IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 594 OF 2017

Mohammed Sher Ali Mohammed
Siddiqui Shaikh ...Appellant
V/s.
The State of Maharashtra ...Respondent.

WITH

CRIMINAL APPEAL NO. 370 OF 2016

Kaniza Badlur Shaikh @ Hasina ...Appellant
V/s.
The State of Maharashtra ...Respondent.

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Mr. Prosper D'Souza for the Appellants.
Mrs. Rutuja Ambekar, APP for the Respondent/State.
PSI Mahendra Bagwe, Mahim Police Station is present.

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CORAM : N.R. BORKAR, J.
DATE : 09.12.2025.

COMMON JUDGMENT

1] Both these appeals are filed against one and the same judgment and order dated 20th August 2015 passed by the learned Special Judge under P.O.C.S.O. Act, Gr. Bombay in Sessions Case No. 99 of 2014. Both these appeals were, therefore, heard together and are being disposed of by this common judgment.

2] The appellant in Criminal Appeal No. 594 of 2017 was accused No.1 and appellant in Criminal Appeal No.370 of 2016 was accused No.2 before the trial Court. By the impugned judgment and order accused No.1 has been convicted for the

offence punishable under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”) so also for the offence punishable under Section 376 of the Indian Penal Code (for short “IPC”) and sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs.7000/-, in default of payment of fine, to suffer simple imprisonment for 1 month. Similarly, accused No.2 has been convicted for the offence punishable under Section 17 of the POCSO Act and sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs.10000/-, in default of payment of fine, to suffer simple imprisonment for 1 month.

3] It is the case of the prosecution that the victim was residing with her parents at Paribakkaspur, Bihar. Accused No.2, who is her maternal aunt, brought her to Mumbai on the pretext of providing her education. Accused No.1 was residing with accused No.2. It is alleged that after two days of her coming to Mumbai, when accused No.2 was not at home, accused No.1 tied her mouth with handkerchief and took her to upstairs of the house and committed forcible sexual intercourse with her. It is alleged that on next day she complained about the act of accused No.1 to accused No.2, however, accused No.2 threatened her that she had to listen and obey accused No.1. It is alleged that on next day also, accused No.1 committed forcible sexual intercourse with her. One day she came out of house and was crying. At that time PW-4 Tamina asked her as to why she was crying. She narrated the whole incident to PW-4 who then took her to police station.

4] I have heard the learned counsel for appellants/accused and the learned APP for the State.

5] The learned counsel for the appellants submits that the trial Court to convict the appellants has relied upon the sole testimony of PW-1/victim. It is submitted that the evidence of PW-1/victim is not probable. It is submitted that the victim in her cross-examination has admitted that she was not confined in the house still she did not disclose about the incident to neighbours. It is submitted that there are many material omissions and contradictions in the evidence of PW-1/victim. It is submitted that thus the trial Court committed an error in convicting the appellants.

6] On the other hand, the learned APP for the respondent/State has supported the impugned judgment and order.

7] I have perused the evidence of PW-1/victim. According to victim, accused No.1 had repeatedly subjected her to forcible sexual intercourse. In the cross-examination conducted on behalf of accused No.1 nothing is elicited to disbelieve the version of PW.1. In the facts and circumstances, the version of the victim can not be doubted just because she did not disclose about the incident to neighbours. According to PW.1/victim, when she disclosed about the incident to accused No.2, she told her that she had to listen and obey accused No.1. However, in the cross-

examination, she has admitted that when accused No.2 had asked her to swear on the Quran she refused to do so. Apart from it, admittedly, accused No.2 was not present at the home when the alleged incidents took place. Considering the said facts, in my view the trial Court erred in convicting the accused No.2. In the result, the following order is passed :

O R D E R

i] Criminal Appeal No.594 of 2017 is dismissed.

ii] Criminal Appeal No.370/2016 is allowed.

iii] The impugned judgment and order dated 20th August 2015 passed by the learned Special Judge under P.O.C.S.O. Act, Gr. Bombay in Sessions Case No. 99 of 2014 to the extent of convicting the accused No.2 – Kaniza Badlur Shaikh @ Hasina for the offence punishable under Section 17 of the POCSO Act is quashed and set aside and she is acquitted of the said offence.

iv] The bail bonds of appellant/original accused No.2 – Kaniza Badlur Shaikh @ Hasina shall stand cancelled;

v] The fine, if any, paid by the accused No.2 - Kaniza be refunded to her.

[N.R.BORKAR, J.]