



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

CRIMINAL APPEAL NO.838 OF 2022

Appellant : Shankar s/o Dilip Dhabaddhao,
 Convicted Offender (C-5732),
 Aged about 24 years, Occp. Labour,
 R/o Mungsaji Nagar, New Malegaon,
 Tq. Malegaon, Dist. Washim.
 – Versus –

(At present in Central Jail
 Amravati)

Respondents : 1. State of Maharashtra,
 Through Police Station Officer,
 Police Station, Malegaon, Tq. Malegaon,
 Dist. Washim.

2. Mr. XYZ
 (Victim in Crime No.143/2018,
 Police Station Malegaon, Dist. Washim)

 Mr. R.K. Maheshwari, Advocate (Appointed) for the Appellant.
 Mr. H.D. Futane, A.P.P. for Respondent No.1/State.
 Mr. M.L. Vairagade, Advocate (Appointed) for Respondent No.2.

CORAM : **M.W. CHANDWANI, J.**
RESERVED ON : **5th FEBRUARY, 2024.**
PRONOUNCED ON : **20th FEBRUARY, 2024.**

JUDGMENT:

The appellant has challenged the judgment and order dated 24/12/2019 passed by the learned Additional Sessions Judge, Washim in Special Child Case No.30/2018, whereby the appellant was convicted for the offence punishable under Section 377 of the Indian Penal Code (I.P.C.) and

sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.2,000/-. The appellant was further convicted for the offence punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and sentenced to suffer rigorous imprisonment for seven and ten years, respectively, with fine amount of Rs.2,000/- on each count. The case of the prosecution can be culled out as under :

02] The victim, a male child of eleven years, who hails from Mumbai, came to visit his grandmother at Malegaon during holidays. On the day of incident i.e. on 25/05/2018, the grandmother of the victim went out for work. The victim was playing outside the house. The appellant, who is a neighbour and acquainted with the victim, came there and took the victim boy to a nearby hut, situated near Swami Samarth Temple for playing. Both felt thirsty and the appellant took the victim boy inside the hut. The appellant closed the door from inside. The appellant made the victim boy lay down and remove his underwear below the knee and committed forcible carnal intercourse in the anus of the victim boy. The appellant also slapped the victim. When the victim boy made hue and cry, the appellant left him and let the victim go. When the grandmother of victim returned home at about 06:30 p.m., the victim informed the incident to her. The informant i.e. the grandmother of victim, lodged the oral report [Exh.11] with Malegaon Police Station, whereby

the law was set in motion. The victim boy was sent for medical examination. The appellant was arrested. He was also subjected to medical examination. After completion of investigation, the charge-sheet came to be filed for the offence punishable under Sections 377, 504 and 506 of I.P.C. and under Sections 4 and 5(m) of the POCSO Act.

03] In support of its case, the prosecution has examined in all six witnesses i.e. the informant (PW-1), the grandmother of the victim at Exh.10; the victim (PW-2) at Exh.14; Dr. Sandip Devrao Wadhwe (PW-3), who examined the victim as well as the appellant at Exh.18; Santosh Kisan Kamble (PW-4), the panch to the spot-panchnama at Exh.21 and lastly, Sanjay Natthu Gawai (PW-5), A.S.I. at Exh.28 and Sukeshini Uttamrao Jamdade (PW-6), P.S.I, at Exh.35. Whereas, the appellant did not examine anybody in his defence. After appreciating the evidence on record, the Special Court recorded the conviction by impugned judgment and order. Feeling aggrieved, the present appeal is filed.

04] Mr. R.K. Maheshwari, learned Counsel appearing on behalf of the appellant submitted that the trial Court has committed serious error in holding the appellant guilty for the offence punishable under Section 377 of I.P.C. and Sections 4 and 6 of POCSO Act, without there being any independent eye-witness. It did not consider the material omissions and contradictions in the

version of the prosecution witnesses. The learned trial Court also did not appreciate the evidence of the prosecution witnesses in proper perspective, which resulted in miscarriage of justice. It is submitted that in these circumstances, the findings rendered by the trial Court are unsustainable and are required to be set aside by allowing the appeal.

05] *Per contra*, Mr. H.D. Futane, learned A.P.P. for respondent No.1/ State vehemently submitted that the trial Court has rightly appreciated the evidence of the victim as well as the medical evidence on record. According to him, there is no infirmity in the judgment of the trial Court. He supported the impugned judgment and order of the trial Court and sought rejection of the appeal.

06] I have gone through the impugned judgment, the evidence of the prosecution witnesses and other material on record.

07] Since, the provision of the POSCO Act has been pressed into service by the prosecution, it is necessary to see, whether the victim boy is a child within the meaning of Section 2(d) of the POSCO Act. The birth certificate produced by the prosecution evidencing the date of birth of the victim boy as 30/08/2007. Not only this, the victim has deposed his date of birth as 30/08/2007. The appellant did not challenge this aspect neither

before the trial Court nor before this Court. The alleged incident occurred on 25/05/2018. Therefore, on the date of incident, the victim was below 11 years and is a child within the meaning of Section 2(d) of the POCSO Act.

08] Perusal of the evidence of the victim goes to show that on 25/05/2018, when the victim had been to Malegaon, the appellant took him to a hut and closed the door and he made him to remove his pant and underwear and inserted his penis many times in his anus forcefully. After hue and cry made by the victim, the appellant let the victim go. The evidence further revealed that he informed the incident to his grandmother in the evening, when she came back home. The informant (PW-1), grandmother of the victim boy, on whose complaint the aforesaid offence came to be registered, has been examined as PW-1. She claims that after she returned to home at 06:30 p.m., the victim told her the incident of unnatural sex done by the appellant. Therefore, she immediately took the victim to the Police Station and lodged the oral report vide Exh.11. No material contradictions and omissions have been brought on record in the version of these witnesses, which will lead to disbelieving by their versions.

09] This takes me to the version of Dr. Sandip Wadhwe (PW-3), who was working at Rural Hospital, Malegaon at that relevant time as Medical Officer. His version goes to show that he examined the victim and he found

swelling and abrasion with fresh bleeding on anal region of the victim and opined that findings are consistent with the sexual intercourse. Thus, the evidence of Dr. Sandip Wadhwe (PW-3) corroborates the version of PW-1, grandmother of the victim and PW-2, the victim. The appellant has come up with a defence that just because there was dispute between the grandfather of the victim and the appellant in respect of a road, he has been falsely implicated in the case. Except bare suggestions, nothing has been brought on record by the appellant. The lodging of report on the day of incident coupled with the presence of injury and spasm of the anal region of the victim also speaks in volume. The evidence of the prosecution witnesses is consistent on material aspect.

10] The learned trial Court, after discussing the evidence of the victim, her grandmother and the medical evidence in detail, rightly recorded the findings of the guilt of the appellant for the offence punishable under Section 377 of I.P.C. and Sections 4 and 6 of the POCSO Act. No infirmity is noted in the findings of the learned trial Court. The learned trial Court has rightly recorded the conviction and sentenced the appellant. Even, this Court finds that the learned trial Court, after considering the aggravated and mitigating circumstances, imposed an adequate sentence, which is just and proper.

11] No interference is required in the findings and sentence recorded by the trial Court. There is no merit in the appeal. Consequently, the appeal fails.

(M.W. CHANDWANI, J.)

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