



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

CRIMINAL APPEAL NO. 39 OF 2020

APPELLANT : Bhushan S/o Arunrao Wadaskar,
Aged 19 years, Occu. Education,
R/o Sahur, Tq. Ashti, Dist. Wardha.

VERSUS

RESPONDENT : State of Maharashtra,
through Police Station Officer,
Police Station, Benoda, Amravati
Tq. and Dist. Amravati.

Mr. U. J. Deshpande, Advocate for the appellant.
Mrs. M. A. Barabde, A.P.P. for the respondent/State.

CORAM : G. A. SANAP, J.
DATED : FEBRUARY 20, 2025.

ORAL JUDGMENT

1. In this appeal, challenge is to the judgment and order dated 02.01.2020, passed by learned Sessions Judge, Amravati in Special (POCSO) Case No. 235 of 2018, whereby the learned Judge convicted the appellant for the offence punishable under Section 354-D of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.5,000/- and in default to suffer SI for eight days.

2. BACKGROUND FACTS :

The crime in this case was registered on the report of the victim girl. The prosecution case, which can be unfolded from the report and other materials, is that the incident occurred on 23.07.2018 at about 10.30 am. The victim girl and the appellant are residents of village Sahur, Tal. Ashti, Dist. Wardha. On 23.07.2018, at about 9.30 am, the victim girl boarded the ST bus to go to Haterna to attend the school. The appellant was also travelling in the said bus. As soon as the bus reached Haterna bus stand, the appellant caught hold of the hand of the victim girl and forced her to sit and get down at the next bus stop. The victim girl sat down. At the next stop, namely Panjabrao Thakre Krushi Vidyalaya, Haterna, she got down from the bus. The appellant followed her. The appellant again caught hold her hand and expressed his love for the victim. The appellant insisted the victim girl to answer whether she loves him or not. He threatened her that if she did not answer positively, then he would commit suicide in the river near her school. The victim girl thereafter shouted for help. One unknown person came there and questioned the appellant as to why he was harassing the victim girl. Thereafter, the appellant released the hand of the girl. Accused no.2 Harshal (Acquitted by the trial Judge) came on his motorcycle and the appellant and accused no.2 left that place.

3. It is further the case of the prosecution that the victim girl, who was scared on account of this incident, did not attend the school and return back to her home. She narrated the incident to her mother. The mother of the victim was shocked. She did not allow the victim to go to the school for two days. It is further the case of the prosecution that on 25.07.2018 while the victim was proceeding to attend the tuition class in the village, she saw both the accused together by the side of the road. After seeing them, the victim was scared and returned back to her home. She narrated the incident to her mother. Her mother narrated the incident to her husband. Thereafter, they decided to approach the police. On the next day, they went to the police station and the victim girl lodged the report.

4. On the basis of the report (Exh.13) of the victim girl, a crime bearing No. 83/2018 was registered against the appellant at Police Station, Benoda, Dist. Amravati. PW6 carried out the investigation. PW6 collected the birth certificate of the victim girl from the competent authority. The statement of the victim girl and the statement of the independent witness were recorded under Section 164 of the Cr.P.C. As the investigation revealed complicity of the appellant in the crime, he filed charge-sheet against the appellant and the co-accused.

5. Learned Sessions Judge framed the charge (Exh. 2) against the appellant. The appellant abjured his guilt. His defence is of false implication on account of enmity between the father of the appellant and one Prashant Takpure. A report was lodged at the instance of Prashant Takpure. The prosecution, in order to bring home the guilt of the appellant, examined six witnesses. On consideration of the evidence, learned Judge held the appellant guilty of the offence punishable under Section 354-D of the IPC and sentenced him as above. The appellant has come in appeal before this Court.

6. I have heard Mr. U. J. Deshpande, learned advocate for the appellant and Mrs. M. A. Barabde, the learned Additional Public Prosecutor for the respondent-State. Perused the record and proceedings.

7. Learned advocate for the appellant submitted that the evidence adduced by the prosecution is not sufficient to prove the incident. It is pointed out that there are material inconsistencies and discrepancies in the evidence of the victim girl and her mother (PW2). Similarly, there are contradictions in the evidence of the victim girl and independent witness (PW3) on material points. Learned advocate submitted that these discrepancies are sufficient to create a doubt about

the occurrence of the incident in the manner stated by the victim girl and the independent witness. Learned advocate further submitted that the offence of stalking, as defined under Section 354-D of the IPC, has not been made out. Learned advocate submitted that the prosecution has come before Court with a solitary instance of catching hold of the hand of the victim girl by the appellant. Learned advocate submitted that in order to make out the offence under Section 354-D of the IPC, the prosecution has to prove that the act mentioned in clause (i) of Section 354-D(1) of the IPC was done repeatedly despite a clear indication of disinterest by a woman. Learned advocate submitted that the learned Sessions Judge has failed to properly appreciate this aspect and has come to a wrong conclusion.

