

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 595 OF 2014

Ramesh Krishna Gopnur,
Age : 40 years, Occ : Agriculturist,
Indian Inhabitant, Residing at : Ranshet
Pada, Po. Pelhar, Tal. Vasai, ... Appellant
Dist. Thane (Ori. Accused)
(At present in Central Jail, Thane)

Versus

The State of Maharashtra,
(Through Valiv Police Station, Vasai) ... Respondent

Ms. Laxmi Raman, Appointed Advocate for the Appellant

Ms. Gauri S. Rao, A.P.P for the Respondent No.1-State

Mr. A. R. Kapadnis, as *amicus curiae* for the Original
Complainant

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

RESERVED ON : 13/08/2024

PRONOUNCED ON : 11/09/2024

JUDGMENT (Per Revati Mohite Dere, J.) :

1 By this appeal, the appellant has impugned the
judgment and order of conviction and sentence dated 29th March

2014 passed by the learned Additional Sessions Judge, Vasai, Thane in Session Case No. 33/2013 as under :

- for the offence punishable under Section 376(f) of the Indian Penal Code (`IPC`), to suffer life imprisonment and to pay a fine of Rs.50,000/-, in default, to suffer rigorous imprisonment for 2 years;

- for the offence punishable under Section 8 of the Prevention of Children from Sexual Offences Act (`POCSO Act`), to suffer rigorous imprisonment for 3 years and to pay a fine of Rs. 15,000/-, in default, to suffer rigorous imprisonment for 6 months;

- for the offence punishable under Section 506 of the IPC, to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for 6 months;

- All the substantive sentences were directed to run concurrently.

- The appellant, in addition to the fine amount, was directed to pay compensation of Rs.1,00,000/- each to the survivors A, B, C and E.
- The appellant was directed to pay compensation of Rs.10,000/- to survivor D.
- On deposit, the compensation amount was directed to be kept in Fixed Deposit in any Nationalised Bank in the joint names of survivors and their respective mothers and on attaining the age of majority, the amount along with interest was directed to be paid to the survivors.

Since, it is a POCSO case, the identity of the victim girls is concealed.

2 The prosecution case in brief is as under:

The appellant and the complainant (PW7) are close relatives, inasmuch as, PW7 is the wife of the brother-in-law of

the appellant. It is the prosecution case that the appellant sexually assaulted five girls. All the victim girls were between the age group 8 years to 13 years and living in the same village as the appellant. The said incident of sexual assault by the appellant on the victim girls went on for about 2 years. It is only when PW6 saw the appellant sexually assaulting one of the victim girls, the complainant (PW7) was informed of the same, pursuant to which, PW7 lodged an FIR against the appellant alleging offences punishable under Sections 376(f), 354, 323 and 506 of the Indian Penal Code and Sections 4 and 8 of the Prevention of Children from Sexual Offences Act. The victim girls were sent for medical examination and after investigation, charge-sheet was filed in the said case in the Court of the Judicial Magistrate First Class, Vasai. Since the offences were triable by the Court of Sessions, the case came to be committed to the Court of Sessions, for trial.

The trial Court framed charge against the appellant, to which, the appellant pleaded not guilty and claimed to be tried.

The prosecution in support of its case, examined 12 witnesses i.e the victim girls PW1 (Survivor A); PW2 (Survivor B); PW3 (Survivor C); PW4 (Survivor D); PW5 (Survivor E); PW7, the complainant (mother of one of the survivor-PW2); PW6, (eye-witness), who witnessed sexual assault by the appellant on one of the victim girls; two medical officers i.e. PW8-Dr. Sheela Chakre and PW 10-Dr. Ravindra Deokar; PW9-Nancy Pareira, panch to the spot panchnama; PW11-Amol Ghag (photographer) and PW 12-Mrs. Muthe (the Investigating Officer).

Thereafter, the 313 statement of the appellant was recorded. His defence was of denial and false implication. The appellant did not examine any witness in support of his case.

The learned Judge, after hearing the parties, was pleased to convict the appellant as stated aforesaid, in paragraph 1.

3 At the outset, we may note that as soon as the appeal was called out for hearing, Advocate Mr. Aniket Vagal stated that he has given his no objection to the appellant and as such stated that he has no instructions to appear in the aforesaid appeal. Hence, we appointed Ms. Laxmi Raman, who is on the Legal Aid Panel to espouse the cause of the appellant. We also appointed Mr. A. R. Kapadnis as *amicus curiae* to espouse the cause of the original complainant.

