

(2024) 08 BOM CK 0040
In the Bombay High Court
Case No : Criminal Appeal No. 201 Of 2021

Mituram S/O Udayram Dhurve

APPELLANT

Vs

State Of Mha. Thr. Pso Ps Warud Dist.Amravati And Another

RESPONDENT

Date of Decision : 08-08-2024

Acts Referred:

Indian Penal Code, 1860 — Section 354D(1)(i)

Protection of Children From Sexual Offences Act, 2012 — Section 11, 11(vi), 12

Citation : (2024) 08 BOM CK 0040

Hon'ble Judges : G. A. Sanap, J

Bench : Single Bench

Advocate : R.D. Hajare, Mukta Kavimandan, Aniket Rangari, Mohini Sharma

Final Decision : Dismissed

Judgement

G. A. Sanap, J

1. In this appeal, the challenge is to the judgment and order dated 04.02.2021 passed by the learned Sessions Judge, Amravati, whereby the learned Sessions Judge held the appellant guilty of the offence punishable under Section 354-D (1) (i) of the Indian Penal Code (for short, "the I.P.C.") and under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, "the POCSO Act") and sentenced him to suffer rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default of payment of fine to further suffer simple imprisonment for one month.

2. Background facts:-

The report in this case was lodged by the victim girl on 19.08.2017. It is stated that on the date of the incident, the victim was 13 years of age and studying in 9th standard. At the relevant time, she was also attending the tuition classes at Warud. The timing of her tuition classes was 8.00 a.m. to 11.00 a.m and her school timing was 12.00 p.m. to 5.15 p.m. The victim has stated in her report that since prior to one month of the report dated 19.08.2017, one boy would

stand in front of school and would stare at her. The said boy would take his motor cycle near to the victim. It is stated that one day when she was proceeding from school to her house by ring road, the said boy suddenly came in front of her and expressed his desire to talk to her. The victim told him that she was not acquainted with him. At that time the said boy disclosed his name as Mituram Dhurve. The victim flatly refused to communicate with the said accused in any manner. It is stated that the accused thereafter was repeatedly following her. The victim told him not to follow her; otherwise she would disclose the incident to her parents. There was no change in the behavior of the accused. He would constantly follow the victim.

3. It is stated that on 19.08.2017 she finished her tuition class at Malpe Sir and was proceeding to attend the tuition class of English subject. She was proceeding via post office Hanuman Temple towards Jagruti School. When she went near the post office, one person came from behind and caught held her hand. She turned around and saw that he was the accused, who had caught held her hand. She pleaded with the accused to release her hand, but at that time the accused told her that he loves her and one day she would accept his love. The victim resisted and somehow rescued herself from the accused. She gave him a slap on the face. At the relevant time, one unknown person came there and made an inquiry whether the accused was harassing her. She informed the said person that the accused was harassing her. The said unknown person told her that he would take care of said boy. She should attend her tuition class. The victim went to attend the tuition. After attending the tuition, she went to the school. Her mother came to the school to take her to the doctor. She disclosed the incident to her mother. The mother informed her father about the incident. Her father came there. They together went to the police station. The victim lodged the report at Warud Police Station. Police registered First Information Report No.0627/2017 against the accused.

4. Priya Umale, PSI (PW-3) conducted the investigation. She drew the spot Panchanama. She collected the documents of the age of the victim. She recorded the statements of the witnesses. After completion of the investigation, she filed the charge-sheet against the accused. Learned Sessions Judge framed the charge against the accused. The accused pleaded not guilty. His defence is of false implication. Prosecution examined four witnesses to prove the charge against the accused. Learned Sessions Judge, on consideration of the evidence, held the accused guilty of the offence punishable under Section 354-D (1), sub-clause (i) of the I.P.C. and under Section 12 of the POCSO Act and sentenced him as above. Being aggrieved by the judgment and order, the appellant has come before this Court in appeal.

