



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 773 OF 2022

APPELLANT : Ramjiwan @ Ramesh S/o. Rava
Rathod (Presently in Jail), Age about
48 Years, Occ: Labour, R/o.
Bhambora, Tah. Ghatanji, Dist.
Yavatmal.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through PSO
Ghatanji, Tah. Ghatanji, Dist.
Yavatmal.

Amended as per Court's
Order dt. 09.01.2023. 2. XYZ (Victim), in Crime
No.609/2019, registered in Police
Station Ghatanji, Tah. Ghatanji, Dist.
Yavatmal.

Mr. M.L. Vairagade, Advocate for the Appellant.
Mr. A.R. Chutke, APP for Respondent No.1/State.
Ms. Mohini A. Sharma, Advocate appointed to represent
Respondent No.2/victim.

CORAM : G. A. SANAP, J.
DATED : 18th NOVEMBER, 2024.

ORAL JUDGMENT

. In this appeal, challenge is to the judgment and order
dated 18.08.2022, passed by the learned Additional Sessions Judge

(Special Judge, POCSO Act), Yavatmal, whereby the learned Judge convicted the appellant for the offences punishable under Section 354-A of the Indian Penal Code, 1860 (for short, “IPC”) and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, “POCSO Act”), and sentenced him to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- and in default to suffer further simple imprisonment for 3 months for the offence punishable under Section 354-A of the IPC and rigorous imprisonment for 5 years and to pay a fine of Rs.10,000/- and in default to suffer further simple imprisonment for 3 months for the offence punishable under Section 8 of the POCSO Act. No separate sentence has been awarded for the offence punishable under Section 12 of the POCSO Act.

02] BACKGROUND FACTS:

PW-1 is the victim-girl, who, at the time of the incident, was around 13 years of age. The crime was registered on her report. The case of prosecution, which can be unfolded from the report and the other materials, is that the incident in question occurred on 22nd November, 2019, at about 7:30 p.m. The house of the appellant is in front of the house of the informant. In the year

2019, the victim was studying in 7th Standard at Arni. The victim was at house on 22nd November, 2019. She was standing in front of her house. The appellant requested the victim to provide him a lemon. The victim went inside the house and brought the lemon. The victim went towards the house of the appellant. After collecting the lemon, the appellant called the victim inside his house on the pretext of providing her jujube fruit (Bor). The victim went inside the house of the appellant. The appellant told her to sit on the cot. The appellant gave a sudden push to the victim. The appellant forcibly lied her on the cot. The appellant lied on her person and pressed her breast. The victim raised shouts. The appellant, therefore, ran away from the house. The victim went back to her house, weeping. She narrated the incident to her mother and grandmother. Her father had gone to Arni. Her father came back from Arni, and they narrated the incident to him. Thereafter, the victim, along with her father, went to Ghatanji Police Station and lodged the report.

03] On the basis of the report of the victim-girl, a crime bearing No.609/2019 was registered against the appellant. PW-3 carried out the investigation. PW-3 drew the spot panchanama. PW-3 caused the statement of the victim recorded through the

learned Magistrate. PW-3 collected the birth certificate of the victim. The appellant was arrested. After completion of the investigation, he filed the charge-sheet against the appellant in the Court. The learned Judge framed the charge against the appellant. The appellant pleaded not guilty. His defence is of false implication on account of monetary dispute between him and the father of the victim. The prosecution, in order to bring home the guilt of the appellant, examined 3 witnesses. The learned Judge, on consideration of the evidence, held the appellant guilty of the charge and sentenced him as above. The appellant has come before this Court in appeal.

04] I have heard Mr. M.L. Vairagade, learned advocate for the appellant, Mr. A.R. Chutke, learned APP for respondent No.1/ State and Ms. Mohini A. Sharma, learned advocate appointed to represent respondent No.2/victim. Perused the record and proceedings.

