

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**: NAGPUR BENCH : NAGPUR.**

**CRIMINAL APPEAL NO. 251 OF 2016**

**APPELLANT** : Mahadev Narayan Bhusari,  
Aged about 29 years, Occu. Agriculturist,  
R/o Chikani, Tah. Warora, Dist. Chandrapur.

**VERSUS**

**RESPONDENT** : State of Maharashtra,  
Through Police Station Officer,  
Police Station, Warora, Dist. Chandrapur.

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Ms. Deepali V. Sapkal, Advocate appointed for the appellant.  
Mr. M. J. Khan, A.P.P. for the Respondent/State  
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**CORAM : G. A. SANAP, J.**  
**DATE : AUGUST 24, 2022.**

**ORAL JUDGMENT**

1. In this appeal, challenge is to the judgment and order dated 17.03.2016, passed by the learned Special Judge, Warora in Special (POCSO) Case No.10/2015, whereby the learned Judge convicted the appellant for the offences punishable under Sections 341, 354-A, 354-D of the Indian Penal Code and under Sections 11(i) and

12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act” for short). The sentence awarded on different counts is as under :

- i] Rigorous imprisonment for two years and fine of Rs.500/-, in default to suffer simple imprisonment for three months, for the offence under Section 11 (i), punishable under Section 12 of the POCSO Act.
- ii] Rigorous imprisonment for two years and fine of Rs.500/-, in default to suffer simple imprisonment for three months, for the offence punishable under Section 354-D of the Indian Penal Code;
- iii] Simple imprisonment for one month for the offence punishable under Section 341 of the Indian Penal Code.
- iv] Though, the appellant was convicted for the offence punishable under Section 354-A of the Indian Penal Code, no separate sentence is awarded.

2. The victim girl (PW1), on the date of the incident, was studying in 9<sup>th</sup> standard at Kisan Vidyalaya, Chikni. She was residing with her parents at Masala, Tah. Warora, Dist. Chandrapur. The victim and her friends would attend the school from their village on bicycle.

The incident in question occurred on 11.02.2015 at about 5.00 p.m. It is stated that the victim and her friends were coming back to their village on bicycle after attending the school. The agricultural land of the father of the victim is on the way. The mother of the victim was on the field. Mother of the victim called her to collect key of the house. When the victim went to collect key, her friends went away. The victim, after collecting key from her mother, was proceeding on her bicycle to house. When she came near the agricultural land of Raju Khangar (PW3), the appellant came from behind on his motorcycle. He obstructed the victim and said to her “*mi tuzyawar khup prem karto. Chal mala detes ka*” (I love you very much and made demand for sex). The appellant, tried to catch hold the hand of the victim. The victim started screaming. Raju Khangar (PW3) heard screams of the victim and came running to the spot. He rescued the victim from the appellant and the appellant went away from the spot. The victim proceeded to her house. She narrated the incident to her mother when she returned home at 7.00 p.m. On the next day, after attending the school, she went to the police station and lodged report of the incident against the appellant. On the basis of the report, Crime No. 43/2015

came to be registered against the appellant.

3. API Prashant Masram (PW8), who was attached to Police Station, Warora on the date of the incident, conducted investigation. He visited the spot shown by the victim and drew spot panchnama. He obtained the relevant documents including the age proof of the victim. He recorded the statements of the witnesses. He arrested the appellant. After completion of investigation, he filed charge-sheet in the Special Court.

4. The learned Special Judge, Warora, framed Charge (Exh.2) against the appellant for the aforesaid offences. The appellant pleaded not guilty and claimed to be tried. The defence of the appellant was of total denial and false implication in the crime. In order to bring home the guilt of the appellant, prosecution examined in all eight witnesses. The learned Special Judge, on consideration and analysis of the evidence, found the appellant guilty and sentenced him as above. Being aggrieved by this judgment and order, the appellant is before this Court in appeal.

5. I have heard Ms. Deepali Sapkal, learned advocate appointed by the High Court Legal Services Sub Committee, Nagpur, for the appellant and Mr. M. J. Khan, learned Additional Public Prosecutor for the respondent-State. With their assistance, I have perused the record and proceedings.