4 Mrs. Raman, learned appointed advocate submitted that the evidence of the victim girls does not inspire confidence, inasmuch as, they have not disclosed the sexual assault on them by the appellant, for almost 2 years. She submitted that the appellant has been implicated because of the dispute between the appellant and his brother-in-law on account of agricultural land situated at Vasai, Thane. She submitted that having regard to the evidence on record, the conviction of the appellant cannot be

sustained and as such, the appellant be acquitted of the offences, for which he is convicted.

5 Mrs. Rao, learned A.P.P submitted that no interference was warranted in the impugned judgment and order of conviction and sentence. She submitted that the evidence of the victims, is corroborated by medical evidence and that mere delay would not render the evidence of the prosecutrix, suspicious. She further submitted that the evidence of each of the victim girls inspires confidence and as such, will show the manner in which the appellant sexually assaulted them. She further submitted that PW6, an eye-witness has also duly corroborated the evidence of the victim girls.

6 Mr. Kapadnis learned appointed advocate for the original complainant supported the submissions advanced by the learned A.P.P. Mr. Kapadnis further submitted that the appellant has not even rebutted the presumption under Section 29 of

POCSO Act. Mr. Kapadnis relied on the judgment of the Apex Court in the case of *Nawabuddin vs. State of Uttarakhand*¹, to show how crimes against women and children, in particular, under the POCSO Act are to be dealt with.

7 Heard learned counsel for the parties and perused the evidence. We will first deal with the evidence of the victim girls i.e. PW1 (Survivor A); PW2 (Survivor B); PW3 (Survivor C); PW4 (Survivor D) and PW5 (Survivor E).

8 PW1-Survivor A, at the time of the incident, was aged 11 years. Her date of birth being 25th May 2000. According to PW1, she knew the appellant, as he was the husband of her paternal aunt and hence, would call him *Mama*. She has stated that the appellant was living behind their house and that he would call her for cleaning utensils. PW1 has further stated that the appellant would hold her hand, remove her underwear, gag her mouth and thereafter, would sexually assault her after

1 (2022) 5 SCC 419

applying oil to her private part; that the appellant would threaten her not to disclose the same or else he would beat her, and that after the sexual assault, the appellant used to tell her to go home. According to PW1, the first incident took place about 2 years prior (to recording of her evidence) and although, she had pain, she did not disclose the said incident to anyone. She has stated that the said incident took place at the appellant's house at `R'. She has stated that again when she had gone to her paternal aunt's place at `P, when her aunt had gone to the agricultural field, the appellant sexually assaulted her. PW1 has further deposed that the appellant had called PW5 to perform dance and that he had done the same thing with her, as he had done with her and that the said incident was witnessed by PW6 and one `J' and that PW6 and `J' disclosed the same to PW2's mother, after which, she too disclosed the incident to her mother. PW1 has identified the appellant in Court.

A perusal of the cross-examination would show that there is no cross to the date of birth of PW1 and as such, the same

has gone unchallenged. Thus, the prosecution has proved that PW1 was 11 years old when the said incident of sexual assault started. It is pertinent to note that there is absolutely no cross also on the actual incident as deposed to by PW1 with respect to sexual assault on her, as stated hereinabove. The only cross conducted is on the activities of PW1 in school i.e. playing Kho-Kho, Kabaddi, etc. and with respect to the house. There is also no suggestion with respect to any dispute over any agricultural land. Thus, the evidence of PW1 vis-à-vis the actual incident of sexual assault as well as her date of birth, has gone unchallenged.

9 PW2-Survivor B was also a minor, studying in standard V at the relevant time. She has stated that after coming from school, she would clean utensils in the house, do sweeping and also study. She has stated that the appellant was called, *Mama* and would live at a short distance from their house; that, whereas *Mama* lived at `R`, his wife and children would live at `P`. PW2 has deposed that *Mama* used to call her and send her

to a shop to bring *bidi* for him and thereafter, he would close the door and sexually assault her; and that he did the same with her, about four times. PW2 has further stated that she disclosed the sexual assault to her mother, by the appellant, only in March 2013; as the appellant had extended threats to her that he would assault her. She has further stated that PW6 and 'J' had seen the appellant doing the said act with PW5 in the appellant's house at 'R', pursuant to which she also disclosed the incident to her mother.