05] Learned advocate for the appellant submitted that there is no independent corroboration to the evidence of the victim. PW-2 is none other than the father of the victim-girl and as such the interested witness. Learned advocate took me through the

evidence of the victim and submitted that her evidence does not inspire confidence. The evidence is not sufficient to prove the charge. Learned advocate submitted that the defence of the appellant is probable and, as such, deserves acceptance. Learned advocate took me through the evidence of the defence witness. It is submitted that the defence witness categorically stated about the dispute between the appellant and the father of the victim on account of the money lending transaction. Learned advocate submitted that the learned Judge has failed to properly appreciate the evidence and, as such, has come to a wrong conclusion. Learned advocate submitted that there is no cogent, concrete, and reliable evidence with regard to the birth date of the victim. The birth certificate produced on record cannot be accepted as concrete evidence to prove the birth date of the victim.

06] Learned APP submitted that the victim and her father have stated the birth date. It is submitted that the birth certificate of the victim was collected by the Investigating Officer. The birth certificate proved in this case is the certified copy issued by the Competent Officer on the basis of the public record. Learned APP submitted that, since the birth certificate and the birth date has not

been challenged in the cross-examination of the victim-girl, the contention sought to be raised challenging the said evidence at this stage cannot be accepted. Learned APP further submitted that the evidence of the victim cannot be disbelieved and discarded. The victim-girl, in her evidence, has narrated the first-hand account of the incident. Learned APP took me through the cross-examination of the victim and pointed out that there is not a single admission in her cross-examination to doubt the credibility and trustworthiness of the victim. Learned APP submitted that the occurrence of the incident has been fortified by the conduct of the victim and her father. The report of the incident was lodged without any delay. Learned APP submitted that, after this incident, the appellant was absconding for three months, and ultimately he was arrested from Nashik. Learned APP submitted that the evidence of the victim-girl is of stellar quality. It is also submitted that the father of the victim-girl would not have involved the victim in such a deplorable incident to take revenge against the appellant. Learned APP submitted that, on the material part, the evidence of PW-2, the father of the victim, is relevant. It is sufficient to prove the conduct of the victim and her mother. Learned APP submitted that the learned Judge has recorded cogent reasons in support of his findings. In short, it is submitted that the well-reasoned judgment

and order does not warrant interference.

07] Learned advocate Ms. Mohini A. Sharma, appointed to represent respondent No.2/victim, has adopted the submissions advanced by the learned APP.

08] Exh.24 is the birth certificate of the victim. The Investigating Officer has stated that the father of the victim, on his written requisition, had provided the birth certificate to him. The birth certificate was compiled in the charge-sheet. The victim, in her evidence, has stated that her birth date is 27th February, 2007. The victim, at the time of lodging the report as well as at the time of recording her statement by the Magistrate, stated her age. She has stated that she is 12 years old. Exh.24 is the birth certificate. Perusal of the birth certificate would show that the birth of the victim with Gram Panchayat was registered on 28th February, 2007. The registration number from the Gram Panchayat record is 6. The birth certificate was issued on 29th February, 2007. The certified copy of the birth certificate was signed by the Secretary of Gram Panchayat, Bhambora. The birth certificate was issued on the basis of the public record. The prosecution has not examined any witness from village Gram Panchayat, Bhambora. In my view, it

may not be necessary in all cases to examine the witness from the Gram Panchayat. In respect of such a public document, there is a presumption.

09] It is not the defence of the appellant that the entry of the birth and birth date of the victim was recorded for the first time after registration of the crime. The incident in question occurred on 22nd November, 2019. On the date of the incident, the victim-girl was studying in 7th Standard. The police had no reason to create such documentary evidence after registration of the FIR. Similarly, the Secretary of the Gram Panchayat, who is the Registrar (Birth and Death), had no reason to take an entry of birth and birth date of the victim after lodging the report. The appellant has not challenged the oral as well as documentary evidence adduced by the prosecution with regard to the birth date of the victim. The evidence, therefore, proves that, on the date of the incident, the victim was around 13 years of age and, as such, a child as defined under Section 2(1)(d) of the POCSO Act.

