



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 666 OF 2024

Harishchandra Yamaji Ghode
Age: 50 years, Occu.: Agri.,
R/o Ghoti, Tq. Akole,
Dist. Ahmednagar

..APPELLANT

VERSUS

1. State of Maharashtra
Through Rajur Police Station,
Tq. Akole, Dist. Ahmednagar

2. XYZ

..RESPONDENTS

....
Mr. P.B. Jadhav, Advocate for appellant (appointed through Legal Aid)
Mr. S.D. Ghayal, Addl.P.P. for respondent no.1 – State
Mr. P.M. Kulkarni, Advocate for residence no.2 (appointed by Court)
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : 25th FEBRUARY, 2025
PRONOUNCED ON : 01st APRIL, 2025**

JUDGMENT (PER : R.G. AVACHAT,J.) :

1. The challenge in this appeal is to the judgment and order of conviction and consequential sentence dated 21st February, 2017 passed by the Court of Additional Sessions Judge, Sangamner ('trial Court') in Sessions Case No. 68 of 2015. Vide the impugned judgment and order, the appellant was convicted and consequently sentenced as under :-

"1. The accused Harishchandra Yamaji Ghode is hereby convicted u/s. 235(2) of Criminal Procedure Code for the offence u/s.5 of Protection of Children from Sexual Offences Act, 2012 punishable u/s.6 of the Act and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.2000/- (Rupees Two

Thousand only). In default to undergo rigorous imprisonment for three months.

In view of the above sentence, no separate sentence is awarded for the offence u/s. 376 of Indian Penal Code and Sec.4 of POCSO Act, though he is convicted for the same.”

2. The facts in brief, giving rise to the present appeal, are as follows:-

PW 1 – ‘A’ (victim) was said to be little over fifteen years of age at the relevant time. PW 2 – ‘B’ is the mother of the victim. She had been previously married. PW 1 – ‘A’ was born of the said wedlock. There was, however separation between the couple. She thereafter started residing with the appellant as his wife. This couple has been blessed with four children. PW 1 would reside with her mother, appellant (step-father) and her step-siblings as well. PW 1 was admitted to the school, initially. The appellant, however discontinued her schooling so as to ensure that she would take care of her younger siblings. Both, the appellant and PW 2 used to go out of the house for work. It is the case of the prosecution that the appellant, during absence of the other family members, would commit sexual intercourse with PW 1. He continued to do so for long. As a result, PW 1 conceived. Information was given to Rajur Police Station about PW 1, being minor, to have been conceived. Police officials, therefore, rushed to her house and took both, PW 1 and 2 to the police station. PW 1 was medically screened. It was found that she was pregnant of 26-28 weeks. PW 1 lodged the First Information Report (‘F.I.R.’) (Exh.22) against the appellant.

3. Crime, vide C.R. No. 38 of 2015 was registered. The crime was investigated. Crime scene panchanama was drawn (Exh.38). The appellant was arrested. He too was medically screened. PW 1 delivered a baby girl. Blood samples of the trio were obtained for DNA profiling. DNA reports indicate that appellant and PW 1 to be the biological parents of the new born. On completion of investigation, the appellant was proceeded against by filing the charge-sheet.

4. The trial Court framed the charge (Exh.6). The appellant pleaded not guilty. His defence was of false implication at the behest of police. At one stage it was suggested to PW 1 that she was in consensual relationship with the appellant and was above eighteen years of age at the relevant time.

5. The prosecution, to bring home the charge, examined twelve witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence, convicted and consequently sentenced the appellant as stated above.

6. Learned counsel, appointed to represent the appellant, would submit that there was delay in lodging of the F.I.R. The same has not been explained. There was step relationship between the victim and the appellant. The victim's mother (PW 2) did not stand by the prosecution. He would further submit that there was no reliable evidence to suggest PW 1 was below eighteen years of age at the relevant time. As regards DNA report,

learned counsel would submit that protocol regarding collection and preservation of the samples for DNA profiling has not been duly observed. No witness was examined in whose presence blood sample of the new born baby was said to have been obtained. Learned counsel relied on the following authorities to ultimately urge for allowing the appeal :-

- (I) ***Suresh s/o. Devidas Malche Vs. The State of Maharashtra, decided on 15.03.2023 (Criminal Appeal No. 306 of 2016);***
- (II) ***Premjibhai Bachubhai Khasiya Vs. State of Gujarat and Anr., 2009 Criminal Law Journal, 2888;***

