



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

CRIMINAL APPEAL NO.680 OF 2021

Vishnu Chandrayya Yedulla
Age 37 years, R/o Khilaganpur
Tq. Vanaparti, Dist. Mehboobnagar,
State - Telangana
Now R/o Kapre-Mala, Akolnear Road,
Kedgaon, Ahmednagar

... APPELLANT

VERSUS

1. The State of Maharashtra
through Police Inspector,
Kotwali Police Station,
Dist. Ahmednagar

2. X Y Z

... RESPONDENTS

.....
Mr. C.V. Dharurkar, Advocate for appellant (appointed through
Legal Aid)
Mrs. S.N. Deshmukh, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 12th December, 2024
Date of pronouncing judgment : 21st January, 2025

J U D G M E N T (PER : R.G. AVACHAT, J.) :

The challenge in this appeal is to a judgment and
order of conviction and consequential sentence, passed by the

Court for trial of offences under the Protection of Children from Sexual Offences Act (POCSO Act for short), Ahmednagar in Sessions Case, No.165/2015, dated 5/1/2018. The material part of the order impugned herein reads thus :

- (1) The accused Vishnu Chandrayya Yedulla is hereby convicted, as per provisions of Sec.235(2) of Code of Criminal Procedure, for the offence punishable under Section 376(2)(i) of Indian Penal Code as amended by Criminal Law (Amendment) Act, 2013 and he is sentenced to suffer imprisonment for life till his natural death, and to pay a fine of Rs.50,000/- (Rs. Fifty thousand only), in default of payment of fine, he shall suffer S.I. for 1 (one) year.
- (2) The accused Vishnu Chandrayya Yedulla is further convicted, as per provisions of Sec.235(2) of Code of Criminal Procedure, for the offence punishable under Section 354-A(1)(i) of Indian Penal Code as amended by Criminal Law (Amendment) Act, 2013 and he is sentenced to suffer Rigorous Imprisonment for three years, and to pay a fine of Rs.5,000/- (Rs. Five thousand only), in default of payment of fine, he shall suffer S.I. for 1 (one) month.
- (3) The accused Vishnu Chandrayya Yedulla is also convicted under Section 235(2) of Criminal Procedure

Code, for the offence under Section 506 of Indian Penal Code and he is sentenced to suffer Rigorous Imprisonment for one year.

- (4) The accused Vishnu Chandrayya Yedulla is also convicted under section 235(2) of Criminal Procedure Code, for the offence under section 5(j)(ii) and 5(l) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

However, no separate punishment is awarded to the accused for the aforesaid offences under The Protection of Children from Sexual Offences Act, 2012, in view of Section 42 of the said Act.

- (5) All the above mentioned substantive sentences imposed on the accused shall run concurrently.
- (6) The fine amount, if recovered from the accused, the amount of Rs.45,000/- (Rs. Forty-five thousand only) be given to the prosecutrix, by way of compensation under Section 357(1) of the Code of Criminal Procedure and remaining amount of Rs.10,000/- (Rs. Ten thousand only) be credited in the Account of Government of Maharashtra.

2. Learned Advocate for the appellant, who holds his brief through Legal Aid, made submissions for reduction in

quantum of sentence. According to him, the appellant hailed from Telangana. He was 34 years of age while the offence took place. He has a wife and children to look after in Telangana. According to him, the sentence of imprisonment for life till his natural death, was grossly disproportionate to the offence committed by the appellant. He relied on the following set of authorities :

- (1) Mallan @ Rajan Kani Vs. State of Kerala
Special Leave to Appeal (Crl.) No.7003/2024
- (2) Adu Ram Vs. Mukna & ors. [(2005) 10 SCC 597]
- (3) Bavo alias Manubhai Ambalal Thakore Vs. State of Gujarat [AIR 2012 SC 979]
- (4) Manoj Mishra alias Chhotkau Vs. State of U.P.
(2021) 10 SCC 763
- (5) Mohd. Firoz Vs. State of Madhya Pradesh
(2022) 7 SCC 443
- (6) Shivaji Sakharam Madhe Vs. State of Maharashtra
& anr. (Cri.Appeal No.432/2022, decided on 19/9/2024)
- (7) Pradip @ Golu s/o Suresh Dandge Vs. State of Maharashtra (Criminal Appeal No.419/2019,
decided on 2/12/2022)
- (8) Anil Ramesh Kolhe Vs. State of Maharashtra & ors.
(Criminal Appeal No.816/2017, decided on 3/8/2022)

3. The learned A.P.P. would, on the other hand, submit that, it is a heinous offence. The offence is not against an individual but against the society. A minor girl below 12 years was deflowered by the appellant in whom the girl (the victim) had confidence as her father. According to her, the victim was ravished more than 2-3 times. She even conceived and delivered a baby. In this factual backdrop, the appellant does not deserve leniency. She would further submit that, if the sentence is reduced, it may amount to misplaced sympathy. She, therefore, urged for dismissal of the appeal.

4. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein as well. The appellant originally hailed from Telangana. He came to Maharashtra in search for a work. The mother of the victim was not residing with her husband. She would stay alone along with her children. She got acquainted with the appellant. Both of them started residing as husband and wife. The victim had seen the appellant to have sexual intercourse with her mother. The appellant then took advantage and committed similar act with her when she was alone. Such thing happened more than twice. The victim had related her woes to her

mother. The mother initially turned a blind eye. Due to the appellant committing such act with the victim, she conceived and delivered a baby. These are the facts not in dispute.

5. The question is, whether imprisonment for life which shall mean till the end of natural life of the appellant, is disproportionate to the crime committed by the appellant. One need not refer to the theories of punishment such as retributive theory or reformative as well.

6. Admittedly, the appellant was 34 years of age at the relevant time. He hailed from the State of Andhra Pradesh. He came to Maharashtra in search for a job. He got acquainted with the mother of the victim. The mother was not staying with her husband. The acquaintance developed into emotional relationship between the appellant and the victim's mother. In the F.I.R., the victim gave her age as 13 years. True, the victim was just below 12 years of age while she was deflowered by the appellant.

7. We are informed that a person convicted for offence of rape is not granted (not entitled) for furlough. Meaning thereby, the appellant would be completing 10 years

of imprisonment, without being out of jail for a single day. While the offence was committed, the same was punishable with rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life and shall also be liable to fine.

8. The record indicates that, the appellant did not have means to pay the fine. The fine remained unpaid. He has a family (wife and children) in the State of Andhra Pradesh.

9. In case of Mallan (supra), the appellant therein was convicted for the offence punishable under Section 376 of the Indian Penal Code and sentenced to life imprisonment with fine of Rs.2 Lakhs. The appellant therein was step father of the victim. He had raped the victim more than once. The Apex Court, therefore, did not interfere with the order of conviction. The appellant therein was 40 years of age and had already undergone 8 years of sentence, his financial condition was such that he would not be able to pay the fine amount. Considering these facts and circumstances, the Apex Court

reduced the quantum of sentence to 10 years, retaining the fine amount, but reducing the default sentence from 2 years to 1 year.

10. In case of Adu Ram (supra), it has been observed :

“Criminal Trial – Sentence – Proportionality – sentence should be commensurate with gravity of offence – Relevant factors to be taken into account while determining proper sentence – Held, no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment – Due consideration should be given to facts and circumstances of case, having regard to various factors including nature of offence and manner in which it was executed or committed, motive for the crime, conduct of accused and all other attendant circumstances – Aggravating and mitigating factors should be delicately balanced– Discretion in determination of quantum of punishment is required to be exercised judiciously and judicially.”

11. In case of Bavo alias Manubhai (supra), 10 years R.I. was imposed for an offence of rape on a 7 year old girl. True, the appellant therein was 18-19 years of age at the relevant time.

12. The Division Bench of this Court, in case of Pradip @ Golu (supra), has observed :-

“24. Since the punishment prescribed for the offence punishable under Section 376[2][i] of the Indian Penal Code is greater in degree than the punishment prescribed for the offence punishable under Sections 4 and 10 of the POCSO Act, the accused is to be sentenced for the offence punishable under Section 376[2][i] of the Indian Penal Code. As observed above, at the relevant time the offence under Section 376[2][i] was punishable with rigorous imprisonment for a term which shall not be less than 10 years, but, which may extend to imprisonment for life, which shall mean imprisonment for remainder of that person’s natural life and shall also be liable to fine. The Section has put a minimum rider of imprisonment for 10 years, which may extend further. The Legislature purposefully left the judicial discretion to the Court to award punishment with a rider of minimum sentence. The purpose behind leaving discretion with the Court is to mould the sentence in accordance with the prevailing circumstances befitting to the crime and all other relevant factors.”

13. Considering the background of the appellant and keeping on mind the observations made in the aforesaid authorities, we are of the opinion that, rigorous imprisonment for 11 years would meet the ends of justice. With this, we partly allow the appeal in terms of the following order :

ORDER

(i) The Criminal Appeal is partly allowed.

(ii) Conviction of the appellant for the offence punishable under Section 376(2)(i) of the Indian Penal Code vide order dated 5/1/2018, passed by learned Judge, Special Court (POCSO Act), Ahmednagar in Sessions Case No.165/2015 is maintained. However, the sentence of imprisonment for life till his natural death is reduced to rigorous imprisonment for eleven (11) years. The quantum of amount of fine to stand unaltered. In default of payment of fine, the appellant shall suffer S.I. for one month.

(iii) The appellant is entitled to set off, as per provisions of Section 428 of the Code of Criminal Procedure.

(iv) Rest of the terms of the impugned order to stand unaltered.

(v) Fees of learned Advocate Mr. Dharurkar, who was appointed through Legal Aid, is quantified at Rs.10,000/- (Rupees ten thousand).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-