10] PW-1 is the victim and the star witness for the prosecution. The victim, in her examination-in-chief, has reiterated the incident recorded in the FIR. She has stated that the house of

the appellant is in front of her house. On the date of the incident, while she was standing in front of her house, the appellant made a demand of lemon. She has stated that she gave a lemon to the appellant in front of his house. She has stated that the appellant, on the pretext of giving Jujube fruit (Bor) to her, called her inside the house. In the house, he made her sit on the cot. She has stated that thereafter the appellant lied her on the cot and then pressed her breast. She has stated that, therefore, she raised shouts. The appellant ran away from the house. She has further stated that, after this incident, she went to her house weeping and narrated the incident to her mother and grandmother. She has stated that her father had gone to Arni on the date of the incident. The father came in the evening, and they narrated the incident to the father, and thereafter they went to the police station and lodged the report. Perusal of her cross-examination would show that no material of any significance has been elicited in her cross-examination to discard and disbelieve her evidence. The suggestions, consistent with the defence of the appellant, have been put to her. The victim has denied all the suggestions. The victim has stated that she would call the appellant as elder father (Mothe Baba).

11] It is to be noted that, prior to this incident, there was no dispute as such between two families. It is, therefore, apparent that, when the appellant called the victim inside the house, the victim did not doubt his intention. The victim had obliged the appellant by giving him a lemon. The victim, therefore, believed that, in order to discharge his obligation, he was giving her the Jujube fruit (Bor). Perusal of her evidence in entirety would show that there is no reason to discard and disbelieve the same. The statement of the victim was recorded by the learned Judicial Magistrate First Class, Ghatanji, on 31st December, 2019. The victim reiterated the entire incident before the learned Magistrate. It is to be noted that, if the false report was lodged against the appellant by the victim on the say of her parents for some reason or the other, the victim would have been easily exposed on certain material aspects in her cross-examination. The cross-examiner would have exposed the victim in the cross-examination, if the account of the incident narrated was the result of tutoring and imaginary. I do not see any reason to discard and disbelieve the evidence of the victim.

12] PW-2 is the father of the victim. He has stated that, on the date of the incident, he had gone to Arni for work. He has stated that, when he came back, he found that the victim was

weeping. He has stated that, on enquiry, the victim narrated the entire incident to him. He has stated that, therefore, they decided to report the matter to the police. He took the victim to Ghatanji Police Station. He has stated that his wife and his brother accompanied them. PW-2 was subjected to searching and grueling cross-examination. Perusal of his cross-examination would show that the appellant put questions consistent with his defence to PW-2. PW-2 has denied all the questions put to him consistent with the defence of the appellant. It was suggested to him that there was a financial transaction between him and the appellant. It was suggested to him that the appellant had borrowed money from him and the appellant was not ready to repay the money, and therefore to corner the appellant and to compel him to repay the money, the false report was lodged against him. PW-2 has denied all the suggestions. As far as PW-2 is concerned, he was not the witness to the main incident. The conduct of the victim and this witness deserves consideration.

13] It is to be noted that the report of the incident was lodged at 9:00 p.m. on 22nd November, 2019. The incident occurred on the same day at 7:30 p.m. The mother and grandmother of the victim were at house. The victim narrated the

incident to them. However, they suggested the victim to wait till her father comes back from Arni. The conduct of the victim in narrating the incident to the mother and grandmother is consistent. The father, on being informed about the occurrence of the incident, without wasting further time, took the victim to the Police Station, Ghatanji, and lodged the report. It needs to be stated that, therefore, the possibility of exaggeration or embellishment of the incident has been completely ruled out in this case. The prompt lodging of the report is the most important circumstance in such a crime.

