



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 728 OF 2022

Pradip Prakash Baikar

...Appellant

Versus

The State of Maharashtra and Anr.

...Respondents

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Mr. Akshay Dingale for the Appellant.

Mr. Ashok Gawai APP for the Respondent/State.

Ms. Gunjan Thakkar (appointed by Legal Aid) for Respondent No.2.

CORAM : R.M. JOSHI, J.

RESERVED ON : 16th FEBRUARY, 2026

PRONOUNCED ON : 25th FEBRUARY, 2026

: JUDGMENT :

1. Appellant/convict takes exception to the judgment and order dated 07.06.2022 passed in Special Case No.16 of 2014, whereby the Appellant came to be convicted for the offences punishable under Section 376(2)(i), 506 of IPC and Section 6 and 10 of the Protection of Children from Sexual Offences, Act 2012 ('POCSO' for short), sentenced to suffer maximum sentence of imprisonment of 10 years with fine, with default sentence.

2. First informant i.e. mother of the victim lodged report to the Ghatkopar Police Station informing about the occurrence of the incident prior to 4 days of lodging of the report. According to the informant, on 26.08.2013 victim complained to her mother about stomach pain. On questioning her about the reason for the same, she disclosed that prior to 4 days a man residing in front of the house called her on the pretext of giving food articles. He thereafter, removed her clothes and

committed sexual intercourse with her. Informant further states that her husband came back home at about 09.00 p.m. and thereafter, he called his brother. On the advice of his brother, they went to the police station and lodged report. Investigation was carried out by a woman police officer. Victim was sent for medical examination. Statement of the witnesses were recorded under Sections 161 and 164 of Cr.PC. Spot panchanama was done. Seized muddemal was sent to CA for examination. On conclusion of investigation, chargesheet came to be filed before the competent Court. The charge was framed. The accused denied the charges.

3. The prosecution examined the following witnesses to prove the offence against the accused. PW-1 Gayatri Ravindra Gavali, PW-2 Anita Ravindra Gavali, PW-3 Ravindra Jayhari Gawali, PW-4 Rajesh Prakash Thakur, PW-5 Sultana Akhtar Baig, PW-6 Mrs. Kamal Madhav Nanaware and PW-7 Dr. Kiran Yadav.

4. Apart from the oral evidence, reliance is also placed on documentary evidence such as first information report, medical examination report, spot panchanama, panchanama of seizure of clothes of victim and accused, CA reports etc. The Trial Court accepted the evidence laid by the prosecution and recorded judgment of conviction against the accused.

5. Learned Counsel for the Appellant submits that the Trial Court has not appreciated the evidence on record in proper perspective. It is his submission that the victim has not given the date as well as the time of occurrence of the incident and her testimony is not only inconsistent with her previous statement, but is also inconsistent with the evidence of informant. It is argued that even medical examination discloses no sign of any external injuries, nor genital injuries were found. It is his

submission that the medical officer has not given any opinion with regard to the victim being sexually abused. It is submitted that the other evidence laid by the prosecution in the form of testimony of PW-5, Smt. Baig is not supporting the case of the prosecution and that there is reason for this witness to depose falsely against the accused. It is his submission that the evidence of victim cannot be called as a evidence of a sterling quality in order to place reliance upon the same and in absence of any corroborating evidence, this is the fit case for acquittal of the accused. To support its submissions, he placed reliance on judgment of Supreme Court in case of **Nirmal Premikumar and Anr. v/s. State [Cr. Appeal No. 1098/2024]** and **Rai Sandip alias Deepu Vs State [(2012) 8 SCC 21]**.

