



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

**CRIMINAL APPEAL NO. 812 OF 2019**

**APPELLANT** : Vilas S/o. Tanaji Dhobale, Aged  
about 22 Years, Occ. Private Service,  
R/o. Mohgaon Bhadade, Tah.  
Narkhed, Dist. Nagpur (Presently in  
Central Prison at Nagpur).

**//VERSUS//**

**RESPONDENTS** : The State of Maharashtra, through  
P.S.O., Police Station Narkhed, Dist.  
Nagpur.

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Ms. Kirti Deshpande, Advocate for the Appellant.  
Ms. Kavita Bhondge, APP for the Respondent/State.

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**CORAM : G. A. SANAP, J.**  
**DATED : 11<sup>th</sup> JUNE, 2024.**

**ORAL JUDGMENT**

. In this appeal, challenge is to the judgment and order dated 16.04.2019, passed by the learned Additional Sessions Judge, Nagpur, whereby the learned Judge, on conviction, sentenced the accused to suffer rigorous imprisonment for three years and to pay a fine of Rs.2,000/- for the offence punishable under Section 363 of the Indian Penal Code, 1860 (for short, "IPC"); rigorous

imprisonment for seven years and to pay a fine of Rs.5,000/- for the offence punishable under Section 366(A) of the IPC; and rigorous imprisonment for twelve years and to pay a fine of Rs.8,000/- for the offence punishable under Section 376(2)(n) of the IPC. The accused, though convicted for the offence punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, “POCSO Act”), no separate sentence has been awarded.

02] BACKGROUND FACTS:

The victim in this case is a minor girl of 15 years old. The informant is the father of the victim. The informant lodged the report at Narkhed Police Station on 17<sup>th</sup> September, 2017. The accused is a distant relative of the informant. The victim on the date of the incident was studying in the 10<sup>th</sup> standard in Gomukh Vidhyalaya, Pipla Kewalram. It is stated that on 12<sup>th</sup> September, 2017, as usual, the victim went to the school at about 10.00 a.m.; however, she did not come back home. The informant made an inquiry with the classmates of the victim. The classmates informed him that the victim did not attend school on that day. The informant made a search of the victim at the house of his relatives

and other places, but the victim could not be traced out. The informant had suspicion over the accused. He has stated that the accused, who is residing near his house, took advantage of the innocence of the victim and kidnapped her for unknown reasons.

03] On this report, a Crime bearing No.294/2017 was registered for the offence punishable under Section 363 of the IPC. The Investigating Officer, during the course of the investigation, came to know that, after kidnapping the victim, the accused carried the victim to village Nandani, district Kolhapur and started residing in a rented room. The Investigating officer, accompanied by the father of the victim and other relatives, proceeded to village Nandani. On enquiry at village Nandani, they came to know that the accused has taken a room on rent, and he is residing in the said room with the victim. They went there. The accused and the victim were found in the said premises. The accused was arrested. The spot panchanama of the said spot was drawn. The victim narrated the incident to the police. According to the victim, the accused promised her a job, and under the promise of providing her a job, kidnapped her. The victim further stated that the accused, under the promise of providing the job, committed sexual intercourse with her on number of occasions. After this, the supplementary

statement of the informant was recorded. Similarly, the statement of the victim was recorded. The investigation revealed the commission of the above-stated offences. The victim was examined by the Medical Officer.

04] After completion of the investigation, the charge-sheet was filed. On committal of the case to the Sessions Court, the learned Additional Sessions Judge framed the charge against the accused. The accused pleaded not guilty to the said charge. In order to bring home the guilt against the accused, the prosecution examined six witnesses. The learned Judge found the accused guilty of the above offences and sentenced him as above. The accused is, therefore, before this Court in appeal.

05] I have heard Ms. Kirti Deshpande, learned advocate for the appellant/accused, and Ms. Kavita Bhondge, learned APP for the State. Perused the record and proceedings.

