IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.982 OF 2017

Ramchandra Shrimant Bhandare ....Appellant
Versus
The State of Maharashtra ...Respondent

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Mr. Sushan Mhatre, Advocate for the Appellant.
Mr. Yogesh Y. Dabke, APP for the Respondent-State.

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CORAM : SARANG V. KOTWAL, J.

DATE : 3rd AUGUST, 2022

ORAL JUDGMENT :

1. The appellant has challenged his conviction and sentence recorded by the learned Special Judge under POCSO Act at Greater Mumbai on 20.11.2017 in POCSO Case No.94/2014. The appellant was convicted for commission of offence punishable under Section 354 of the Indian Penal Code read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'). He was sentenced to suffer RI for five years and to pay fine of Rs.5,000/- and in default to undergo RI for six months. He was granted benefit of set off under Section 428 of Cr.P.C.. The judgment mentions that the appellant was in custody

from 13.12.2013 till 21.7.2014 and then was re-arrested on 26.7.2017 and was in custody till the date of the order.

2. Heard Shri Sushan Mhatre, learned counsel for the appellant and Shri Yogesh Dabke, learned APP for the State.

3. The prosecution case is that on 11.12.2013 at about 1.00 p.m., the appellant approached the victim who was about five years of age on that date. He touched and pinched her private parts and thus committed offence punishable under Section 8 of POCSO Act and under Section 354 of IPC. The FIR was lodged at the midnight. The appellant was apprehended by the people from the locality, was brought to the police station then he was arrested. The investigation was carried out and the charge-sheet was filed. During trial, the prosecution examined four witnesses : PW-1 was the victim herself, PW-2 was the victim's mother, PW-3 was the investigating officer and PW-4 was the Medical Officer.

4. PW-1 in her deposition has stated that she was studying in 4th standard. Her school timing was from 7.00 a.m. to 12.30 p.m. After returning from school she used to take lunch and thereafter used to go to Masjid for studying Arbi. She used to return home at

around 4.30 p.m. Then she used to go out for playing with her friends and used to return home at 7.00 p.m. On the day of the incident she was playing outside her house with her friends. At that time, one uncle came near her and took her with him. He closed her eyes with his hands. He touched her private parts. He also pinched her private parts. She was having pain. She returned home and narrated the incident to her mother. Her mother took her to hospital. Then she was taken to the police station. The mother lodged her FIR. PW-1's statement was also recorded under Section 164 of Cr.P.C. by the learned Magistrate.

In the cross-examination, she deposed that her parents were keeping watch on her activities to protect her and that she was not kept alone by her mother. She did not know anything about the relations between her father and the appellant. She specifically denied the suggestion that she was deposing before the Court against the appellant at the instance of her mother. She also admitted that there was quarrel between the appellant and her father. However, she immediately clarified that the quarrel took place on account of the fact that the appellant had committed this

offence. PW-1 then identified the appellant before the Court.

5. PW-2 is the mother of the victim. She had narrated the incident that on the date of the incident her daughter returned home crying. On enquiries she told her about the incident. PW-2 then saw her private part which was reddish in colour. In the evening she along with her daughter - the victim had gone to purchase vegetables, while they were returning they saw that the appellant was drinking alcohol. At that time the victim showed the appellant as the person who had committed that offence. PW-2's husband then with the help of neighbours enquired with the appellant. The people in the vicinity gathered there and assaulted the appellant for committing that act. The police then came there and took the appellant with them. PW-2 also went to the police station and lodged her FIR, which was produced on record at Exhibit-13. The victim was sent for medical examination.

In the cross-examination, hardly anything of consequence was elicited from her evidence. She denied the suggestion that on the date of incident the appellant had quarreled with her husband under the influence of liquor and as PW-2's

husband assaulted him, the appellant's family members went to police station to lodge complaint against her husband and, therefore, immediately the present complaint was lodged to falsely implicate the appellant.