8. Learned Additional Public Prosecutor for the State submitted that the evidence of the victim girl (PW1) is cogent, concrete and reliable. Her evidence, with regard to the occurrence of the incident, has been corroborated by the evidence of PW3. The evidence of her mother (PW2) corroborates the part of the incident and conduct of the victim girl. Learned APP submitted that the accused caught hold the hand of the victim girl twice on 23.07.2018. Learned APP pointed out that again third incident occurred on 25.07.2018, when the victim girl was proceeding to attend the tuition class in her village.

Learned APP submitted that the prosecution, on the basis of this evidence, has proved that the appellant repeatedly followed the victim girl with an intent to foster personal interaction with the girl despite a clear indication of disinterest by her. Learned APP submitted that the findings recorded by the learned Sessions Judge are supported by the cogent and concrete reasons.

9. The prosecution has come before this Court with a case that on the date of the incident, the victim was below 18 years of age. The incident occurred on 23.07.2018 at about 10.00 a.m. The birth certificate of the victim girl is at Exh.15. The Investigating Officer, during the course of investigation, had collected the birth certificate (Exh.15) from the office of Amravati Municipal Corporation. The victim has stated that her birth date is 11.02.2003. On the date of the incident, the victim girl was studying in 10th standard. The appellant has not challenged the birth certificate (Exh.15), which is a public document. Perusal of the birth certificate would show that the birth of the victim was registered on 21.03.2003 at Serial No. 3316. The incident occurred in 2018. It is not the defence of the appellant that for the purpose of supporting the prosecution against the appellant, this birth certificate was manipulated. Exh.15 is a public document. The Investigating Officer had no reason to create a false evidence. Learned

Judge has held that the victim, on the date of the incident, was below 18 years of age. On appreciation of the evidence, I am satisfied that this finding is based on available evidence.

10. The next important issue is as to whether the evidence is sufficient to prove the incident as narrated by the victim girl. The appellant and the victim are resident of the same village. Perusal of the evidence of the victim (PW1) would show that the appellant did not do any objectionable act to outrage her modesty. Learned Sessions Judge has also recorded a finding that the act was not committed with sexual intent and to outrage the modesty of the victim girl. As per the victim girl, the incident occurred initially in the ST bus when she was trying to get down at Haterna bus stand. She stated that the appellant, all of a sudden, caught hold her hand and forced her to sit and get down at the next bus stop. She has stated that she followed the commands of the appellant and got down from the bus at the next bus stop, namely Panjabrao Thakre Krushi Vidyalaya. She stated that after getting down from the bus, the appellant again caught hold her hand and asked her whether she loves him or not. He expressed his love for her and wanted an immediate answer in positive, otherwise threatened to commit suicide by jumping in the river, which was near to her school. She shouted for help. At that time, one unknown person came there and

questioned the appellant. The appellant thereafter released her hand and left the spot. She stated that at that time, a friend of the appellant (acquitted accused no.2), came to the spot and they both left the spot on the motorcycle. She stated that she was frightened and therefore, did not go to the school and returned back to home by bus. She stated that she narrated the incident to her mother. Her mother was shocked and therefore, she did not allow the victim to go to the school for 2-3 days. It is to be noted that the mother of the victim did not narrate this incident to her husband until 25.07.2018. The victim girl stated that on 25.07.2018 at about 6.00 p.m. when she was proceeding to attend the tuition class in the village, she saw the appellant and co-accused on the motorcycle. She was scared and therefore, she did not attend the tuition class and return back to home. As far as this incident is concerned, the victim girl has not attributed any act or gesture of any sort to the appellant.

11. While appreciating the submission of the learned advocate that the genesis of the incident has been suppressed, the conduct of the victim (PW1) and her mother (PW2) needs appreciation. If the incident of this kind had occurred with the victim girl, then the mother would have informed the father of the victim girl about the said incident. No reason has been put forth for not informing the father of

the victim about this incident upto 25.07.2018. As far as this aspect is concerned, the mother (PW2) has stated that only on 25.07.2018 she narrated the incident occurred on 23.07.2018 to her husband. If the incident as narrated had occurred with the victim girl, then by applying any standard, the same would have been a very serious matter for the parents. The mother of the victim would not have concealed this incident from her husband. There was no reason otherwise to conceal it from her husband. In my view, this is a very important circumstance against the case of the prosecution.