Again, there is no challenge to the evidence of this witness with respect to PW2-Survivor B's age. Although, certain omissions have come on record, the said omissions are not material omissions and as such, do not in anyway discredit PW2's testimony, vis-a-vis sexual assault on her. Infact, some of the omissions are not omissions.

10 PW3-Survivor C, was also studying in standard V. She too was studying in the same school as PW2, PW4 and PW5. She

has stated that the appellant was known as *Mama* and would stay near their house, alone. PW3 has stated that the appellant used to call her to get *bidi* and matchstick from a shop; that after bringing the same, he would close the door and sexually assault her by gagging her mouth. She has stated that the incident occurred only once. She has stated that she did not disclose the said incident to any one, as the appellant had threatened her that if she disclosed the same, he would burry her. She has further deposed that the appellant would take her, PW4, PW2 and PW5 to a plot for eating cucumber and thereafter, he used to take them to a hut and thereafter, the appellant would make her lie down and would sleep on her. She has stated that on one day the appellant caught PW4 and PW5, however, as PW4 started shouting, he left her and caught hold of PW5 and did the same thing with PW5. She has stated that the said incident was witnessed by PW6 and `J' through the window and they disclosed the said incident to PW5's mother, after which everybody learnt about the sexual assault on the girls by the appellant.

Although, the said witness PW3 was cross-examined at length, nothing material was elicited in her cross-examination, so as to discredit her testimony, nor is there any challenge to the age of the said witness.

11 PW4-Survivor D, was at the relevant time in standard IV. She has stated that the appellant was called as *Mama* and that he was residing in front of her house, alone. She has stated that the appellant used to ask her to bring matchbox from the shop for him and after bringing the same, he would catch her and thereafter sexually assault her; that he did the said act for about 5 to 6 times. She has stated that the said act was done in his house as well as in a hut on a plot, when she and others had gone for eating cucumber. She has further deposed that she did not disclose the incident to anyone, as the appellant had abused her and told her that he would burry her, '*Gadun Takin*'. PW4 has stated that she had pains in her private part and that she had informed her mother about the pains at the time of taking a bath.

She has deposed that her mother learnt of the incident from PW2's mother, after PW6 and 'J' saw the incident. She also disclosed about the incident, which took place on PW5.

Again, the cross examination of this witness is not on the actual incident of sexual assault. Infact, in para 7 of the cross-examination, witness has stated that "*it has happened that Mama took all of us inside the hut and removed our nickers*". The suggestions given to PW4, have been denied by the said witness. It may also be noted that there is no challenge to the age of the said witness.

12 PW5-Survivor E was aged around 9 years at the relevant time. She too has disclosed that the appellant was known as *Mama* and that he would stay alone in the house near theirs; that he would ask her to bring matchbox for him and thereafter would sexually assault her by gagging her mouth. She has stated that the said act was not only done in his house but also in a hut

on a plot. She has further stated that PW6 and `J' had witnessed the incident in the hut in the house of *Mama* and had disclosed the incident to PW2's mother, after which, PW2's mother approached the police.

Again, there is no cross with respect to the incident of sexual assault on PW5 nor any challenge with respect to her age. There is nothing material in the cross-examination, so as to discredit the evidence of this witness.

13 PW6 was also studying in standard IV in the same school alongwith other prosecutrix at the relevant time. He has stated that the appellant was called as *Mama* and that he would ask the children to bring *bidi*, match box and sugar and that he would tell PW1 and PW2 to clean utensils. According to PW6, on the day of incident, he, PW4 and PW5 were playing near the house of the appellant and he called them. He has stated that on one such occasion, he had followed the appellant to see what he

was doing. He has stated that he saw the appellant sexually assaulting PW2, PW4 and PW5. He has stated that the appellant used to threaten all the children not to disclose the incident or he would burry them. He has further stated that he and `J' disclosed the incident to everyone.

Again, in the cross-examination, there is nothing which has come on record to disbelieve or discredit the evidence of the said witness. Infact, there is no cross-examination to what was deposed by the said witness with respect to him having witnessed sexual assault on the victim girls.

14 The complainant/first informant was examined as PW7. She has stated that on 17th March 2013, she learnt from PW6 that the appellant sexually assaulted PW5; that he had seen the incident from the gap of a hole. She has stated that thereafter PW1 disclosed that the appellant was doing the same thing with her, when he would call her to clean the utensils and that he did

the said act about 10 to 12 times. Pursuant thereto, PW7 lodged an FIR with Valiv Police Station, Vasai, Thane, against the appellant. The said FIR is exhibited as Exhibit 23.