There is hardly any material contradiction and omission between the FIR and her deposition. The FIR was recorded at 12.10 a.m. on 13.12.2013 i.e. on the same mid-night.

6. PW-3 API Santosh Rasam had conducted the investigation. He deposed that at about 11.30 p.m., the informant, her husband and the victim had come to the police station and had narrated the incident. The FIR was lodged. In the meantime, the staff of Vakola police station brought the appellant to the police station in their mobile van. The victim identified the appellant as the person who had committed that act. He was arrested. He clarified that in the third paragraph of the FIR, by mistake, the date was mentioned as 11.12.2013 instead of 12.12.2013. The victim was five years of age at the time of FIR and she was continuously crying and, therefore, he could not record her statement for seven to eight days. In the meantime, she was referred for medical

examination at Cooper Hospital. The victim's statement was recorded under Section 164 of Cr.P.C. He himself recorded the statement of the victim on 11.8.2017 and issued copy of the same to the defence. Again in the cross-examination, nothing much was elicited. He admitted that he did not record the statement of the victim's friends who were playing with her.

7. PW-4 Dr. Ayyar had examined the victim on 12.12.2013. She was brought to Cooper Hospital by her mother. Her medical examination did not reveal anything except the history given by her mother .

. This, in short, is the prosecution case.

8. The defence of the appellant recorded under Section 313 of Cr.P.C. is that he went to the victim's father's shop to purchase grocery. He paid money but there was some quarrel and he was falsely implicated because of the quarrel between him and the victim's father.

9. Learned Judge believed the version of the victim and by relying on other evidence, convicted and sentenced the appellant as

mentioned earlier.

10. Learned counsel for the appellant submitted that the FIR mentions that the incident had taken place on 11.12.2013 and the FIR was lodged on 13.12.2013. The delay has remained unexplained. He submitted that the appellant is falsely implicated because of the quarrel between him and the victim's father. He submitted that the medical examination did not reveal any injury including redness on the private part of the victim. The prosecution case therefore is doubtful.

11. Learned APP, on the other hand, relied upon the depositions of the victim and her mother to contend that the prosecution has proved its case beyond reasonable doubt.

12. I have considered these submissions. The victim has described the incident in sufficient details. She was barely five years of age. The evidence shows that she was crying continuously. After gathering courage she, in fact, had identified the appellant in the Court. From her evidence it does not appear that she is a tutored witness. In fact she has denied the suggestion that she was deposing on being tutored by her mother. The victim appears to be

a truthful witness.

13. PW-2's evidence corroborates PW-1's version. The appellant was immediately shown by PW-1 in the evening when PW-1 and PW-2 were returning after purchasing vegetables from the market. There was no possibility of the victim identifying the appellant wrongly. PW-1 appears to be an innocent child. She has not identified any person randomly. Even during the course of trial, she identified the appellant in the Court though she was scared.

14. The absence of injury mentioned in the medical certificate will not make any difference to her case because the very nature of the offence of sexual assault defined under Section 7 of the POCSO Act mentions that even touching private part with sexual intent is sufficient to attract the provisions of Section 7 read with Section 8 of the POCSO Act.

15. In this case, the ocular evidence of the victim and her mother inspires confidence and there is no reason to doubt their versions. The other step of arresting the accused is also proved by the prosecution from the evidence of the investigating officer. The appellant was caught by the residents and was handed over to the

police.

16. The defence of the appellant does not really help his cause. No circumstances are brought on record by the defence to show that there in fact was any quarrel between the appellant and the victim's father.

17. Thus, considering all these aspects, no case for interference with the impugned judgment and order is made out. The appeal is, therefore, dismissed. It is clarified that if the appellant has already completed his substantive sentence and also the the sentence imposed on him in default of payment of fine, in that case, the appellant be released only if he has completed both the sentences and if he is not required in any other case. With these observations, the appeal is disposed of.

(SARANG V. KOTWAL, J.)

Deshmane (PS)