

Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.285 OF 2024

Dinbandhu @ Sanjay Jamun Sah ...Appellant
Versus
The State of Maharashtra and anr. ...Respondents

Mr. Nikhil Patil with Mr. Sudhanshu R. Bade, for the Appellant.
Mr. Ankit Pandey (Appointed through Legal Aid), for the Respondent No.2.
Mr. A. S. Gawai, APP, for the State.
Mr. D.P. Mane, PSI, Kasturba Marg Police Station is present.

CORAM: R. M. JOSHI, J.

DATED: 28th JANUARY, 2026.

PC:-

1. This Appeal filed by the Appellant/accused No.1 takes exception to the judgment and order dated 17th July, 2023 passed in Special (POCSO) Case No.419 of 2019, whereby the Appellant came to be convicted. It is the case of the prosecution that accused are parents of victim, a minor. The family hails from Bihar. According to the victim, on 20th June, 2018, at the house, at their native place accused No.1-father of the victim committed sexual intercourse with her in presence of accused No.2-mother. There is allegation that on other occasion apart from victim, he committed sexual intercourse with her mother too. The family when came to Mumbai, accused No.1 attempted to establish sexual relations with

victim on 17th August, 2019. Victim informed about the incident to her mother, who ignored the same. Victim, therefore, narrated the incident to the neighbour-PW 1-Informant. Since mother of the victim failed to take cognizance of victim, Informant and others in respect of the grievance against accused No.1, they decided to lodge report in this regard to the concerned police station. Accordingly, PW 1 recorded offence against accused persons.

2. During the course of the investigation, victim was sent for medical examination and medical certificate was obtained. Statement of the victim was recorded under Sections 161 as well as 164 of Cr.P.C. Similarly, statements of other witnesses were recorded, so also spot panchanama was done on conclusion of investigation charge-sheet is filed before competent Court. Accused No.1 came to be arrested on 20th August, 2019 and accused No.2 was taken in custody on 21st August, 2019. They were under trial prisoners during the trial.

3. Charge came to be framed against them vide Exhibit 24. Since accused pleaded not guilty, prosecution examined following seven witnesses: Informant as PW No.1, Victim as PW No.2, Authorized person of the school of the victim as PW No.3, Medical Officer as PW No.4, the Station Duty Officer who registered the first information as PW No.5, PSI as PW 6, who recorded the statement of victim, Investigation Officer as PW No.7. Apart from the oral evidence, prosecution led documentary evidence such as medical certificate, proof of age of victim etc.. The incriminating circumstances appearing from the evidence of the prosecution were put to the accused under Section 313 of Cr.P.C.

4. Learned Trial Court found evidence led by the prosecution to be sufficient to bring home guilt of the accused persons. Hence, by impugned judgment and order recorded conviction against both accused. Accused No.2 has not preferred any appeal against the conviction.

5. Learned counsel for the accused No.1/Appellant submits that the evidence of the victim is not consistent and hence, cannot become sole basis for the conviction of the accused. It is his further submission that the Informant-PW 1 is in enemical terms with the accused and hence, false report came to be lodged by her. It is also pointed out that there is material inconsistency in the statement of these two witnesses in respect of the incident occurred on 17th August, 2019. Informant on one side claims that on that day, there was incident of act of commission of sexual intercourse with victim once the victim claims the incident to be attempted to commit such intercourse. It is his submission that having regard to the nature of the evidence and more particularly, in view of the fact that the Trial Court has refused to accept the occurrence of the incident dated 17th August, 2019, as stated by the victim, this is a fit case for acquittal of the Appellant. He further submits that the Appellant has responsibility of his wife and three daughters and therefore, leniency be shown to him.

6. Learned APP and learned counsel for the Respondent No. 2 supported impugned judgment and order for conviction. According to them, the testimony of victim is consistent in respect of incident dated 17th August, 2019 as well as the incident dated 20th June, 2018. According to them, merely because the first informant's

statement is inconsistent to the statement of victim, as regards incident of 17th August, 2019, the same does not become a ground to discard the evidence of victim completely. It is, however, fairly submitted that there is no challenge raised by the prosecution to the findings recorded by the Trial Court with regard to not accepting occurrence of incident dated 17th August, 2019, as claimed by the victim. It is their further submission that the evidence of the victim gets support from the medical evidence, and in absence of making out any substantial case of false implication, Appellant does not deserve acquittal.