12. Before proceeding to appreciate the submissions on the point of delay, it would be necessary to ascertain the real nature of the incident and the place of the incident. The first incident, according to the victim girl, occurred in the bus. The victim girl has admitted that the students attending the school were travelling in the said bus. There were other passengers in the bus as well. She stated that she did not narrate the incident to the bus conductor. If the incident of catching of her hand and restraining her from getting down from the bus at Haterna bus stop had been noticed by the co-passengers and the bus conductor, then the victim girl, in ordinary circumstances, would not have obeyed the commands of the appellant. It is not the case of the victim that the appellant either beat her at that point of time or

threatened to beat her, in case she did not follow his commands. The occurrence of the incident in the bus at Haterna bus stop is, therefore, doubtful. The victim girl has stated that many students of the village are taking education at Warud and Haterna. She also admitted that the co-passengers travel to Durgwada or Haterna for their work by bus. She has stated that few people were in the bus. She has also stated that at Haterna bus stop, several passengers boarded the bus and several passengers got down from the bus. She stated that she did not complain to the driver, conductor or any other passenger about the alleged act of the appellant. The co-passengers after noticing such an incident would have questioned the appellant.

13. As per the victim girl (PW1), the second incident occurred when she got down at the next bus stop namely Panjabrao Thakre Krushi Vidyalaya, Haterna. The school of the victim is nearer to Haterna bus stop. The victim girl, despite restraint from the appellant as alleged, would have got down at Haterna bus stop. She stated that at Panjabrao Thakre Krushi Vidyalaya bus stop, the appellant caught hold her hand. It is not her case that she got down at Haterna bus stop. In this context, the evidence of the independent witness (PW3) assumes significance. PW3 has stated that when he reached Haterna bus stop, he saw that one boy was holding the hand of one girl. He questioned

the boy as to why he was harassing the girl. He has stated that the boy did not say anything and released the hand of the girl. He has stated that after 5-10 minutes, one black colour two wheeler came there. The appellant left the spot with the acquitted accused on his motorcycle. He has stated that the girl was scared. On his inquiry, the girl disclosed her name. She narrated the incident to him. PW3 has nowhere stated that he witnessed the incident at Panjabrao Thakre Krushi Vidyalaya bus stop. It has come on record that two bus stops are different and distinct.

14. The evidence of the victim girl and the evidence of PW3 on the point of occurrence of the incident is contradictory. PW3 has admitted in his cross-examination that his statement was recorded before the Court of the Magistrate under Section 164 of the Cr.P.C. PW3 has stated that he knows the father of the victim girl as he worked for him as a mason for a long time. He has admitted that the father of the victim had constructed his house. He was acquainted with the victim girl and her siblings. Further perusal of his cross-examination would show that he has suppressed the material facts from the Court. His statement u/s 164 Cr.P.C. would show that after the alleged incident, he made a phone call to the father of the victim girl. The phone call was attended by the mother of the victim girl and on the phone, PW3 narrated the incident to the parents of the victim girl.

Before the Magistrate, he stated that from the spot of the incident, he took the victim girl with him and dropped her at her house. In his cross-examination, he has contradicted his own version. Perusal of his cross-examination in juxtaposition with his 164 statement would show that he consciously tried to hide certain facts from the Court. In the facts and circumstances, there is a scope to conclude that the victim girl and the appellant had been knowing each other. PW3 might have seen the appellant holding the hand of the victim girl. PW3 being acquainted with the father of the victim girl, might have objected for this act of the appellant and taken the victim girl to his house and reported the incident to her parents.

15. The evidence of the victim girl (PW2) and the independent witness (PW3) is contradictory. PW3 has stated that he made a phone call to the father of the victim girl, but the phone call was picked up by the mother. This fact would show that the father of the victim girl was at home when this phone call was received. In my opinion, this evidence clearly shows that the genesis of the incident has been suppressed. As far as the incident dated 25.07.2018 is concerned, the evidence of the victim girl and her mother is contradictory. The victim girl has stated that while she was proceeding to attend the tuition class, she saw the appellant and his friend (co-accused) on motorcycle.

She was scared and therefore, she went back to her house and reported the said incident to her mother. The mother of the victim in her evidence has improved this part of the incident. The mother has stated that on 25.07.2018, while the victim was proceeding to attend the tuition class, both the accused restrained her on the way and therefore, she returned back to home without attending the tuition class. The victim was scared. On this aspect, the evidence of the victim girl deserves weightage. The report lodged by the victim girl is at Exh.13. In the report, the victim girl stated that while proceeding to attend the tuition class, she saw the appellant and his friend on a vehicle on the road, leading to her tuition class. She got scared and therefore, without attending the tuition class, she returned back. The victim girl did not attribute any gesture or objectionable act to the appellant and his friend. Therefore, this part of the story of the prosecution case is also doubtful. In my opinion, the evidence on record is not sufficient to prove the incident as stated in the report by the victim girl. The genesis of the incident has been suppressed. This fact is crystal clear on perusal of the evidence of the victim girl (PW1), her mother (PW2) and independent witness (PW3) together. Learned Sessions Judge has failed to appreciate this aspect in proper perspective.