15 The aforesaid evidence i.e. of the survivors as well as PW6 and PW7 is consistent and corroborates each other. The said evidence is also duly corroborated by the medical evidence and Chemical Analyser's report, which has come on record.

16 PW8-Dr. Sheela Chakre was attached to G.S. Medical College and K.E.M. Hospital, at the relevant time. She has stated that on 21st March 2013, five minor girls were referred for medical examination and that she and two other doctors from the Gynaecological Department examined the said girls.

PW8 has deposed that the date of birth of PW1 was given as 25th May 2000 and that she was about 13 years of age at the time of examination. She has stated that PW1 disclosed to her

that she was sexually abused by her *Mama* i.e. her aunt's husband for 2 years; that the said act was done at his home and in the farm. She has further deposed that PW1 gave history of sexual assault of penis penetration and feeding of breast; of wiping of genitals by cloth (towel/bed sheet) by the appellant; and of using oil at the time of the act. PW8, on examination, found that the hymen was ruptured and there was cornuculae formation seen. On physical examination, it was found that there was penetration. PW8 has deposed that the age of PW1 was around 13 to 14 years.

According to PW8, she also examined PW2 on the same day i.e. on 21st March 2013; that the date of birth of PW2 was 11th June 2004 and as such, she was 9 years of age at the time of her examination; that the history given by PW2 was that the sexual assault, one month prior to her examination; that there was an attempt of penetration but as she screamed, the appellant gagged her and thereafter stopped the act. On physical

examination, PW8 found a small tear of 4 O'clock position over the hymen and that the hymen was not totally ruptured and as such, opined that there was evidence of chronic vaginal penetration but no evidence of any physical abuse. She has stated that the age of the survivor was 9 years and as her vagina was not fully developed, in spite of chronic penetration, it has not gone inside and as such, there was only a tear at 4 O'clock position.

PW8 thereafter examined PW3, who gave her date of birth to be 9 years. According to PW8-Dr.Chakre, PW3 also gave history of penile penetration, which she resisted; that she was threatened not to reveal the act to any person. On examination, PW8 found that there was an old multiple tear to hymen from 7 O'clock to 9 O'clock position; that the hymen was not totally ruptured, however, on examination, evidence was found of chronic vaginal penetration. She has stated that as PW3 was aged 9 years, her vagina was not fully developed, in spite of chronic penetration, it has not gone inside and hence, a tear at 7 O'clock

to 9 O'clock position was seen. She has stated that on hitting of penis on vagina, such tear can be caused.

PW5 was also examined on 21st March 2013 by PW8. PW8 has given PW5's date of birth as 15th July 2003. She has further deposed that the history given by PW5 was attempted penial penetration along with holding hands and history of showing porn video. On examination, it was found that there was a small tear at 4 O'clock position with presence of slight inflammation around the opening of hymen. The inflammation indicated recent sexual assault. PW8 also found that the hymen was not totally ruptured and as such, opined that there was evidence of recent vaginal penetration.

The said evidence of PW8 is duly supported by medical case papers, which have been exhibited as Exhibits 26, 28, 30, 33 and 37.

17 Although PW10-Dr. Ravindra Deokar, who gave the report with respect to the ages of the survivors, was examined to prove the ages of the survivors, since there is no challenge by the appellant to the ages of the survivors, it is not necessary to deal with the said evidence, since the said evidence also show that the victim girls were all minors at the relevant time.

18 Considering the aforesaid evidence, it is evident that all the five victim survivors were sexually assaulted by the appellant. Not only the evidence of the survivors inspires confidence but the same stands duly corroborated by the medical evidence and the evidence of PW6 who had witnessed the incident of sexual assault. All the survivors were minors, between the age group of 8 to 13 years. Under Section 29 of the POCSO Act there is a presumption. The said presumption has not been rebutted by the appellant.

19 Considering the aforesaid evidence on record, we do not find any infirmity in the impugned judgment and order of conviction and sentence and as such, uphold the conviction and sentence imposed by the trial court. Accordingly, the Appeal stands dismissed.

20 We would like to record a word of appreciation for the able assistance provided and the efforts taken by Ms. Laxmi Raman, as an appointed advocate for the appellant, in conducting the appeal and Mr. A. R. Kapadnis, as an *amicus curiae*. High Court Legal Services Committee to award fees to both the learned counsel, as per Rules.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.