5. I have heard Mr. R.D. Hajare, learned Appointed Advocate for the appellant, Mrs. Mukta Kavimandan, learned APP for the State and Mr. Aniket Rangari, learned Advocate h/f Ms. Mohini Sharma, learned Appointed Advocate for the respondent No.2. Perused the record and proceedings.

6. Learned Advocate for the appellant submitted that in this case, the offence of stalking under Section 354-D (1), sub-clause (i) of the I.P.C. has not been proved. Learned Advocate submitted that the act alleged to have been committed by the accused was not committed repeatedly. Learned Advocate further submitted that evidence on record is not sufficient to prove either the offence of stalking or the offence of sexual harassment. Learned Advocate would submit that evidence of the victim PW-1 does not inspire confidence. Learned Advocate took me through the evidence of the victim and pointed out that the victim has admitted that 3 to 4 more girls used to attend the school with her. Learned Advocate submitted that the prosecution has not examined a single girl to seek independent corroboration to the evidence of the victim. Learned Advocate took me through the evidence of the mother of the victim (PW-2) and submitted that she was not witness to any incident occurred with the victim. Learned Advocate would submit that for nearly one month, the accused was allegedly stalking the victim, but the victim did not disclose the same to her parents. Learned Advocate submitted that this is the most unnatural conduct of the victim. Learned Advocate submitted that except for the interested evidence of the victim and her mother, there is no other independent evidence to corroborate the case of the prosecution. Learned Advocate would submit that learned Sessions Judge has placed implicit reliance on their evidence and handed down the conviction and sentence to the accused. Learned Advocate further submitted that there is no cogent and concrete documentary evidence to prove the date of birth of the victim. Learned Advocate would submit that the available evidence produced by the prosecution is not legally admissible.

7. Learned APP submitted that learned Sessions Judge has thoroughly marshaled and appreciated the evidence of the prosecution witnesses and on scrutinizing the evidence carefully has held the accused guilty of the above offences. Learned APP submitted that the victim and her mother had no relations or enmity with the accused. Learned APP submitted that the victim had no reason to falsely implicate the accused in such a serious crime, which would obviously have stigmatized her and her family. Learned APP submitted that the first hand account of the incident narrated by the victim is credible and therefore, cannot be disbelieved. Learned APP submitted that there was no delay in lodging the report. It is pointed out that the accused has not pleaded any defence for his false implication. Learned APP submitted that the offence of stalking has been proved on the basis of the evidence of the victim girl. Learned APP further submitted that the offence of sexual harassment as defined under Section 11 of the POCSO Act has also been established. As far as the date of birth of the victim is concerned, learned APP submitted that prosecution has examined Lalita Dhoke-Head Mistress (PW-4) of the school, where the victim was admitted in the 1st standard. Learned APP submitted that during the course of investigation investigating officer had collected the certified extract of the admission register from the school as well as the affidavit of the father of the victim submitted in the school. Learned APP submitted that in these two documents the date of the

birth of the victim has been recorded as 19.09.2003. Learned APP, in short, submitted that there is no substance in the appeal.

8. The victim on the date of the incident was studying in the 9th standard. The victim has stated the birth dates of her elder and younger sisters. She has stated that she was admitted in 1st standard in Zilla Parishad Primary School at Rajura Bazar and studied there up to 4th standard. In her evidence, she has stated that she is 17 years old. It is true that she has not specifically stated her birth date. Her mother PW-2, has stated her birth date. She has stated that her birth date is 19.09.2003. She was born at Ahmadabad. The mother has also stated the birth dates of her elder and younger daughters. The birth date of the elder daughter is 10.04.2000 and the birth date of the younger daughter is 02.05.2007. She has also stated that the victim was admitted to Zilla Parishad School at Rajura Bazar in the first standard.

