



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

**CRIMINAL APPEAL NO. 460 OF 2017**

**APPELLANT :-**

Paresh @ Kamlesh Prakash Dhanvatkar  
Aged about 21 years, Occ: Private Work,  
r/o. Vaishali Nagar Behind Ganesh  
Temple,  
P.S.O. Panchpaoli, Nagpur.  
(In Central Prison, Nagpur)

...VERSUS...

**RESPONDENT :-**

The State of Maharashtra, Through PSO,  
Panchpaoli, Nagpur.

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Mr. C.R.Thakur, counsel for the appellant.  
Ms Shamsi Haider, APP for the respondent.  
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**CORAM : MANISH PITALE, J.**

**DATE OF RESERVING THE JUDGMENT: 27.07.2018.**

**DATE OF PRONOUNCING THE JUDGMENT: 09.08.2018.**

**J U D G M E N T**

The appellant has challenged judgment and order dated 11/09/2017 passed by the Sessions Court, Nagpur (Trial

Court in Special Child Criminal Case No.154 of 2015, whereby the appellant has been convicted for the offence punishable under section 354-B of the Indian Penal Code (IPC) and sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and sentenced to suffer rigorous imprisonment for 4 years and 3 years for such conviction with amounts of fine to be paid in terms of the impugned judgment and order.

2. The prosecution case in brief is that the complainant (PW-1) Sandhya Suryawanshi lodged a report on 21/05/2015 in Police Station Panchpaoli, Nagpur, District Nagpur, alleging that on 17/05/2015 at about 12.30 p.m., when she had gone to the market with her mother-in-law, the appellant took her daughter behind Hanuman Temple and kissed her on lips and cheeks and thereafter he showed his private part to the child. The child victim PW-2 was scared and ran away from the place. The complainant PW-1 claimed that her daughter i.e. the victim PW-2 narrated the incident to her when she came back from the market and that the complainant then informed her husband and mother-in-law about the same.

3. It was claimed that report was lodged before the Police after about 4 days because the complainant PW-1 was scared of defamation of her daughter. On registration of the first information report (FIR) pursuant to the said oral report lodged by the complainant PW-1, the Investigating Officer PW-6 undertook investigation and recorded statements of witnesses, including the statement of the victim PW-2. The appellant was arrested on 22/05/2015 and he was sent for medical examination. On the basis of the material gathered during investigation, charge-sheet was submitted against the appellant.

4. After charge was framed, evidence of witnesses was recorded in the Trial Court. The prosecution examined 6 witnesses in support of its case. PW-1 was the complainant and mother of the victim, PW-2 was the victim herself, PW-3 and 4 were the panch witnesses on spot panchnama, PW-5 was the Police Officer, who recorded the report lodged by the complainant PW-1 and PW-6 was the Investigating Officer. On the basis of the oral and documentary evidence on record, the Trial Court found that the prosecution had proved its case beyond reasonable doubt against

the appellant and accordingly he was convicted and sentenced in the aforesaid manner.

5. Mr. C.R.Thakur, learned counsel appearing for the appellant, submitted that in the present case, delay of 4 days in registration of FIR was fatal for the prosecution case. It was submitted that no explanation was put forth by the prosecution for such huge amount of delay. It was submitted that the entire case against the appellant was nothing but a concoction and that the appellant was falsely implicated. It was submitted that there had been dispute between the family of the appellant and that of the complainant with respect to a lane near the house, due to which the appellant was falsely implicated. It was further submitted that the prosecution failed to examine friends of the victim PW-2, with whom she was playing near the Hanuman Temple at the time of the incident. It was submitted that since FIR itself was lodged after four days, there was no medical evidence in the present case to prove the allegations made against the appellant. On this basis, it was submitted that the appeal deserved to be allowed.

6. *Per contra*, Ms Shamsi Haider, learned APP appearing on behalf of the respondent-State, submitted that merely because FIR was lodged after 4 days, it could not be said to be fatal for the prosecution case. The complainant PW-1 had sufficiently explained the delay in registration of FIR, as she stated that she feared defamation of her minor daughter. It was submitted that in such circumstances, it has been held that delayed registration of FIR in cases involving sexual offences, needs to be appreciated in the context of the fear that the child and her family would have about being defamed when such incident becomes public. It was submitted that the victim PW-2 had clearly stated in her evidence in support of the prosecution case and that there was sufficient material on record to demonstrate that the impugned judgment and order passed by the Trial Court was justified. On this basis, it was submitted that the appeal deserved to be dismissed. The learned APP relied upon the judgment of this Court in the case of **Siddharth Dagadu Sonde v. State of Maharashtra**, reported in **2017 ALL MR (Cri.) 4192**.