6. Ms. Deepali Sapkal, learned advocate for the appellant submitted that evidence against the appellant is not cogent, concrete and reliable. She submitted that on the basis of the evidence of the interested witnesses, the learned Judge ought to have given benefit of doubt to the appellant. Learned advocate submitted that evidence of the victim (PW1) does not inspire confidence. In the submission of the learned advocate, evidence of the victim is not sufficient to prove the incident. Learned advocate submitted that evidence of independent witness Raju Khangar (PW3) is not at all reliable. Learned advocate submitted that evidence of the victim (PW1) and Raju Khangar (PW3) is not consistent. She submitted that evidence of the friends i.e. PW4 and PW5 of the victim (PW1) is hardly of any consequence to substantiate the case of the prosecution on material

aspects. Learned advocate submitted that the learned Special Judge has not properly appreciated the evidence on record and as such came to a wrong conclusion. Learned advocate further submitted that even if the evidence on record is accepted as it is, the same would not be sufficient to prove the offence of stalking under Section 354-D of the Indian Penal Code. Learned advocate submitted that there was inordinate delay in lodging the report and the delay has not been explained by the prosecution, which creates a doubt about the case of the prosecution. Learned advocate for the appellant, therefore, submitted that on the basis of the material placed on record, sufficient doubt has been created about the case of the prosecution and therefore, benefit of doubt must go to the appellant. She submitted that the appeal is, therefore, required to be allowed.

7. On the other hand, Mr. M. J. Khan, learned Additional Public Prosecutor for the State submitted that there is no inconsistency in the evidence of the victim (PW1) and independent witness Raju Khangar (PW3). Learned APP submitted that no material has been brought on record to establish that either the victim girl (PW1) or

independent witness Raju Khangar (PW3) had any reason for falsely implicating the appellant. He submitted that the defence of the appellant that he was mercilessly beaten on account of his trifle quarrel with the victim (PW1) and therefore, in order to prevent him from reporting the matter to the police, he was falsely implicated in the case, cannot be accepted. Learned APP submitted that this defence is not at all probable, inasmuch as no injuries were found on his person when he was arrested on the very next day of the incident. Learned APP further submitted that evidence of the victim (PW1) is sufficient to prove the incident and involvement of the appellant in the incident. Learned APP submitted that no material has been brought on record to accept defence of the appellant. Learned APP submitted that this defence is highly improbable inasmuch as the parents of 14 years old girl would not even think to ruin her life for such a trifle cause. Learned APP submitted that the learned Special Judge has properly appreciated the evidence on record and recorded sound reasons in support of his findings. As regards delay in filing report to police, learned APP submitted that the delay has been properly explained during the course of trial. He submitted that considering the nature of

the incident and involvement of 14 years old girl in the incident, the delay was natural. In short, the learned APP supported the well reasoned judgment of the learned Special Judge.

8. In order to satisfy myself about correct factual position, I have minutely perused the evidence on record. The victim (PW1) is the star witness of the prosecution. She, in her evidence before the Court, unfolded the unfortunate incident occurred with her. It is to be noted that the appellant has not denied his presence on the spot at the given time. It is the defence of the appellant that his motorcycle touched the bicycle of the victim and therefore, quarrel ensued between him and the victim. It is also his defence that therefore, he was beaten black and blue by the parents of the victim and in order to avoid prosecution, he has been falsely implicated in the present crime. At this stage, keeping aside the aspect of probability of his defence, the fact remains that he has admitted his presence on the spot at the time of the incident. The victim (PW1) has narrated actual incident in her evidence. She has stated that after attending the school, she and her friends were coming back to their village. She has stated that on the



way she went to her mother to collect key of the house and in the meantime, her other friends went away. She has stated that after collecting key from her mother, she proceeded towards the village. She has stated that when she reached near agricultural land of Raju Khangar (PW3), the appellant came from behind on his motorcycle and obstructed her. She has categorically stated that appellant stated to her “*mi tuzyawar khup prem karto, chal mala detes ka*”. (I love you very much and made demand for sex). She has further stated that by uttering these words, the accused tried to caught hold her hand. She has specifically stated that she, therefore, screamed loudly and after hearing her screaming, Raju Khangar (PW3) came on the spot from his field. She has stated that she narrated the incident to Raju (PW3). In her presence, Raju questioned the appellant as to why he is teasing her. She has stated that the appellant abused Raju (PW3) and thereafter, went away on his motorcycle from the spot. She has stated that from the spot, she went to her house and in the evening narrated the incident to her parents. The victim (PW1) has further stated that prior to this incident, the appellant used to whistle when she and her friends would go to school by road. He also used to sing song and

obstruct them. The oral report was lodged on the next day of the incident. It is at Exhibit-7. Perusal of the report would show that all these facts have been stated in the report.