9. PW-4 is Head Mistress of Zilla Parishad Primary School, Rajura Bazar. She was summoned to produce the admission register to prove the certified extract of birth certificate issued from the school. She has deposed that the victim girl was admitted to the school on 25.06.2009 in the 1st standard. The relevant entry from the admission register is at serial No.7303. She has stated that, as per the school admission record, the birth date of the victim is 19.09.2003. The original admission register produced by her was duly verified by the learned Sessions Judge. The extract is at Exh.32. PW-4 has also produced the affidavit register. As far as the affidavit of the parents of the victim is concerned, it is at serial No.7306. The extract of the said affidavit is at Exh.33. The extract was verified and compared with the original record. She has stated that the birth date was provided by the parents of the victim. This witness was cross-examined. Perusal of the cross-examination of this witness would show that there is no admission of any significance on record to rebut the evidence of PW-4.

10. It is true that there is no birth certificate. The only document relied upon is the school admission register, where the birth date of the victim was recorded. It needs to be stated that it is not the case of the accused that this documentary evidence was prepared to support the case of the prosecution. The offence is dated 19.08.2017. The victim was admitted in the school on 25.06.2009. Learned Sessions Judge has appreciated this evidence and has recorded the finding that the school admission register is cogent and concrete to prove the birth date of the victim. Learned Sessions Judge has found that this evidence is sufficient to prove the age of the victim. On re-appreciation of the evidence, I am satisfied that this record was not created just to support the case of the prosecution. The birth date recorded in the school register is proof of her birth date through out her life for all purposes. The mother, apart from stating birth date of the victim has stated the birth dates of her elder and younger daughters. The evidence of PW-1 and PW-2, as to the age of the victim has not at all been challenged. On the basis of this evidence I am satisfied that the prosecution has proved beyond doubt the birth date of the victim and as such, the fact that the

victim on the date of the incident was below 18 years of age. In view of this, I do not see any substance in the submissions advanced by learned Advocate for the appellant.

11. The next important issue as to whether the evidence of the victim and her mother inspires confidence or not and the offence proved against the accused on the basis of the said evidence?

12. PW-1 is the victim girl. She has deposed that the incident occurred on 19.08.2017. It has come in her evidence that at that time she was studying in 9th standard and apart from the school, she used to attend tuition classes of Math, Science and English at Warud. She has stated that timings of classe was between 8.00 a.m. and 11.00 a.m. and the timings of the school was 12.00 p.m to 15.15 p.m. She has testified that she would travel to the school by bus. As far as the accused is concerned, she has stated that the accused would stand in front of her school and would stare at her. He was harassing her. He was riding the bike intentionally in front of her. She has categorically stated that one day when she was proceeding towards bus stand by ring road the accused came in front of her and restrained her. The accused told her that he would like to communicate with her. He disclosed his name as Mituram Dhurve. The victim has categorically told the accused that she is not acquainted with him and therefore, she would not communicate with him. She has stated that after this incident, after a few days, the accused again started following her and harassing her, despite her clear indication of disinterest in the accused. She has further stated that the accused continued to follow and harass her. As far as the incident dated 19.08.2017 is concerned, she has stated that while she was proceeding for tuition class and in front of post office near Hanuman Temple, some one came from behind and caught hold her hand. She turned around and saw that he was the accused. She has stated that the accused told her that he is having love for her and he is confident that one day she would accept his love. The victim slapped the accused on face and rescued herself. She has stated that at that time one unknown person came there and told her to leave, with an assurance that he would take care of the accused. She therefore, attended the tuition class. After tuition, she went to the school. Her mother came to the school to take her to the hospital. She narrated the incident to her mother and thereafter the report was lodged. The oral report is at Exh.9. The First Information Report is at Exh.10.

13. This witness has been cross-examined. The only admission that may provide some temporary soothing relief to the accused is that she has admitted that other girls from her village would also travel with her in the bus. She has also admitted that other girls would also attend tuition class with her. Prosecution has not examined any of her friends. It needs to be stated that only because of this, the evidence of the victim would not get dented. One suggestion was put to her that she was communicating with one boy and on the suggestion of the said boy the report was lodged against the accused. The victim has denied this suggestion. Perusal of her cross-examination would show that she has

