



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL (APEAL) NO. 333 OF 2023

Vinod S/o. Ganpatrao Nichat,

Aged about 47 Yrs., Occu.: Labourer,

R/o. Jalgaon (Belora) Wardha,

Tah. Arvi, District Wardha

(Presently in Central prison, Akola)

.... APPELLANT

// VERSUS //

State of Maharashtra,

Police Station Officer, Police

Station, Talegaon, Tah. Arvi,

District Wardha

... RESPONDENT

Mr A. M. Balpande, Advocate (appointed) for the appellant

Mr S. S. Hulke, APP for respondent

CORAM : G. A. SANAP, J.

DATE : 08/07/2024

ORAL JUDGMENT :

1 Heard finally with the consent of learned Advocates
for the parties.

2 In this appeal, the challenge is to the judgment and
order dated 08.12.2021 passed by the learned Extra Joint
Additional Sessions Judge, Wardha, whereby the learned Judge

on conviction sentenced the appellant/accused to undergo rigorous imprisonment for five years for the offence under Section 9(m) punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') and to pay a fine of Rs.3,000/- and in default to undergo simple imprisonment for six months and further sentenced to suffer rigorous imprisonment for three years for the offence punishable under Section 8 of the POCSO Act and to pay a fine of Rs.1000/- in default to suffer simple imprisonment for two months. No separate punishment has been awarded for the proved offences under Sections 354 and 354-A of the Indian Penal Code (for short 'the IPC').

3 In a nutshell the case of the prosecution is as follows:

PW-2 informant is the mother of the victim. The crime was registered on the report of the informant. The report reveals that the incident in question occurred on 27.11.2018. The victim, on the date of the incident, was studying in the 5th

standard. It is the case of the prosecution that on 27.11.2018, Rubela and Gower vaccine doses were to be administered to the students in the school. The daughter of the accused was a school friend of the victim. At about 9:30 a.m., the victim went to the house of the accused to call her friend Trupti. The victim gave a call to Trupti from outside. Trupti was taking a bath and therefore, she requested the victim to sit inside her house. The victim went inside and sat in the house. The mother of Trupti was not at home. The accused was lying on the floor in the second room. It is stated that the accused called the victim and asked her to sit beside him. The victim sat beside him. It is stated that then the accused started pressing her legs and breasts. The accused kissed her. The accused was wearing a full pant. He opened the zip of his pant and told the victim to touch there. He promised to give Rs.10/- to her so that she and Trupti could purchase sweets. The victim strongly retorted by saying that she did not want

money from him. The victim got scared by this unexpected behavior of the accused and therefore, without waiting for Trupti, she returned home. Her parents had gone to the field. Her grandfather was alone at home. She was in a hurry to go to school and therefore, she did not narrate the incident to her grandfather. After some time, Trupti came to call her and both of them went to the school. She returned from the school at about 5:00 p.m. Her parents also returned from the field. She narrated the incident to her parents. Thereafter, the parents of the victim went to the police station Talegaon with the victim. The mother of the victim lodged the report. On the basis of this report, crime bearing No. 0385 of 2018 was registered against the accused.

4 PW-5 PSI Kavita Fuse conducted the investigation. She drew the spot panchanama. She recorded the statements of the witnesses. She collected the birth certificate of the victim. The statements of the victim as well as her mother under

Section 164 of the Cr.P.C. were recorded by the Magistrate. After completion of the investigation, the charge-sheet was filed against the accused.

5 Learned Judge framed the charge against the accused. The accused pleaded not guilty to the charge. It was the defence of the accused that, on account of enmity with the parents of the victim, he has been falsely implicated. In order to bring home guilt against the accused, the prosecution examined five witnesses. Learned Judge, on consideration of the evidence, held the accused guilty of the charge and sentenced him, as above. The appellant/accused has come before this Court in appeal.

6 I have heard the learned appointed Advocate Mr A. M. Balpande for the appellant/accused and learned APP Mr Suraj Hulke for the State. Perused the record & proceedings.

7 Learned Advocate for the appellant submitted that the victim, as well as her mother, have admitted that the victim was suffering from an epileptic attack. Learned Advocate submitted that therefore, the possibility of the victim suffering from an epileptic attack at the house of Trupti could not be ruled out. Learned Advocate pointed out that the victim has admitted that, on account of the recurrence of the epileptic attack, she was in a disturbed state of mind. Learned Advocate, therefore, submitted that in a disturbed state of mind the victim must have narrated the false and imaginary incident to her parents. Learned Advocate further submitted that the prosecution has not examined independent witnesses who had accompanied the parents of the victim to the police station. Learned Advocate submitted that the conviction is based on the testimony of the victim and the testimony of her mother. Learned Advocate submitted that the conviction is based on the evidence of the interested witnesses.

8 Learned APP submitted that the accused has not been able to probabalize the defence of a false implication. Learned APP took me through the evidence of the PW-1 victim and her mother PW-2 and submitted that there are no major discrepancies or inconsistencies in their evidence to discard and disbelieve the same. Learned APP pointed out that no significant material has been elicited in their cross examination to shake their credibility. Learned APP took me through the judgment and order passed by the learned Judge and submitted that the entire evidence has been properly appreciated.