7. Heard counsel for the parties. The first and foremost issue that needs to be decided in the present appeal is, as to

whether registration of FIR on 21/05/2015 at about 3.30 p.m. pertaining to an incident, that allegedly occurred at about 12.30 p.m. on 17/05/2015, could be said to be fatal for the prosecution in the present case. No straight jacket formula can be laid down as regards delay in registration of FIR becoming fatal for the prosecution. Everything would depend on the facts and circumstances of each case and the nature of evidence placed on record on behalf of the prosecution. In the judgment relied upon by the learned APP i.e. **Siddharth Dagadu Sonde v. State of Maharashtra** (*supra*), in a case where FIR was registered after 5 days of the incident, pertaining to offences under the POCSO Act, this Court found that the delay of 5 days could not be said to be fatal for the prosecution case. In the said judgment, reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**, reported in **AIR 1983 SC 753**. In the said judgment of the Hon'ble Supreme Court, reasons for late reporting of sexual offences in our country were noted to be as follows :-

“(1) A girl or a woman in the tradition bound non-permissive Society of India would be extremely

*reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred, (2) She would be conscious of the danger of being ostracized by the Society or being looked down by the society including by her own family members, relatives, friends and neighbours, (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be, difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over powered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11)*

*The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency to face the Court, to face the cross examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.”*

On the basis of the aforesaid position, it was submitted by the learned APP that delay of 4 days in registration of FIR in the present case could not be said to be fatal for the prosecution case.

8. There is no doubt about the fact that when an incident involves a minor girl child like the victim PW-2 in the present case, the family of the victim may not immediately approach the Police in respect of such incident. The inclination of the family would be to avoid making the incident public so that the victim and the family do not suffer social stigma.

9. In the present case, the incident allegedly took place on 17/05/2015 at about 12.30 p.m., while FIR was registered

after 4 days on 21/05/2015 at 3.30 p.m. The complainant PW-1 gave a one line explanation for the delay in her evidence by stating that she did not lodge report earlier due to fear of defamation of her daughter i.e. the victim PW-2. But, it has also come in her evidence that she had gone to the market with her mother-in-law when the alleged incident took place. According to this witness, when she returned home at about 2.00 p.m., she heard her daughter weeping and upon being asked, she narrated details of the said incident. The complainant PW-1 stated that she narrated the incident to her mother-in-law and that her mother-in-law told about the incident to her husband and father-in-law and that she also told both of them about the incident. There are no details as to when the complainant PW-1 told her husband and in-laws about the said incident. It has also not come on record that upon being told about the incident, all of them were in fear about the defamation of the victim PW-2. It appears to be unnatural that the father and grand parents of the child would have kept quiet for a long period of 4 days before the report was lodged about the incident. It is also not the case of the complainant PW-1 that she hesitated for some time and then told her husband and father-in-law about the incident, who then

immediately caused the report to be lodged. It is also strange that the father of the child did not approach the Police at all. The one line explanation sought to be given by the complainant PW-1 for delay in approaching the police does not appear to be convincing, as no attending circumstances have been explained as to why the complainant PW-1 did not report the matter earlier to the Police.

10. In the case of **Siddharth Dagadu Sonde v. State of Maharashtra** (*supra*), upon which reliance is placed by the learned APP, the delay of 5 days was explained on the basis that the accused was none other than the uncle of the victim and the parents of the victim found it difficult to immediately report the incident to the Police, as it involved a close family member. It had also come on record in that case, that the mother of the victim had first confronted the accused (uncle of the victim) when the accused threatened that if they lodged a complaint against him, he would commit suicide. Thereafter, the complainant in that case, with the help of other prosecution witnesses gathered courage to lodge the report against the accused. In that case, the Court found that the medical evidence had corroborated the allegations made by the victim.

11. But, in the present case, the facts are different and in the context of the evidence of the other prosecution witnesses, delay in approaching the Police in the present case has created a serious doubt about the genuineness of the prosecution case.