6. The learned APP and learned counsel for Respondent No. 2 supported the impugned judgment and order. It is their contention that the Court has to take into consideration the age of the victim while assessing her evidence. It is submitted that minor discrepancies even if occurring in the evidence of the victim cannot become a ground for acquittal of the accused. According to them, the defence was not in a position to show any specific reason for false implication of the accused. It is submitted that different suggestions are made to the witnesses in respect of the previous disputes. Reference is made to the evidence of PW-5 who according to them, is an independent witness and had seen the victim going along with the accused at the relevant time. So also reliance is placed upon evidence of the employer of the accused who states about accused having worked on the fateful day upto 04.30 p.m. and having not performed any overtime work. It is the contention of Learned APP that medical evidence indicates that redness was present on the vagina of the victim. This according to him, is sufficient to

support the evidence of the victim with regard to the occurrence of the incident.

7. In case of offence against a child under POCSO Act, the Court is required to give due weightage to the evidence of the child, who is the victim of sexual assault. No doubt if the other evidence on record or overall circumstances brought before the court create any doubt with regard to the occurrence of the incident as claimed by the victim, the Court in such case would be on guard and search for any corroborative evidence.

8. In this case, before the Trial Court victim has specifically deposed about her date of birth to be 06.04.2005. The informant during her testimony has proved the birth certificate of the victim. There is no cross examination conducted by the victim taking exception to the fact that the victim is minor and therefore child under Section 2(d) of POCSO Act. The prosecution thus by leading cogent evidence has substantiated the fact that the victim was minor and hence rightly invoked the provisions of POCSO Act.

9. No doubt the victim has not been able to give the date of the occurrence of the incident. However, she specifically narrates the manner in which the incident had occurred. She states about accused having taken her to his home. This evidence of the victim gets due support from testimony of PW-5 who is the neighbour and had seen victim along with the accused on the relevant day. The victim thereafter, narrates the incident and the manner in which it occurred. The said evidence of the victim does not get affected by the cross examination. Defence was unable to bring anything on record to discard the evidence of victim with regard to the occurrence of the incident. In the cross examination, the suggestion was made to the victim that there was

quarrel between the accused and the mother of the victim over the issue of filling of water from a common tap. This suggestion is denied by the victim. As against this a suggestion was made to the informant that accused used to financially assist her and also had offered jewellery to her. It is also suggested that the cousin sister of the accused did not like the accused spending money on her and therefore, on this account quarrels took place. It is thus, clear that the defence is suggesting different reasons for his alleged false implication to the 4 witnesses of the prosecution and there is no substance in the said defence.

10. The victim's evidence not only gets support from the testimony of PW-5 but also medical evidence on record. No doubt the medical certificate so also the evidence of Dr. Yadav PW-7 indicates that there was no injury found on the person of the victim. However, as rightly pointed out by learned APP that the medical certificate indicates about redness being caused on the private part of the victim. There is no reason other than the sexual assault for causing of the same redness. In such circumstances merely because there is no opinion expressed by the Medical Officer with regard to the sexual assault, the case does not become fit for acquittal of the accused. In any case, the testimony of the Medical Officer is in the form of opinion. The entire evidence on record shows that the evidence of victim before the Trial Court is consistent with her previous statement so also gets the support from an independent witness coupled with the medical evidence. In absence of any evidence brought on record by the defence to show any false implication, this Court finds no reason to accept the contention of counsel for the Appellant in that regard.

11. Once the prosecution proves the core and fundamental facts which lead to the proof of the act of commission of offence,

presumption can be raised in view of Section 29 of the Act and it is for the accused to rebut the same. Here in this case accused has failed to rebut the said presumption either by way of cross-examination of witnesses of prosecution or leading other evidence. Consequently, this Court finds no reason to cause interference in the interim judgment and order of conviction.

12. At this stage, learned Counsel for the Appellant submits that the Appellant be sentenced to suffer imprisonment for the period already undergone. Learned APP and learned counsel for the Respondent No. 2 victim have drawn attention of the Court to the fact that the offence proved against the Appellant/accused provides for minimum period of imprisonment of 10 years and as such, there is no scope for causing interference therein.

13. In view of the aforesaid facts, there is no merit in the appeal and the appeal stands dismissed.

(R.M. JOSHI, J.)