9 I have minutely perused the oral and documentary evidence. The victim on the date of the offence was 9 years, 11 months and 20 days old. Two birth certificates produced on record at Exhs. 21 and 37 mention the birth date of the victim as 07.12.2008. The certificates were issued from the office of Nagar Parishad, Arvi, where the birth and birth date of the

victim have been registered. The cross examination of the victim and PW-2 would show that the accused has neither disputed the birth date of the victim nor the birth certificates at Exh. 21 and 37. It, therefore, goes without saying that on the date of the occurrence of the incident the victim was below 12 years of age. Learned Judge, on consideration of the evidence of the victim and the evidence of her mother, has observed that their evidence is credible and as such, believable to base the conviction of the accused for the charged offences. The accused has failed to probablise his defence of enmity with the parents of the victim.

10 Victim, on the date of the incident, was studying in 5th standard. The victim has stated that her parents had gone to the field for work and she and her grandfather were at home. In her evidence, she has narrated the reason to visit the house of the accused. There is hardly any dispute, in her cross examination, about her friendship with Trupti, the daughter of

the accused. It is also not disputed that Trupti was studying with the victim. In order to substantiate his defence of false implication, the accused could have examined an independent witness from his village. Except for suggestion of enmity in the cross examination, there is no other material to conclude that there was indeed enmity between the accused and the parents of the victim. It is pertinent to mention that if they were on inimical terms then the victim would not have, in the first instance, gone to the house of the accused and in the second instance, would not have gone inside the house of the accused. The victim has stated that when she went to the house of Trupti to call her to go to school, she was taking bath and as requested by her, she went inside the house and sat there. Her evidence reveals that the accused took advantage of the situation and called her near him and committed this shameful act. The victim was a friend of Trupti. She was bound to believe the father of Trupti. But when the accused committed

the shameful act of pressing her legs and breasts and asking her to touch a part of his body after opening his zip, she retorted strongly. She did not accept his offer of Rs.10/- for buying the sweets. She ran away from the spot to her house and when Trupti came to her house, they both went to school.

11 The victim was subjected to searching cross examination. She admitted that she was suffering from an epileptic attack. She has stated that she was in a disturbed state of mind on account of the recurring epileptic attack. She has stated that she did not inform this incident to her grandfather because she was in a hurry to go to school. In my view, this is the only aspect that can be used to demonstrate that if the incident as alleged had occurred, then the victim would have narrated the same to her grandfather. The victim has stated the reasons for not narrating the same to her grandfather. Her parents were not at home. She did not narrate the incident to anybody except her parents. It is not her case that she narrated

the shameful act committed by the accused with her to Trupti. In my view, the conduct of the victim could not be said to be totally unnatural. The victim must have been taken aback on account of this act of a father figure. She would not have expected such a shameful act by the accused, who was a father figure to her. She must be spending anxious moments on account of this surprise sprang by the accused.

12 She narrated the incident to her parents when they came back from the field. The reaction of the parents was but natural. They reported this incident to the Police Patil of the village. They went to the police station and lodged the report. The prompt lodging of the report by the parents of the victim after coming to know of the incident is sufficient to conclude that there was no scope for embellishment or exaggeration. The conduct of the parents was consistent with the person of the ordinary prudence when placed in a similar situation. The mother of the victim has narrated the incident in the report to

the police. The evidence of the mother of the victim PW-2 is consistent with the evidence of the victim. There are no inconsistencies or discrepancies in her evidence as to the occurrence of the incident as narrated to her by the victim. At this stage, it is necessary to state that in ordinary circumstances, even if it is assumed for the sake of argument that there was an enmity between the accused and the parents of the victim, they would not have even thought of jeopardizing the future of their daughter. The sexual offence at the first instance is traumatic for the victim. In such a crime, where the girl is involved, an attempt is made to avoid reporting of such a crime. The reporting of such a crime can bring disrepute to the family. It can also invite stigmatic consequences for the victim as well as for the family. While appreciating the evidence of the victim and the parents of the victim of a sexual offence these facts need to be borne in mind. The parents of the victim had no reason to falsely implicate the

accused. If they wanted to falsely implicate the accused, then the PW-2 mother of the victim would have created an imaginary story of molesting her own modesty. In our conservative society, even on account of family enmity, the future and career of the girl is not jeopardized. In my view, this is a strong circumstance in favour of the prosecution.

13 On minute perusal and appreciation of the evidence of the victim and her mother, I do not see any reason to discard or disbelieve their evidence. During the course of the cross-examination not dent has been caused to their basic version as to the occurrence of the incident. Their statements were recorded by the learned Magistrate under Section 164 of the Cr.P.C. during the course of the investigation. Perusal of their respective statements would show that the account of the incident narrated by them has been consistent. In the facts and circumstances, I fully agree with the conclusion arrived at by the learned Judge as to the offences proved against the accused.

The conviction and sentence, on the basis of the available evidence, has been fully justified. In this case, no interference is warranted in the well reasoned judgment and order passed by the learned Sessions Judge. Besides, the learned Advocate for the appellant submitted that the accused has undergone the sentence. In the facts and circumstances, I do not see any substance in the appeal. The appeal is accordingly **dismissed**.

14 Learned appointed advocate for the appellant be paid professional fees, as per the rules.

15 The criminal appeal stands **disposed of**, accordingly. Pending application, if any, stands disposed of.

(G. A. SANAP, J.)

Namrata