14] It is pertinent to mention that the victim, on the date of the incident, was about 13 years of age. The parents, even for the purpose of recovery of borrowed money from the appellant, would not have involved their daughter in such an incident. It needs to be stated that the reporting of such a matter to the police invites stigmatic consequences. The reporting of such a matter causes irreparable damage to the future and reputation of the girl. The parents could have invented any other story to involve the appellant. In my view, this is another circumstance in favour of the case of the prosecution.

15] The appellant has examined one defence witness. Perusal of the evidence of the defence witness would show that it is not sufficient to accept the defence of the appellant. The evidence of the defence witness lacks material particulars as to the transaction. Certain facts with regard to the sale of cotton, etc., by PW-2 in the absence of the appellant from his house are highly unbelievable. The spot panchanama has been admitted by the appellant. Perusal of the panchanama would show that, at the time of the panchanama, the appellant and his wife were not present. The panchanama does not show that the cotton was found in the house at the time of the panchanama. In my view, therefore, this fact causes a dent to the very substance of the evidence of the defence witness. In view of this, I am satisfied that the evidence on record is sufficient to prove the charge against the appellant. The evidence is sufficient to prove the foundational facts viz-a-viz the charge framed against the appellant. Therefore, the presumption under Section 29 of the POCSO Act was triggered against the appellant. The appellant has made an unsuccessful attempt to rebut the said presumption. The evidence adduced by him is not sufficient to rebut the said presumption. In view of this, I conclude that, on merits, I do not see any substance in this appeal. The evidence is sufficient to prove the offence of sexual assault as defined under

Section 7 of the POCSO Act as well as the offence of sexual harassment as defined under Section 354-A of the IPC.

16] Learned advocate for the appellant submitted that the appellant, so far, has undergone the sentence of 3 years 4 months and 24 days. Learned advocate further submitted that the appellant is 50 years of age. There is no support to his wife. It is submitted that, considering the gravity of the offence, the sentence already served by the appellant would meet the ends of justice.

17] Learned APP submitted that the appellant has misused the faith of the victim-girl. The victim-girl would call the appellant as elder father. The victim-girl obliged the appellant by giving him a lemon. Learned APP, in short, submitted that the sentence of 5 years awarded by the learned Judge is just and proper.

18] Learned advocate for the victim submitted that, after registration of the crime, the father of the victim was assaulted by the relatives of the appellant. The matter was reported to the police. In short, it is submitted that the appellant does not deserve leniency.

19] The punishment for sexual assault has been provided under Section 8 of the POCSO Act. The punishment as per Section 8 of the POCSO Act for the proved offence under Section 7 of the POCSO Act shall not be less than three years but which may extend to five years and fine. The punishment prescribed under Section 354-A of the IPC may extend to three years or with fine or with both.

20] It is seen on perusal of the record that the appellant has paid the fine amount. In my view, considering the age of the appellant and other attending circumstances, the sentence of 3 years 4 months and 24 days already suffered by the appellant would be the sufficient punishment. The appellant, during this period of incarceration, might have reflected on his shameful act and repented over the same. In my view, therefore, on this count, the submission deserves acceptance. Hence, I proceed to pass the following order:

ORDER

- i] The Criminal Appeal is **partly allowed**.
- ii] The judgment and order of conviction passed against the appellant by the learned Additional Sessions Judge (Special Judge,

POCSO Act), Yavatmal, dated 18.08.2022 in Special (Child) Case No.53/2020 for the offences punishable under 354-A of the Indian Penal Code, 1860 and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, is maintained. However, the order with regard to the sentence is modified.

iii] It is ordered that the appellant - Ramjiwan @ Ramesh S/o. Rava Rathod shall undergo the sentence already suffered by him.

iv] The appellant has deposited the fine. He is in jail. He be released forthwith, if not required in any other case/crime.

v] The High Court Legal Services Sub-Committee, Nagpur, shall pay the fees to the learned advocate appointed to represent respondent No.2, as per Rules.

vi] The Criminal Appeal stands disposed of in the above terms.

(G. A. SANAP, J.)

Vijay