12. A perusal of the evidence of the victim PW-2 shows that she was playing along with other children near the Hanuman Temple on the date of the incident. She claimed that the appellant came there and asked her to play game of hide and seek with him and then he took her behind the temple. Thereafter, the victim has given details of the manner in which the appellant behaved with her. But, in the cross-examination the victim PW-2 has stated that earlier she used to visit the house of the appellant but due to dispute regarding lane between the two families, the visiting terms had come to an end. The complainant PW-1 has also stated in cross-examination that there had been exchange of words between the two families, although she denied the suggestion that there had been a dispute between the families in respect of the lane. The complainant PW-1 had also stated that about 10 to 11 years earlier the father of the appellant had raised objection on construction of wall.

13. It has also come in the evidence of the complainant PW-1 that there were some improvements made in her evidence before the Court as compared to her statement given to the Police after the incident. These omissions were proved through the cross-examination of the Investigating Officer. The nature of evidence of the complainant PW-1 and her daughter victim PW-2 thus shows that there had been a dispute between the families of the appellant and the victim. The omissions in the evidence of the complainant PW-1 also indicate that there was an attempt by her to embellish the version. In this context, failure of the prosecution to examine at least one of the children with whom the victim PW-2 was playing also becomes significant. The place of the incident was not a house or an enclosed place, but it was a public place behind the Hanuman Temple. In this situation the prosecution could have examined an independent witness.

14. As the FIR itself was lodged after 4 days of the incident, as also because of the nature of the allegations made against the appellant, there is no medical evidence in the present case to corroborate the prosecution case. There is nothing on record to show that the victim PW-2 had indeed suffered physical

abuse due to the said incident. The evidence of PW-3 and PW-4, the panch witnesses on spot panchanama shows that they have not supported the prosecution case. Both these witnesses have stated that the spot panchanama was not prepared in their presence. Therefore, this aspect of the prosecution case is also not proved. The evidence of the Investigating Officer PW-6 shows that he admits not to have recorded the statement of the girl who was playing with the victim PW-2. He also admitted that he had asked the victim PW-2 as to what the appellant had done with her by specifically naming the appellant. This indicates that the name of the appellant did not come from the victim PW-2 at the time of recording of her statement. In his statement under section 313 of the Criminal Procedure Code, the appellant stated that he had been falsely implicated because of dispute pertaining to lane in the year 2015.

15. The evidence of the prosecution witnesses brings out the fact that although the incident allegedly took place on 17/05/2015 at about 12.30 p.m., the complaint regarding the same was lodged by the complainant PW-1 for the first time on 21/05/2015 at about 3.30 p.m. In the backdrop of the admissions

given by the complainant PW-1 and the victim PW-2 about dispute between the families of the victim and the appellant (accused), proper explanation for such a long delay in registration of the FIR was necessary. But, the complainant PW-1 has failed to give a proper explanation. One line statement about fear of defamation of her daughter does not appear to be sufficient in the facts and circumstances of the present case. The complainant PW-1 has failed to give details about when she informed her husband and in-laws about the said incident and what prompted her on 21/05/2015 to approach the Police at about 3.30 p.m. Since existence of dispute between the families was admitted both by the complainant PW-1 and the victim PW-2, the possibility of false implication of the appellant cannot be ruled out. There is also no medical evidence to corroborate the prosecution case. The Investigating Officer failed to record statement of the children with whom the victim PW-2 was playing when the incident allegedly occurred and the spot panchanama has also not been proved satisfactorily as both the panch witnesses turned hostile.

16. In these circumstances, it appears to be unsafe to convict the appellant for the offences with which he was charged.

The Trial Court has merely stated that it found the explanation for delay in registration of FIR to be satisfactorily explained by the complainant PW-1. There is no discussion in the impugned judgment and order as to why there was such a delay of 4 days in approaching the Police when the Police Station was admittedly situated at a distance of about one to one and half kilometers from the house of the complainant PW-1. There is no explanation on record as to why the husband of the complainant PW-1 and the father of the victim PW-2 had no role to play in the present case, although it pertained to serious offence of sexual abuse against his own daughter. All these circumstances show that the verdict of guilty pronounced by the Trial Court against the appellant is not sustainable.

17. Accordingly, the instant appeal is allowed. The impugned judgment and order is set aside and the appellant is acquitted of the offences with which he was charged. Consequently, the appellant shall be released from custody forthwith, unless required in any other case.

KHUNTE

**JUDGE**