9. The victim (PW1) was subjected to searching cross-examination to test her veracity. Perusal of the cross-examination of the victim would show that not a single omission or contradiction has been attributed to this witness in her cross-examination. The major part of the cross-examination of the victim is devoted to suggestions. Perusal of her cross-examination would show that on the main part and core of the incident, no dent has been caused to her evidence. Perusal of her cross-examination would also show that her evidence has remained unassailed. While appreciating the evidence of the victim (PW1), it is necessary to bear in mind that there was no enmity between the victim and the appellant or the family of the victim and family of the appellant. There was no reason for the victim to attribute such serious allegations to the appellant. It is also to be noted that if the incident, as suggested in her cross-examination, of trifle nature had occurred, the parents of the victim would not have put the future of

the victim at stake. It is to be noted that if such an incident comes to the fore, it can have cascading effect on the future of girl child and at times, the same can peril her future. The parents of the victim are the farmers. The farmers would not even think of taking revenge of trifle kind of incident in this manner. Therefore, the sum and substance of the evidence of the victim remains unshaken. On the basis of her evidence, the incident as reported by her and involvement of the appellant, has been proved. The specific words uttered and addressed to the victim have been proved and the overt act done by the appellant has also been proved.

10. This would now take me to the evidence of Raju Khangar (PW3), an independent witness, examined by the prosecution, to seek corroboration to the testimony of the victim (PW1). He has stated that on the date of the incident, he was in his agricultural land. He has stated that at about 5.00 pm, he heard cries of the victim. He has stated that therefore, he went to the boundary of his field near the road. He saw that the appellant was harassing and teasing the victim. The victim was on bicycle and the appellant was on motorcycle. Raju

(PW3) has categorically stated that he questioned the appellant as to why he is teasing the victim. The appellant, therefore, abused him and went away. A perusal of his cross-examination would show that his presence on the spot has not been challenged. On the contrary, the suggestions put to this witness in his cross-examination would clearly indicate that the appellant has admitted his presence on the spot. In his cross-examination, general questions were put to him about the location of the spot, location of his field and the people around the spot at the time of the incident etc. His statement was recorded by the police during the course of investigation. Perusal of his cross-examination would show that not a single omission or contradiction has been attributed to this witness. It was suggested to him that he deposed falsely on the say of the father of the victim, which he denied. It is to be noted that this witness is an independent witness. He has no enmity or animosity with the appellant. There was no reason for this witness to depose falsely against the appellant. Perusal of his evidence would, therefore, prove beyond reasonable doubt that he witnessed the incident as narrated by him. His evidence corroborates testimony of the victim (PW1) on material part of the incident. I, therefore, see no

reason to discard and disbelieve the unshaken evidence of this witness.

11. Pragati Meshram (PW4) and Priti Khangar (PW5) are the friends of the victim (PW1). It has come on record in their evidence that they along with the victim and another girls would attend the school at Chikani village on bicycle. While narrating the account of events occurred on the given date, they have stated that when they were coming back after attending the school at the given time, the victim went to her mother to collect key. They have stated that they did not wait for the victim and went away. In her evidence Pragati (PW4) has stated that the appellant used to whistle and sing song whenever he would see the girls. She has categorically stated that on the next day, on the way to school, the victim narrated the incident to her. Evidence of Pragati (PW4) and Priti (PW5) corroborates evidence of the victim on material part of the incident. Their evidence proves that the victim had gone to collect key from her mother and therefore, they went away. This evidence is, therefore, sufficient to indicate that the victim was alone while coming to home after collecting key from her mother. Evidence of PW4 and PW5 that they together would

attend the school on bicycle has not been shaken and as such cannot be disbelieved.