16. The next important issue is as to whether the incident

narrated before the Court, even if taken at its face value, would constitute the offence of stalking. Learned Judge has acquitted the appellant of the offence punishable under Section 354-A of the IPC and under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act” for short). Section 354-A of the IPC and Section 12 of the POCSO Act had been applied against the appellant on the same set of facts. Learned Judge has recorded a finding that the act done by the appellant was not done with sexual intent and therefore, it would not constitute the offence of molesting the modesty of the victim. Learned Judge has recorded a finding that the offence of stalking, as defined under Section 354-D of the IPC, has been made out. In my opinion, this finding also cannot be sustained. It is not the case of the victim girl that prior to occurrence of the incident dated 23.07.2018, the appellant followed her to foster personal interaction despite a clear indication of disinterest on her part. The first incident, according to the victim, occurred in the bus and the second incident occurred immediately after getting down from the bus. As far as incident dated 25.07.2018 is concerned, the victim has not attributed any role to the appellant. She has not stated that on 25.07.2018, the appellant and his friend followed her or made any sign or gesture and therefore, she was scared. In fact, she stated that after seeing the appellant and his friend on motorcycle, she was scared.

Undisputedly, the appellant and the victim are resident of same village. The victim was scared because of the presence of the appellant on the way while attending the tuition class. This act could not be said to be an attempt to foster personal interaction with the victim girl. Learned Judge, on the basis of the solitary incident occurred on one day, has recorded a finding that the appellant followed the victim girl to foster personal interaction repeatedly despite a clear indication of disinterest by such woman. On the basis of such solitary instance, the offence of stalking cannot be invoked. The word '*repeatedly*' indicates the recurrence of the act for a continuous period of time. The act of fostering personal interaction must be done repeatedly to attract the offence of stalking.

17. On the basis of solitary instance, the learned Judge has held the appellant guilty of the offence of stalking. The offence of stalking in this case has not been made out. Besides, the evidence on record is not sufficient to prove the incident as well. In the facts and circumstances, I am of the opinion that the learned Judge has not properly appreciated this aspect. The offence under Section 354-D of the IPC has not been made out. Learned Judge has not accepted the case of the prosecution for the charge under Section 354-A of the IPC and under Section 12 of the POCSO Act. In this factual situation, it

would not be possible to hold the appellant guilty of the offence punishable under Section 354 of the IPC as well. The prosecution has miserably failed to prove the guilt of the appellant. The evidence is not credible and trustworthy. Sufficient doubt has been created about the credibility and trustworthiness of the evidence. The benefit of doubt, therefore, goes to the appellant.

18. It is further pertinent to mention that there was inordinate delay in lodging the report. The first incident occurred on 23.07.2018. Neither the mother nor the victim girl informed the father about this incident. The father was kept in the dark. No incident as such occurred on 25.07.2018. There was no reason for the parents of the victim girl to lodge the report on 26.07.2018. In this context, it would be appropriate to make useful reference to the decision of the Hon'ble Apex Court in *State of Rajasthan .vs. Om Prakash*, reported at (2002) 5 SCC 745. In this case, the Hon'ble Apex Court has held that the first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The object of insisting upon prompt lodging of a report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the culprits and the part played by them

as well as the names of eye-witnesses present at the scene of occurrence. It is held that the delay in lodging FIR quite often results in embellishment, which is a creature of an afterthought. It is held that on account of delay, the report not only gets bereft of the advantage of spontaneity, but danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is held that the Courts should adopt a sensitive approach in dealing with the cases of child rape. It is held that the reason for delay put forth by the prosecution has to be appreciated keeping in mind all these factors.

19. In the case on hand, the contradictory evidence of the witnesses indicates that after due deliberation, the facts had been exaggerated and embellished. On this point also, the case of the prosecution becomes doubtful. As such, the appeal deserves to be allowed.

20. Accordingly, the criminal appeal is allowed.

(i) The judgment and order dated 02.01.2020, passed by learned Sessions Judge, Amravati in Special (POCSO) Case No. 235 of 2018, is quashed and set aside.

(ii) Appellant/accused – Bhushan S/o Arunrao Wadaskar is acquitted of the offence punishable under Section 354-D of the Indian Penal Code.

(iii) The accused is on bail. His bail bonds stand cancelled.

(iv) The Criminal Appeal is disposed of in the aforesaid terms.

(G. A. SANAP, J.)

Diwale