06] Learned advocate for the accused submitted that the evidence of the victim and the informant does not inspire confidence, inasmuch as there are major inconsistencies and omissions in their evidence as to the occurrence of the incident in

the manner stated by them. Learned advocate submitted that the accused has been falsely implicated in this case. Learned advocate further submitted that the medical evidence does not corroborate the oral testimony of the victim on the point of penetrative sexual assault. Learned advocate submitted that, except the bare words of the victim and the informant, there is no other evidence. Learned advocate submitted that PW-4 is the interested witness, and therefore, reliance can not be placed on the said evidence. Learned advocate submitted that the accused has been prosecuted only on the basis of suspicion. Learned advocate submitted that there was a delay in lodging the FIR. Learned advocate submitted that the delay has not been properly explained, and therefore, it is fatal to the case of the prosecution. Learned advocate submitted that the learned Additional Sessions Judge has failed to properly appreciate the evidence on record. Learned advocate submitted that the evidence on record is sufficient to create a doubt about the case of the prosecution, and therefore, the benefit of the said doubt ought to have been extended to the accused. Learned advocate further submitted that the conviction and sentence under Section 366(A) of the IPC was not at all justified. Learned advocate submitted that the accused deserves to be acquitted.

07] Learned APP submitted that the evidence of the victim as to the actual occurrence of the incident is consistent. Learned APP submitted that the evidence of the victim on the point of penetrative sexual assault has been fully corroborated by the medical evidence. Learned APP submitted that the evidence of PW-2, the father of the victim, is consistent with the evidence of the victim. Learned APP submitted that the accused and the victim stayed together in the rented premises at village Nandani. Learned APP submitted that the victim at the time of the incident was 15 years old and, therefore, the defence of consensual intercourse by the accused with the victim cannot be entertained. Learned APP submitted that there was no delay at all in lodging the FIR. Learned APP submitted that the victim went missing on 12<sup>th</sup> September, 2017, and the informant, being the father of the victim, took search of the victim. After coming to know that the accused was also not present in the village, he developed a suspicion about him and thereafter lodged a report on 17<sup>th</sup> September, 2017. Learned APP submitted that in the report lodged at Exh.30, the informant expressed the suspicion that the accused might have kidnapped his daughter. Learned APP submitted that, till the accused and the victim were traced out at village Nandani, he was not aware of the whereabouts of the victim. Learned APP

submitted that the well-reasoned judgment and order passed by the learned Additional Sessions Judge does not warrant interference.

08] I have perused the oral and documentary evidence on record. I have also perused the judgment and order passed by the learned Additional Sessions Judge. PW-1 is the victim. The statement of the victim was recorded under Section 164 of the Code of Criminal Procedure, 1973. Similarly, when she was traced out at village Nandani, she made a categorical statement before the police about her kidnapping with the false promise and the sexual intercourse committed by the accused with her. The evidence of the victim has been made the basis by the learned Judge to convict the accused. Perusal of the evidence of the victim would show that in her evidence she has placed on record the first-hand account of the incident. She has stated that on 10<sup>th</sup> September, 2017 at about 11.00 a.m., she received a call from the accused, and the accused told her that he would arrange a job for her and asked her to accompany him. She has stated that she agreed to accompany the accused. Thereafter, she went to Saoner. They both boarded the bus at Saoner for Pipla. The accused brought her to Nagpur, and from Nagpur, he took her to an unknown place, and from the said unknown place, he took her to village Nandani, district Kolhapur.

As far as the penetrative sexual assault is concerned, she has stated that the accused forced her to wear mangalsutra and toe rings. She has stated that at village Nandani, took a room on rent. She has categorically stated that on 16<sup>th</sup> September, 2017, the accused committed sexual intercourse with her. She has further stated that the accused committed rape on her for three days in the night, morning, and afternoon. Thereafter, he joined his duty. When she asked him about the job, the accused told her that he was trying. She has stated that till 6<sup>th</sup> October, 2017, when they were apprehended by the police, the accused repeatedly committed sexual intercourse with her. The birth certificate obtained by the police during the course of the investigation was shown to her. It is at Exh.24. She has stated that her birth date is 22<sup>nd</sup> September, 2002. In her cross-examination, she has admitted that the accused was acquainted with her because the accused is her distant relative. It was suggested to her in the cross-examination that since the accused had refused to marry with her elder sister, the false report was lodged by them against the accused. The suggestion was denied by the informant.

09] As far as the omission is concerned, it is seen that it pertains to the phone call made by her using the mobile phone of

the accused to her father. Perusal of this omission would show that when she realized that the accused had made a false promise to her, she tried to contact her father. The father has also stated about it. However, it revealed that this fact was not stated in their statements recorded by the police. One more omission is with regard to the wearing of mangalsutra and toe rings. In her evidence, the victim has stated that the accused had committed sexual intercourse with her repeatedly from 12<sup>th</sup> September, 2017 to 6<sup>th</sup> October, 2017.