12. The remaining witnesses are the witnesses on spot panchanama and seizure panchnama of the articles. These witnesses are not that important. These witnesses have also supported the case of the prosecution. Evidence of the victim, corroborated by the evidence of Raju (PW3), is sufficient to accept the case of the prosecution. On the basis of this evidence, the prosecution has successfully proved that the appellant had wrongfully restrained the victim, when she was proceeding to her house, on the road. Evidence of the victim (PW1) is sufficient to show that the appellant made unwelcome and explicit sexual overtures towards the victim and made demand of sexual favour from her. On the basis of evidence of this witness, it has also been proved that the appellant, with sexual intent, uttered the words stated by the victim and those words had been heard by her. I am, therefore, satisfied that on the basis of the evidence on record, the offences, under Section 11(i) punishable under Section 12 of the POCSO Act and the offences under sections 341 and 354-A of the Indian Penal Code have

been proved. As far as these offences are concerned, I do not see any reason to discard and disbelieve the case of the prosecution. The learned Judge has recorded sound reasons in support of his findings. On the above count, no interference is warranted in the judgment and order passed by the learned Special Judge.

13. The appellant was convicted and sentenced for the offence punishable under Section 354-D of the Indian Penal Code. Section 354-D defines stalking. It would be appropriate to reproduce Section 354-D, sub-section (i) of the Indian Penal Code, which reads as under :

***“354-D - Stalking***

*(1) Any man who—*

*(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman ; or*

*(ii) .....*

14. It is seen that in this case, the prosecution invoked the provisions of Section 354-D(1), sub-clause (i) of the IPC against the appellant. Perusal of the evidence on record would show that the ingredients of sub-clause (i) of Section 354-D(1) of IPC have not been

made out. The victim (PW1) has not categorically deposed about repeatedly stalking her and her friends. In her evidence, she has stated that prior to the incident, the appellant used to whistle and sing song. This is the only statement to attribute allegation of stalking to the appellant. Pragati (PW4) has stated that the appellant used to whistle and sing song whenever he would see the girls. Evidence of Priti (PW5) is silent on this aspect. Evidence of the victim (PW1) and her friend Pragati (PW4), in my opinion, falls short to prove the basic ingredients of Section 354-D(1), sub-clause (i) of the IPC. There is no specific statement to this effect in the report lodged by the victim. The evidence of the victim (PW1) and Pragati (PW4) would show that the statement made by them on this point is general and too vague. Perusal of sub-clause (i) of Section 354-D(1) clearly indicates that the acts mentioned therein must be done repeatedly despite a clear indication of disinterest by a woman. This basic ingredient has not been established. In my opinion, therefore, the conviction and sentence of the appellant on this count cannot be sustained. It is required to be set aside.



15. Perusal of the impugned judgment would show that since the appellant was convicted and sentenced under Section 354-D of the IPC and under Section 11(i) punishable under Section 12 of the POCSO Act, no separate sentence was awarded for the offence punishable under Section 354-A of the IPC. The substantive sentence awarded for the offence punishable under Section 12 of the POCSO Act and under Section 354-D of the IPC is rigorous imprisonment for two years on each count. The sentences are ordered to run concurrently. Therefore, there would be no need to modify the sentence. The sentence as awarded by the learned Judge is proportionate to the gravity of the crime. In view of the provisions of Section 42 of the POCSO Act, there would be no need to award separate sentence for the offence proved under Section 354-A of the Indian Penal Code.

16. The appeal is, therefore, partly allowed.

The conviction and sentence for the offence punishable under Section 354-D of the Indian Penal Code is quashed and set aside.

The conviction and sentence for the remaining offences is maintained.

The appeal stands disposed of in above terms.

17. Before parting with the matter, I place on record my appreciation for the able assistance rendered by the learned advocate appointed for the appellant and learned Additional Public Prosecutor for the State. Considering the volume of the record and the efforts put in by the learned Advocate Ms. Deepali Sapkal, appointed for the appellant, her fees is quantified at Rs.15,000/- (Rupees Fifteen thousand only).

( G. A. SANAP,J. )

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