by touching the private parts of the victims. No suggestion was put forth by the appellant, just because he slapped once to the daughter of the informant, he has been falsely implicated in this case. Except disliking of visits of the appellant to the house of Bhagabai by the mothers of the victims, there is nothing on record to show that there was any previous enmity in between Reena (PW-1) and the mother of victim (PW-3) with the appellant to the extent of lodging a false report at the cost of reputation of their minor daughters by their respective mothers.

14] The careful analysis of the evidence of both the victim girls clearly shows that it is the appellant, who has molested them by touching to their private parts, when there was nobody in the house. The facts, that they immediately disclosed the incident to their mothers and thereafter immediately written report was filed by the informant about the alleged

incident, corroborate to their versions. No material has been brought on record in the form of cross-examination to believe that the appellant has been falsely implicated in the case.

15] The trial Court has rightly appreciated evidence on record and came to the conclusion that the prosecution has proved that the appellant has intentionally outraged the modesty of the victim girls and thereby committed an offence punishable under Sections 354 and 354-A of I.P.C. and under Sections 9 and 10 of POCSO Act as well. Therefore, I find no merit in the appeal.

16] The impugned judgment and order passed by the learned Sessions Judge does not require interference with the hands of this Court. Accordingly, the appeal fails and is dismissed.

(M.W. CHANDWANI, J.)

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