10] The evidence of the victim shows that the accused was doing a job at village Nandani, district Kolhapur. The accused has taken a room on rent for their residence. This fact has been proved on the basis of the evidence of the father of the victim and PW-4. The father has deposed about the penetrative sexual assault on the basis of the information given to him by the victim. PW-2, the father of the victim, has deposed that the accused had kidnapped her daughter, and after making efforts to search her, he could not trace her out. He has stated that the accused was also missing from the village and, therefore, the suspicion was fortified. He has stated that, therefore, he lodged the report. He has stated that, after coming to know about the whereabouts of the victim and the accused, the necessary information was given to the police. He has

stated that he accompanied the Investigating Officer (PW-6) to village Nandani. He has further stated that their enquiry revealed that the accused and the victim were residing in a rented room at village Nandani. He has stated that, therefore, they went there and found that the victim was inside the premises.

11] Perusal of the evidence of the victim and PW-2 informant, coupled with the birth certificate at Exh.24, would show that, on the date of the incident, the victim was 15 years old. The informant is the natural guardian of the victim. The victim was taken out of the lawful guardianship of the informant without the consent of the informant. Similarly, the victim has categorically stated about the repeated rape committed on her by the accused after kidnapping. As far as the consent of the victim is concerned, it is immaterial, inasmuch as she was 15 years old at the time of the incident. The accused, at the time of the incident, was 22 years old. As far as the evidence of PW-1 victim and her father PW-2 is concerned, it is consistent. I do not see any reason to discard and disbelieve the said evidence. The victim was a child, as defined under the POCSO Act. The prosecution has proved that the victim was subjected to penetrative sexual assault, as defined under Section 3 and punishable under Section 4 of the POCSO Act.

12] The evidence of PW-4, who had accompanied the informant and the police to village Nandani, is also consistent as to the place where the victim and the accused were residing and where they were found. He has acted as a panch witness to the spot panchanama drawn by the police at the relevant time. He has also stated that when the accused and the victim were located in the rented house, the accused was arrested by the police. He has further stated that the victim was brought back to village Narkhed. His evidence is consistent with the evidence of the informant on this point. Similarly, he has corroborated the evidence of the victim on this point. As far as the evidence of the victim as to the rape is concerned, it is found to be of stellar quality. No significant admission has been elicited in her cross-examination to doubt her version as to the repeated rape committed on her by the accused. She has stated her birth date. The informant, who is the father of the victim, has also stated her birth date. The oral evidence of the victim and PW-2 on this count has been corroborated by the birth certificate. The accused, in the cross-examination of the victim and PW-2, has not at all challenged the birth certificate and the evidence of these two witnesses on this point. The victim, at the time of the incident, was 15 years old. Therefore, the defence of consensual sexual intercourse by the accused would be of no

significance.

13] There is contemporaneous documentary evidence to corroborate the case of the prosecution that the accused and the victim were traced out from village Nandani. Exh.39 is the spot panchanama. The spot mentioned in the panchanama is the house taken on rent by the accused at village Nandani. PW-4 is the panch witness. He is a distant relative of the victim. He had accompanied the father of the victim and the police to take search of the victim. PW-6 is the Investigating Officer. He has stated that, on the basis of CDR and SDR of two mobile phone numbers, the location of the accused was found. The CDR and SDR shown that his location was at village Nandani, Tah. Sirod, Dist. Kolhapur. He has stated that, therefore, they went to village Nandani and found the accused and the victim in the rented premises. The panchnama at Exh.39 has been proved. This contemporaneous documentary evidence is sufficient to corroborate the evidence of PW-6, PW-4, and the father of the victim that, on receipt of the location of the accused, they went to village Nandani, and at the said place, the accused and the victim were found.

14] There is one more circumstance which would weigh in favour of the case of the prosecution. The victim, on the date of the

incident, was 15 years old. The evidence of the victim has been found sufficient to prove the charge. Considering the nature of the crime, the possibility of false implication would be remote. The informant, the father of the victim girl, had no reason to falsely implicate the accused. It needs to be stated that there was no delay as such in lodging the report. The missing report was immediately lodged when he could not trace out his daughter. In my view, while appreciating the evidence in such cases, the Indian society setting needs to be borne in mind. The father of a 15 years old daughter will not jeopardize the future of his daughter. It needs to be stated that, in such cases, there is a reluctance on the part of the family members to report the matter to the police so that the pride and prestige of the family is not maligned. Disclosure of such a crime in public can bring disrepute to the family. Such a crime is treated in our society as stigma. If the disclosure of such a crime is made, then it becomes difficult to find a match for the girl in a respectable family. In my view, all these facts need to be borne in mind while appreciating the evidence on record. The informant would not have involved his daughter, even if he wanted to take revenge or wreck vengeance on the accused for some reason or the other. In this case, there is no sufficient material to establish enmity between the accused and the informant. Therefore, the evidence completely

rules out the possibility of false implication.

15] There is corroborative evidence in the form of the deposition of the Medical Officer. The accused and the victim stayed together from 12<sup>th</sup> September, 2017 to 6<sup>th</sup> October, 2017. This fact would be very relevant while appreciating the evidence of the Medical Officer. PW-3 has stated that on 9<sup>th</sup> October, 2017, she examined the victim. The history of the assault was narrated by the victim. She told her that the accused had committed forcible sexual intercourse with her. On examination, she found that there was old healed hymen torn at 6 o'clock position. She has stated that the medical examination of the victim revealed signs of force and sexual violence. The victim was 15 years old at the time of the incident. Her hymen was found torn. The accused and the victim stayed together, as stated above, for near about 25 days. The old torn hymen is sufficient evidence to prove that she was subjected to sexual intercourse. It is submitted by learned advocate for the appellant that the examination of the victim was carried out by Dr. Tembhekar and not by PW-3. This submission has been made on the basis of her cross-examination.

16] Perusal of the cross-examination, in my view, would show that PW-3 has nowhere admitted that she did not examine

the victim, and the victim was examined by Dr. Tembhekar. Dr. Tembhekar was her assistant. The form was filled by Dr. Tembhekar. This does not mean that the victim was not examined by PW-3. PW-3 has categorically stated in her evidence that she examined the victim. The evidence of PW-3, therefore, corroborates the version of the informant that she was subjected to repetitive sexual intercourse at the hands of the accused. The overwhelming evidence of the informant and other witnesses is sufficient to prove that the accused kidnapped the victim from the lawful guardianship of the father and committed rape on the victim.

17] The evidence on record is sufficient to prove beyond doubt the offence of kidnapping, rape and aggravated sexual assault. Learned Additional Sessions Judge has properly appreciated the evidence. Learned Additional Sessions Judge believed the direct evidence of the victim. I do not see any reason to reverse the decision rendered by the learned Additional Sessions Judge.

18] It is seen that in addition to the conviction under Section 363 of the IPC, the accused has been convicted under Section

366(A) of the IPC. I have minutely perused Section 366(A) of the IPC. In this case, the offence of kidnapping and rape has been proved. Section 366(A) is an aggravated form of kidnapping. Section 366(A) speaks about the accused who procures the minor girl for one or more reasons stated in Section 366(A). The victim here was subjected to illicit intercourse by the accused himself. The accused himself kidnapped her. Therefore, in this case, the offence under Section 366(A) of the IPC has not been made out. Therefore, to this extent, the conviction and sentence is required to be set aside.

19] Learned advocate for the accused submitted that the accused is a young man. Learned advocate submitted that the offence was committed in the year 2017. Learned advocate submitted that, on the date of the commission of the offence, the punishment provided was imprisonment not less than 10 years, but which could extend to imprisonment for life and a fine. The punishment was increased w.e.f. 21<sup>st</sup> April, 2018. Learned advocate submitted that the 12 years rigorous imprisonment awarded for the offense punishable under Section 376(2)(n) of the IPC was excessive. Learned advocate submitted that the minimum prescribed sentence of 10 years ought to have been awarded.

Learned advocate submitted that for awarding the sentence for more than 10 years, the reasons are required to be recorded. Learned advocate submitted that the reasons have not been recorded.

20] I have perused the record and proceedings. The reasons have not been recorded for awarding 12 years sentence. As submitted by learned advocate for the accused, that the accused is a young man, in my view, in the totality of the facts and circumstances, the sentence of 10 years imprisonment would serve the ends of justice. Accordingly, I proceed to pass the following order:

### ORDER

- i] The Criminal Appeal is **partly allowed**.
- ii] The conviction and sentence for the offence punishable under Section 366(A) of the IPC is set aside.
- iii] The appellant/accused – Vilas S/o. Tanaji Dhobale is acquitted of the offence punishable under Section 366(A) of the IPC.
- iv] The conviction and sentence for the offence punishable under Section 376(2)(n) of the IPC is maintained. However, the sentence is modified as under:

The appellant/accused shall undergo rigorous imprisonment for 10 years and to pay a fine and default sentence, as awarded by the learned Additional Sessions Judge.

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

(G. A. SANAP, J.)

Vijay