7. Victim is the daughter of the Appellant. She claims her age to be 13 years at the time of occurrence of the incident. Prosecution has examined PW 3 Ramkaran R. Maurya, who placed before the Trial Court evidence in the form of general register indicating victim to be minor. He specifically states about date of birth of the victim to be 15th August, 2006. In the cross examination, there is not even a suggestion made that the birth date of the victim is not 15th August, 2006. Similarly, there is no suggestion that she was not aged 13 years at the relevant time. Prosecution has proved that the victim was child within the meaning of section 2(d) of the POCSO Act and the provisions of the said Act have application to the presence case.

8. Victim deposes in her substantive evidence before the Trial Court about occurrence of incident dated 17th August, 2019, wherein an attempt was made by the Appellant of committing sexual intercourse with her. She also states about the occurrence of the incident on 20th June, 2018 while the family was at native place

in Bihar. She categorically states about the Appellant committing sexual intercourse with her. So also she being subjected to unnatural intercourse. She further states about occurrence of similar incident with her on the different occasions. She claims that since the grievance made by her mother was futile, she disclosed the said facts to the neighbour i.e. PW 1. In the cross-examination of the victim nothing could be brought on record by the defence to discard her version. The statement of the victim gets in corroboration from the testimony of the Medical Officer, who deposes about the victim giving history of the occurrence of the incident of sexual Assault on her, which is consistent to her statement before the Trial Court. So also statements previously recorded under Sections 161 and 164 of Cr.P.C.

9. As per the evidence of Dr. Aditi Hemant Abhade-PW 4 healed tear to hymn was found and in her opinion, the examination of the victim suggested that the sexual assault on her cannot be ruled out.

10. Informant deposed as to how she came to know about the incident occurred with the victim, and she confronting the same to be accused No.2 i.e. mother of the victim. According to this witness, the response of the mother of the victim was shocking, and hence, she decided to lodge report with the police. This witness, however, gives different version of the occurrence of the incident dated 17th August, 2019. Learned counsel for the Appellant sought to argue that since the Trial Court has not accepted the occurrence of the incident as narrated by the victim to have taken place on 17th August, 2019. Her entire testimony

deserves discordance. It is pertinent to note that it is not a case that evidence of the victim is inconsistent to her previous statement. The Trial Court relying upon the inconsistency in the statement of Informant has held that the incident of 17th August, 2019 is not acceptable. There is no challenge made to the same on behalf of the prosecution. Question therefore arises as to whether for the said reason evidence of victim as a whole deserves discordance. In the facts of the case, and having regard to the fact that the evidence of the victim gets support from medical evidence, this Court finds no substance in the submission of the counsel for the Appellant.

11. Learned Trial Court has rightly taken into consideration the evidence on record and rendered findings, recorded conviction against the Appellant /accused and having regard to the evidence so also the facts and circumstances of the case, this Court finds no reason to cause interference therein.

12. At this stage, learned counsel for the Appellant submits that though the Trial Court has held that the incident dated 17th August, 2019 is not proved, but recorded conviction on the basis of amended provisions of Sections 5 and 6 of the POCSO Act. It is his submission that since the incident of 20th June, 2018 is said to be proved, question of applying the amended provisions to the present case does not arise. It is his submission that at the relevant time, the punishment for the proved offence against the Appellant cause minimum sentence of 7 years and hence, be imposed with minimum sentence.

13. This contention is opposed by the learned APP and learned counsel for the Respondent No. 2 by submitting that the offence committed by father with daughter does not deserve any leniency and therefore, it is not a fit case for sentencing him to suffer minimum prescribed term.

14. This Court finds substance in the contention of the learned APP and learned counsel for the Respondent No.2. Having regard to the nature of offence and more particularly, in view of the fact that offence has been committed by the father of the victim girl, he cannot be sentenced to suffer minimum prescribed sentence.

15. In view of the above, following order is passed:-

ORDER

- i. Appeal stands partly allowed.
- ii. The judgment and order of conviction of the accused is maintained.
- iii. Appellant is sentenced to suffer 10 years Rigorous Imprisonment with fine as imposed by the Trial Court.
- iv. Rest of the judgment of the Trial Court is maintained.

(R. M. JOSHI, J.)