consistently reiterated the basic incident. Despite searching cross-examination the core of her evidence has not been shaken. It needs to be stated that the victim girl had no reason to falsely implicate the accused. The reason put forth in the cross-examination cannot be believed. The accused was not studying with the victim girl. The victim, in her evidence, has narrated the first hand account of behaviour and conduct of the accused. The evidence of the victim is sufficient to prove that the accused repeatedly followed her with an intention to foster personal interaction, despite a clear indication of disinterest by her. The evidence of the victim would further be sufficient to prove that she was subjected to sexual harassment by the accused. The offence of sexual harassment as provided under Section 11 sub-clause (vi) of the POCSO Act would squarely apply in this case. It needs to be stated that the behaviour and conduct of the accused is sufficient to reflect on his intention. The accused was repeatedly following the victim girl. He wanted to talk with her. He wanted to have love relations with her. He expressed his love for the victim and boasted that one day the victim would accept his love and say yes to him. In my view, the intention of the accused is explicit from his conduct. His intention was not good.

14. The mother of the victim is not an eye witness to the incident. She has narrated the account of the incident told to her by the victim girl. She has stated that on 19.08.2017 the victim was not well and therefore, she had to be taken to the hospital. She went to Warud and was waiting for her in front of her school. She has stated that she met the victim at about 11.00 a.m. in front of the Jagruti School. She has stated that at that time the victim disclosed the incident occurred with her. She has disclosed the name of the accused as Mituram Dhurve. She has stated that the victim narrated the incident of 19.08.2017 as well as the constant harassment and stalking by the accused. She has stated that she immediately informed her husband about the incident. Thereafter she took her daughter to the hospital and after arrival of her husband, they went to the Police Station and lodged report at about 3.00 to 3.30 p.m. It is to be noted that the evidence of PW-2 is consistent with the evidence of the victim. PW-2 did not try to exaggerate anything. She has confined herself to the incident narrated to her by the victim. It is true that the victim prior to this date had not disclosed anything about the harassment as well as stalking to her by the accused. In my view, that by itself would not be sufficient to discard and disbelieve the evidence of the victim and evidence of her mother.

15. Perusal of the evidence of the victim would show that at her level, she initially tried to resist the accused. She gave an understanding to the accused that she was not interested in him in any manner. However, the accused did not listen to her, which ultimately resulted in the occurrence of the incident dated 19.08.2017. Perusal of her cross-examination would show that there are no major omissions and inconsistencies. Similarly, there are no major omissions or inconsistencies in the evidence of the victim. There are no interse inconsistencies in the evidence of PW-1 and PW-2. The prompt lodging of the report is another important circumstance in favour of the prosecution. The circumstances would

substantiate the credibility and trustworthiness of the victim. On minute scrutiny and perusal of the evidence of the PW-2, I do not see any reason to discard and disbelieve the same.

16. It needs to be stated that when the girl is involved in such an incident, there is reluctance on the part of the parents to report such a matter to the police. Reporting of such a matter to the police and bringing such a matter in public domain, with certainty, can spoil the future of the girl. Such an offence produces stigmatic consequences, not only for the girl but, also for the family. The reporting of such crimes always puts the prestige and reputation of the family at stake. In the ordinary circumstances the parents even cannot think of involving their daughter in such an incident. In this case, there is no evidence even to suggest that they have any motive to falsely implicate the accused. There was no suggestion of any enmity on any account between the parents of the victim and the accused. In my view, this is the most vital circumstance to reject the submissions made on behalf of the accused. The evidence is credible and trustworthy. Such credible and trustworthy evidence cannot be discarded. In the facts and circumstances, I conclude that there is no substance in the appeal. The offence of stalking and sexual harassment has been proved against the accused. The evidence is sufficient to establish the basic ingredient of the offence under Section 354-D (1) sub-clause (i) and Section 11 (iv) of the POCSO Act. Learned Judge has awarded a substantive sentence of one year. Learned Judge has taken lenient view on this count. I do not see any reason to modify the substantive sentence. As such, the appeal deserves to be dismissed.

17. Accordingly, the Criminal Appeal is dismissed. Pending application, if any, stands disposed of.

18. Learned appointed Advocate for the appellant and learned appointed Advocate for respondent No.2 be paid professional fees, as per the rules.