7. Learned A.P.P. and learned counsel appointed to represent Respondent No.2 (victim) would submit that the victim did not have any reason to falsely implicate the appellant, who is not less than a father for her. They would further submit that the appellant took disadvantage of the victim to have been under his shelter. The offence is thus serious one. It was but natural for the victim to report the incident some what late that too on intervention of police, otherwise she would have been in dilemma where to go and fend for herself. Learned counsel took us through the evidence on record to submit that at one stage PW 1 was suggested to have consensual relationship with the appellant. A certificate issued by the Ashram school, wherein she was admitted, was tendered in evidence in proof of her age. Learned counsel reiterated the reasons given by the trial Court for conviction of the appellant and consequential sentence. Both of them relied on the following authorities and urged for dismissal of the appeal :-

- (I) ***Chhotelal Kandhari Pajapati vs. State of Maharashtra, 2017 ALL MR (Cri) 5323;***

(II) Pravin Popat Kharat Vs. State of Maharashtra, Mh.LJ (Cri)-2024-4-242;

(III) Gaya Prasad Pal Vs. State of Delhi, 2017 All MR (Cri) Journal 1

8. Considered the submissions advanced. Perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

9. PW 1 – ‘A’ testified that her date of birth is 11th March, 2000. PW 2 – ‘B’ is her mother. The appellant is her step-father. She would reside with them. She has step siblings as well. She further testified that she took education of 1st and 2nd standard at Ghoti and then she took admission to an Ashram school at village Palsunda. She was in 7th class in Kahane Ashram School. She further testified that after her examination of 7th class was over, she came to Ghoti for vacation. Since the appellant and her mother would go for work, she used to be at the house alongwith her younger siblings. The appellant removed her from school to ensure that she would take care of his children (step siblings of PW 1). She further testified that the appellant would not behave properly with her and her mother as well. She further testified that the appellant repeatedly committed sexual intercourse with her at their residence. The same happened while her mother used to be away for work in the field and brothers in the school. She further testified to have been conceived from the appellant. Her mother learnt about the same. She gave birth to a female child. Her evidence further indicates that the police officials

of Rajur Police Station had come to her house. She related them the incidents. Her statement (F.I.R., Exh.22) was recorded.

10. PW 1 further testified that the appellant would return home under influence of alcohol. He would beat up her mother and drive her out of the house. He would then commit sexual intercourse with her against her wish. The appellant had even threatened her of dire consequences, if she reported the matter to anyone. She further testified to have undergone medical screening. She delivered a baby girl. The girl was admitted to Snehalaya (a social organisation) at Ahmednagar.

During her cross-examination, she testified that she did not know when and where she was born. Her mother was deaf. She admitted that the appellant had not beaten up her mother in her presence. She claimed ignorance about her age. She admitted to have left the school on her own. She further testified that her mother, other siblings and the appellant would reside in one room. She even testified that her blood sample was not obtained nor her baby's. It was further suggested to PW 1 that she kept physical relationship with the appellant on her own. She flatly denied the same.

11. PW 2, mother of the victim, did not stand by the prosecution. In her cross-examination she stated that the victim was above twenty years of age at the relevant time. Learned A.P.P. submitted that the history given by mother of the victim would vouch for the prosecution case. Before the police she has stated against her husband.

12. PW 3 – Asha and PW 4 – Bhima were the neighbours of PW 1 and 2. Both of them did not speak about any physical relationship between the victim and the appellant. Their evidence only speaks of the appellant would return drunk and then quarrel with his wife.

13. PW 5 – Dr. Chaya had medically screened the victim. According to her, the victim was thirteen years of age in view of her ossification and radiological examination. According to her, the victim was referred to Civil Hospital, Ahmednagar. She found the victim pregnant of 24-26 weeks. The medical examination report of the victim is at Exhibit 26. She also examined the appellant and found him potent.

Only one question was put to her in cross-examination, denying age of the victim and her pregnancy.

14. PW 7 – Dr. Jayshri was the medical officer with Rural Hospital, Akole. She testified to have collected the blood of the appellant for DNA profiling and after sealing the same, handed it over to constable Wakchaure.

According to defence, Wakchaure was not examined as prosecution witness.

15. PW 11 – Dr. Khan testified to have collected blood samples of the victim and her baby for DNA profiling. She referred to medical papers in that regard and the prescribed form duly filled in in the presence of three panch witnesses.

16. PW 10 – Suresh was the Police Constable attached to Rajur Police Station. He testified to have carried the blood samples to Forensic Science Laboratory, Kalina. He placed on record acknowledgment receipt (Exh.68) thereof. On the same lines is the evidence of PW 9 – Kishor, who claimed to have carried the seized articles for chemical analysis to the R.F.S.L., Nashik. Acknowledgment receipt thereof is at Exhibit 66.

17. PW 8 – Rahulkumar was the Assistant Police Inspector serving with Kotwali Police Station, Ahmednagar. He testified that pursuant to a secret information, he alongwith his staff paid visit to Ghoti-Shilvandi village. They then went to the house of PW 1 and 2. He took them into confidence. He noticed PW 1 was pregnant. With the assistance of lady Police Constable, he brought them to the police station. The victim was medically screened. He recorded the statement-cum-F.I.R. lodged by the victim.

18. PW 12 – Sunil is the another police official, who did investigation of the crime and filed the charge-sheet on completion thereof. The DNA report indicating the appellant and the victim to have been the biological parents of the baby girl is at Exhibit 78.

19. Aforesaid is the evidence in the case. There is no dispute that the appellant alongwith his wife, victim and his other children would reside together for long. In proof of age of the victim, her biological mother did not

support the prosecution case. According to her, the victim was twenty years of age. Although the victim has stated her date of birth, the same is inadmissible, being hearsay. A certificate issued by the Government Ashram School, wherein the victim was admitted, was placed on record by the investigating officer. The same is at Exhibit 57. As per the said document, the date of birth of the victim is 11th March, 2000. The contents thereof indicate that it was issued on 08th July, 2015. The victim was 9th standard student of the said school. No original school record was placed on record nor the headmaster, who issued the said certificate, was examined in proof of the certificate. The radiological examination report of the victim has also not been proved by examining the concerned radiologist, who opined the victim to have been above thirteen years of age. In our view, therefore, the prosecution did not place on record reliable evidence in proof of age of the victim.

20. So far as regards the offence of rape is concerned, the victim was consistent in her evidence to state the appellant to have had sexual intercourse with her many a time in the absence of other family members. Though the F.I.R. was silent to state her father would return in drunken state and assault her mother in her presence, we find no reason to disbelieve her evidence. Moreso, when it was specifically suggested to her in her cross-examination as under :-

हे म्हणणे खरे नाही की, मी माझे स्वतःच्या वडीलांशी शारीरिक संबंध ठेवले आणि त्यांना माझेशी संभोग करण्यास भाग पाडले.

It is not true to say that I have kept physical relationship with my father by my own will and forced him to do intercourse with me.

21. Section 114-A of the POCSO reads thus :-

“Presumption as to absence of consent in certain prosecution for rape. - In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.”

22. The aforesaid suggestion, amounting to admission, goes a long way for us to infer that it was the appellant and none else, who made the victim pregnant and is the biological father of the new born. We have considered the authorities relied on as regards breach of protocol in collection of the blood sample for DNA profiling. Although learned counsel for the appellant did his best, the fact remains that before the trial Court, the appellant admitted to have had sexual relation with the victim (PW 1). The victim was helpless. She was residing with her natural mother. The appellant was her step-father. We have, therefore, no hesitation to conclude the appellant to have committed rape of the victim.

23. The appellant is behind the bars close to ten years. He has a wife and four minor children to look after. In the facts and circumstances of the case, we find the imprisonment for life imposed against the the appellant by

the trial Court needs to be brought down to the minimum sentence of imprisonment of ten years.

24. In view of above we pass the following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Impugned judgment and order dated 21st February, 2017 passed by the Court of Additional Sessions Judge, Sangamner ('trial Court') in Sessions Case No. 68 of 2015 thereby convicting the appellant for the offence punishable under Section 5 of Protection of Children from Sexual Offences Act, 2012 punishable u/s.6 of the said Act is hereby set aside. He stands acquitted thereof.
- (III) For conviction under Section 376(2) of the Indian Penal Code, the appellant is sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.1,000/- (Rupees One Thousand), in default to undergo rigorous imprisonment for ten days.
- (V) In addition to the fees already quantified, fees of Mr.P.B. Jadhav and Mr. P.M. Kulkarni, learned counsel appointed to represent the appellant and Respondent No.2 – victim respectively is quantified at Rs.8,000/- (Rupees Eight Thousand) each.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD